SENATE—*Tuesday, January 25, 1977*

(Legislative day of Wednesday, January 19, 1977)

The Senate met in executive session at 10 a.m., on the expiration of the recess, and was called to order by Hon. DONALD W. RIEGLE, JR., a Senator from the State of Michigan.

PRAYER

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

Eternal Father, we open our hearts to Thee seeking to know Thee better, to love Thee more sincerely, and to serve Thee more faithfully. As we listen to one another, may we be attuned to hear Thy voice above all others. We want to do right and to be right. Take from us all that obstructs the awareness of Thy presence and the will to obey Thy guidance. Be to us our unseen Friend, our silent Helper, our constant Companion.

In Jesus' name, we pray. 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., January 25, 1977.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. DONALD W. RIEGLE, JR., a Senator from the State of Michigan, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Monday, January 24, 1977, be approved.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from Tennessee desire recognition?

Mr. BAKER. Mr. President, I have no request for time and I have no statement. I reserve my time under the standing order.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all committees be permitted to meet during the session of the Senate today.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oregon (Mr. HATFIELD) is recognized for not to exceed 15 minutes.

SENATE JOINT RESOLUTION 16—RESOLUTION TO RESTORE POSTHUMOUSLY CITIZENSHIP TO JEFFERSON F. DAVIS

(Referred to the Committee on the Judiciary.)

Mr. HATFIELD. Mr. President, I send to the desk a joint resolution to restore the citizenship of Jefferson Davis, former U.S. Congressman, U.S. Senator, and President of the Confederate States of America.

Last year, Mr. President, this body and the House of Representatives passed a bill, sponsored by the senior Senator from Virginia, to restore the citizenship rights of that most able general, Robert E. Lee. That bill had its genesis in the discovery of a loyalty pledge signed by General Lee which entitled him to an amnesty and restoration of rights long overdue. This bill is based on no such claim. Mr. Davis, believing he had committed no crime, and he was never convicted of one, never asked for pardon, and he was specifically excluded from the general amnesty bill of 1876. Rather, this legislation seeks to right a glaring injustice in the history of the United States.

It is said that history is written by the victors. In this case, it could also be said that the history of this man was written by the vanquished, for Jefferson Davis, perhaps more than Abraham Lincoln, was beset by critics in the Confederacy jealous of his position or outraged at his politics. This criticism from within and without has relegated Davis to at best the misguided champion of a losing cause, and at worst the traitorous defender of an abominable institution.

But Davis was neither of these. He was instead an honorable public servant of principle the like of which is all too rare in these days when expedience is more ardently practiced than conviction defended.

Most of us remember Jefferson Davis as the President of the Confederacy, and I suspect his stature suffers by that association. Nonetheless, his election to the office met with acclaim both in the North and the South, and he acquitted himself well in a nearly impossible job. Woodrow Wilson, in the fourth volume of his "History of the American People," speaks of "the masterful characteristics of Mr. Jefferson Davis":

> He had the pride, the spirit of initiative, the capacity in business, which qualify men for leadership, and lacked nothing of the indomitable will and impervious purpose to make his leadership effective. He moved, direct, undaunted by any peril, and heartened a whole people to hold steadfast to the end.

There is more, much more, to the distinguished career of Jefferson Davis than his leadership of a benighted cause. He was a graduate of the U.S. Military Academy at West Point, which he attended with Lee and Joseph Johnston. After accepting his commission as a second lieutenant, Davis went west for a tour of duty in Illinois and Wisconsin, and saw service in the Black Hawk War. He met and married the daughter of then Col. Zachary Taylor, resigned his commission, and retired to Mississippi to lead the life of a planter in 1835.

Ten years later, in 1845, Jefferson Davis entered the House of Representatives as a Congressman from Mississippi. The New York World declared that he was "the best-equipped man intellectually, perhaps, of his age, in the country." Before the force of that intellect could make its mark on the House, however, the United States was at war with Mexico, and Davis resigned his seat to accept a colonel's commission and lead a unit from Mississippi. He fought under Zachary Taylor, by then a general, and alongside a lieutenant named Ulysses S. Grant. He became known as the hero of Buena Vista for his actions in that battle, in which Taylor defeated Santa Anna despite being outnumbered 4 to 1.

In 1847, still suffering from a wound inflicted at Buena Vista, Davis returned to Washington, this time to take a seat in the Senate. Because of his demonstrated intellect and varied interests, he was made a regent of the Smithsonian and appointed to the Library committee. More important, he was made chairman of the Senate Military Affairs Committee, a singular honor for a freshman Senator.

Davis resigned his seat in 1851 to return to Mississippi and attend to local political matters as well as his plantation, Brierfield. In 1853, however, he was again called to serve, this time as Secretary of War in the administration of President Franklin Pierce. It is one of the many ironies in his life that as Secretary he helped build the arsenal that was later turned against the South, and pressed for the expansion of the railroads. In any event, he was in his element and did an outstanding job. When Buchanan took office in 1857, Mississippi was quick to return Davis to the Senate.

Again he achieved preeminence in a chamber where the presence of Calhoun, Clay, and Webster loomed large. Horace Greeley, the abolitionist editor of the New York Tribune, wrote:

> Mr. Davis is unquestionably the foremost man of the South today. Every Northern Senator will admit that from the Southern side of the floor the most formidable to meet in debate is the thin, polished, intellectual-looking Mississippian with the unimpassioned demeanour, the habitual courtesy and the occasional unintentional arrogance which reveals his consciousness of the great commanding power. He belongs to a higher grade

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of public men in whom formerly the slaveholding democracy was prolific.

Unfortunately, however, Davis' time in the Senate was cut short by events. Mississippi seceded shortly after South Carolina did, and in January of 1861 Davis bid farewell to the Senate and returned to his plantation, where on February 10 he was informed he had been declared President of the Confederacy by a convention of the seceding States.

All of this history is available to anyone willing to take the time to study it. It alone should rescue Davis from obscurity. But the purpose of the joint resolution I offer today is to correct a grave injustice inflicted upon Davis by a vindictive conqueror.

After Petersburg fell and Richmond was evacuated, Davis and his government fled west. Upon learning of Lee's surrender at Appomattox, he turned south, and was eventually captured by Union forces in Georgia. Under military guard, he was taken to Fort Monroe at the mouth of the James River in Virginia. Even those grown accustomed to the modern-day horrors of political imprisonment and torture would be appalled at Davis' treatment there.

As he well knew from his tenure as Secretary of War, Fort Monroe was perhaps the most redoubtable fortress of the U.S. Army, with walls up to 95 feet thick, and surrounded by a moat of equally great proportions. Davis could not have escaped from such a prison. Nevertheless, his captors were not satisfied with merely keeping him within the fort, and instead locked him into an inner cell with only one stoutly barred window, with a lamp ordered to be kept burning day and night at his head, and with a guard detail of 70 soldiers, 2 of whom placed incessantly in the cell itself. He could receive or send no mail, and had only his Bible to read. And for the final insult, Secretary of War Stanton had Davis placed in irons. As the New York Herald put it, Davis had been—

. . . committed to that living tomb prepared within the impregnable walls of Fortress Monroe . . . He is buried alive.

Though the conditions of his imprisonment gradually improved, thanks to the protests of military doctors who believed he would die unless given some relief, Davis was held in close custody in Fort Monroe for 2 years. An indictment was brought against him, but he was never tried, for the prosecutors never settled on the charges. As Chief Justice Salmon Chase said—

If you bring these leaders to trial, it will condemn the North, for by the Constitution secession is not rebellion . . . We cannot convict him of treason. Secession is settled. Let it stay settled.

Finally, Davis was released from Fort Monroe in May 1867. A bond of $100,000 pending trial was posted, with Horace Greeley and Cornelius Vanderbilt among those contributing.

Jefferson Davis had 22 years of life remaining. In 1868 the indictment against him was quashed, and through a general amnesty declared by President Johnson on Christmas Day, 1868, he was no longer a prisoner on bail. But he was still without his rights as a citizen, and they were never restored. He was specifically excepted from the general amnesty of 1876 by the demagoguery of James G. Blaine, who falsely alleged that Davis was "the author, knowingly, deliberately, guiltily, and willfully, of the gigantic murders and crimes at Andersonville."

Mr. President, Jefferson Davis died in 1889, much mourned in the North as well as the South, and still without the rights of a citizen in the Nation he had served so well.

In his memoirs, Davis declared it his purpose to "keep the memory of our heroes green. Yet they belong not to us alone; they belong to the whole country; they belong to America." So it is with Jefferson Davis, and with this joint resolution I seek to keep his memory green, and restore to him the rights due an outstanding American.

I introduce this legislation at this particular time, Mr. President, because it can serve as one more symbol of the reunification of the South with the rest of our Nation, an event eloquently manifested in the election of Jimmy Carter. Furthermore, President Carter has now pardoned Vietnam era draft evaders. I trust we will continue to debate his action. This resolution may give us some historical perspective on the issue, and perhaps a greater understanding of its meaning and purpose.

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

Mr. HATFIELD. I yield.

Mr. ALLEN. Mr. President, I commend the distinguished Senator from Oregon (Mr. HATFIELD) for his very fine speech and for the resolution and the spirit which prompted the resolution.

I appreciate his reporting the life and career and the statesmanship and the patriotism of Jefferson Davis. I do not believe the Senator quoted—possibly he did—from the massive work on Jefferson Davis by Hudson Strode of Alabama. I feel that everyone would be benefited by reading this great work, which does show that Jefferson Davis was a great man, a great southerner, a great American, and that history, in the past, has not been kind to him. Fortunately, however, a different view now is being taken of Jefferson Davis; and in the words of Stanton as to Lincoln when the latter died, certainly now Jefferson Davis does belong to the ages.

He is one man who was chosen as President of a people and of a government who did not seek his office. As a matter of fact, he did not want it; he did not want the burdens of heading the Confederate States of America.

The Confederate States of America was formed in the Alabama State Senate chamber, I believe, on February 5, 1861. The month before that, in the house chamber of the Alabama State Capitol, the Ordinance of Secession was passed which took Alabama out of the Union of States; and it was then in the senate chamber in the Alabama State Capitol that Jefferson Davis was named as President of the Confederacy.

I think this is a great humanitarian and patriotic act that the Senator is taking at this time, and I commend him for his efforts. I hope that the resolution will be adopted unanimously by the Senate.

Mr. HATFIELD. I thank the Senator from Alabama. I am grateful that he made mention of the great three-volume work of Hudson Strode, from which I received the inspiration and the basic information incorporated today in my remarks.

Mr. ALLEN. I thank the Senator.

ATTORNEY GENERAL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of the nomination of Griffin B. Bell, of Georgia, to be Attorney General of the United States.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. EASTLAND, I yield myself not to exceed 15 minutes from the time under his control.

Mr. MATHIAS. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. ROBERT C. BYRD. I yield.

Mr. MATHIAS. Mr. President, I ask unanimous consent that Mr. Kelley, of my staff, have the privilege of the floor during the entire proceedings on this nomination.

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

The Chair inquires of the Senator from West Virginia whether it is his intention to commence the debate at this time.

Mr. ROBERT C. BYRD. The time is now running, so I am yielding myself 15 minutes from Mr. EASTLAND's time, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

NOMINATIONS ON THE SECRETARY'S DESK—COAST GUARD

Mr. ROBERT C. BYRD. Mr President, there are certain nominations on the Secretary's desk in the Coast Guard that have been cleared on both sides of the aisle.

I ask unanimous consent that the Senate proceed to the consideration of those nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the nominations.

The second assistant legislative clerk proceeded to read sundry nominations in the Coast Guard for appointment to the grade indicated.

Mr. ROBERT C. BYRD. Mr President, I ask unanimous consent that the nominations be considered and confirmed en bloc.

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

(All nominations confirmed today are printed in the RECORD at the end of Senate proceedings.)

Mr. ROBERT C. BYRD. Mr. President, I ask that the President be notified of the confirmation of the nominations pertaining to the Coast Guard.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, again on my time.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ATTORNEY GENERAL

The Senate continued with the consideration of the nomination of Griffin B. Bell, of Georgia, to be Attorney General of the United States.

Mr. ROBERT C. BYRD. Mr. President, I yield.

Mr. HEINZ. Mr. President, I thank the distinguished majority leader for yielding. I have a unanimous-consent request. I ask unanimous consent that Geoff Garin, of my staff, have the privileges of the floor during the consideration and the debate on the nomination of Griffin Bell.

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

Mr. BAKER. Mr. President, before we proceed might I propound a unanimous-consent request?

Mr. President, I ask unanimous consent that I may be permitted to yield control of the time on this debate under the standing order to the senior Senator from Maryland (Mr. MATHIAS).

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

Mr. MATHIAS addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. MATHIAS. I yield.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RIEGLE, I ask unanimous consent that Susan Poor of his staff be granted the privileges of the floor during the consideration of the nomination of Mr. Bell.

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

Mr. MATHIAS. Mr. President, I ask unanimous consent that Michael Klipper, a member of the staff of the Judiciary Committee, be allowed the privileges of the floor during this debate.

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

Mr. MATHIAS. Mr. President, the question before the Senate is whether the Senate should give its advice and consent to the President on the nomination of Griffin Bell, of Georgia, to be the Attorney General of the United States.

I think it is important for us at the very outset to ask ourselves what does that mean? What does it mean that the Senate is going to give its advice and consent to the nomination of Griffin Bell to be Attorney General? Does it simply mean that after the President of the United States has had an opportunity to exercise the broad and plenary power to choose from among 215 million Americans, that we then merely have to ascertain whether his choice is a convicted felon or a committed lunatic, and if we find that that is not the case, we then have to automatically grant confirmation?

Well, I would say certainly not. This was one of the questions that arose during the debates on the adoption of the Constitution and which was discussed by Alexander Hamilton in No. LXXVI of The Federalist Papers. He said:

> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

I think that Hamilton has spoken for us as well as for his own time in an important way. It seems to me that we have a responsibility under article II of the Constitution to take part in what is, in effect, a two-pronged appointment process, a process in which the power of appointment is clearly divided, one part being the power of nomination, which is assigned to the President, and the other part being confirmation, which is assigned to the Senate.

We are not given this power just as a matter of show, of exhibition; we are not given this power just so that we have something to do to fill in these days. This is a serious responsibility, and it is one I think we have to discharge in a serious way.

I know the question will be raised here today, as it has been in the press today and in the last few days on the subject of comity with the Executive, of what we owe to a President to accede to his wishes, to give him officers to carry out his administration with whom he is comfortable and in whom he has particular personal confidence.

Of course, this argument is made very strongly when we are in a honeymoon and, I think, it is not without some force. But, on the other hand, I think we have to remind ourselves it is not the President's qualifications that are under review here today; it is the qualifications of his nominee.

The separation of powers, which is a very fundamental principle of our government, does not require that one branch dominate another branch but rather that we share coequally in the responsibilities assigned to us. And this, in fact, is what we propose to do here today in this debate, to look very carefully at the appointment which we will be making with the President by the act of confirmation.

To simply confirm this nomination out of some sense of comity with the Executive would, I think, very seriously erode not only the powers of the Senate but the constitutional responsibilities of the Senate, and I do not propose to do that today.

But if we are going to judge a nominee, any nominee, not just the one before us today, what kind of standards should we apply and what sort of tests should we apply?

I think we have some precedents and guidelines from the past. For example, I think we can ask, on the question of personal integrity, and personal honesty, whether the nominee has taken those precautions, and care in his personal, professional, and financial relationships which would avoid any charge of impropriety or which would avoid, in fact, even the appearance of impropriety. In the case of the great officers of our Government the appearance of impropriety, as well as the existence of impropriety itself, is a very grave matter because it goes to the question of confidence in Government.

The problem of conflict of interest arises. In the case of a nominee who has been a judge, there is a very clear necessity to make an inquiry as to whether he has sat in cases in which he has had an interest of some kind. If the nominee has a previous record of performance as a public official we ought to examine it very carefully. I must say, that this kind of examination presents some difficulty, when that record of prior public service is as a judge, because I believe very strongly in the principle of judicial independence. It is a very ancient and fundamental principle which has been important in our Government from its very beginning. But very often the decisions of a former judge are the most important guides we have to his philosophy and his thinking; therefore. I believe that we have to take a look at what a judge has done. If in fact that judge has shown some reluctance to accept the rulings of higher courts or the clear precepts of the Constitution, and in fact he has shown some ingenuity in avoiding or evading those rules and those precepts, then I think we have to weigh that.

I think we have to look at past mistakes because all of us make mistakes as we go through life, and we have to make some judgment as to what weight to give those past mistakes.

I do not think that because someone has made a mistake or even several mistakes in the past which he has admitted and which he has stated clearly that he has repented that record should be an albatross around his neck forever.

But I do think that there has to be some ample evidence that, in fact, there has been repentance and a change of heart, and I think the evidence has to be very clear if we are to accept that as, in fact, the basis for our decision.

One of the factors, it seems to me, that is important is how the public is going to accept such a nomination because every appointment of a higher public official has an effect on public confidence, and we have an interest in public confidence.

On this subject I am going to quote from the speech that was given in this Chamber by one of the most beloved Members of the Senate ever to sit here, Phil Hart of Michigan. During the debate on the nomination of Judge Carswell to be a Justice of the Supreme Court, Phil Hart addressed himself to this question of the effect of a nomination on public confidence, and he said after some discussion of Judge Carswell's record that we can debate whether or not Judge Carswell had a change of heart.

> We can debate that as white Americans. But what if one were a black American? We have a responsibility to evaluate the judgment of black Americans on our action and their future attitude * * *

He said:

> I am willing to accept . . . Judge Carswell's statement of his change of heart . . . as descriptive of his present attitude, but what do you say to the 20 million blacks? To what extent should we be concerned with their feelings on that kind of speech?

And then he went on to say in a very poignant way:

> We are all part of what we were. That pledge is a part of that nominee.

So I think we do have to take into account the past and how that will be viewed by the public. We have to take into account intentions. In this case the record shows that Judge Griffin Bell has made a number of pledges, pledges that I welcome, pledges that I think are good as to how he will run the Justice Department, how he will interpret the law, and the kind of appointments that he will make. He has expressed some intentions that I find less welcome, intentions which would seem to abrogate the judgment of the Senate when it adopted the amendment offered by the distinguished majority leader last year providing for a 10-year term for the director of the FBI. But these intentions, both welcome and unwelcome, both good and bad, are part of what we will have to judge.

But the final test really comes down to that expressed by the present distinguished senior Senator from Montana, who was the junior Senator at the time, when he was summing up his thoughts in the Carswell debate. He said:

> It is not a challenge of the integrity or the popularity of the President. I vote the conscience of the junior Senator from Montana.

And ultimately that is where we all have to end up. We have to vote our conscience.

Very briefly, I have tried to evaluate the record of this nominee on the question of the propriety of his past actions. I have to say that I think he has lacked sensitivity. He sat as a judge in the Atlanta school case and in the Biscayne Bay case and under circumstances in which I believe he clearly should have recused himself. This is not a personal judgment of mine. It is the judgment of many in the country, including distinguished legal experts.

I submit at this time a telegram which came to me from Vern Countryman, professor of law at Harvard Law School, who concludes:

> I . . . cannot reconcile his confirmation with the Senate's vote on Judge Haynsworth. Confirmation of Bell would make mockery of President Carter's conflict-of-interest guidelines.

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

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

> CAMBRIDGE, MASS., *January 21, 1977.*
> PMS Senator CHARLES MATHIAS, Jr.,
> *Senate Office Building,*
> *Washington, D.C.*
>
> Attention Robert Kelley: I applaud your courageous and principled stand in voting against confirmation of Griffin Bell as Attorney General. In view of obvious improprieties of Bell in sitting as judge on appellate court which ruled on validity of school desegregation plan in a case in which he provided legal advice and on the desegregation of a Biscayne Bay yacht club while he maintained membership in 3 clubs with similar segregationist policies, as well as his failure to report free and discounted club memberships to judicial conference even after its advisory committee had specifically ruled such memberships should be reported, cannot reconcile his confirmation with the Senate's vote on Judge Haynsworth. Confirmation of Bell would make mockery of President Carter's conflict of interests guidelines. Please circulate this message to other Senators.
>
> VERN COUNTRYMAN,
> *Professor of Harvard Law School.*

Mr. MATHIAS. I look at his record of public service, including nearly 15 years on the bench of the Circuit Court of Appeals for the Fifth Circuit; and I do not find that his record there is one which encouraged the march of the law toward the goal of equality and justice in which so much of this country was engaged in the decade of the sixties. In fact, I think an argument can be made that much of that record is a record which was designed to retard the march of the law toward equality and justice at a difficult time in our history; and we will discuss that here today.

I have considered the effect on the public, and of course the effect is clearly to raise some grave doubts among a substantial number of our people—to raise grave doubts as to whether they can look to the Justice Department in the future as a citadel of justice, where all of our people can appeal with the knowledge that their appeal will be met impartially, promptly, and vigorously.

So for these reasons, Mr. President, I cannot advise that this nomination be confirmed. I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. EASTLAND. Mr. President, I yield to the Senator from Indiana. How much time does the Senator want?

Mr. BAYH. Mr. President, I shall take about 5 minutes right now, and then use more time later on.

Mr. EASTLAND. Take what time you want.

Mr. BAYH. Mr. President, I have listened with great interest to the analysis of the issue before us by my distinguished friend and colleague, the Senator from Maryland. Having had the opportunity of serving with him in a number of capacities on various committees and subcommittees, I have to say that there is no Member of this body whose judgment I respect more highly, and I am confident that he is aware of my sincerity in this regard.

It is because of this deep feeling of respect and admiration for him that it is difficult for me to have sat through the same hearings, looked at the same set of facts, listened to the same nominee, considered the same life history and qualifications, and find myself coming to a different conclusion concerning the merits of the nomination. I think if the Senator and I were to look over the record of our tenure in the Senate, we would find many more times on which we have agreed than on which we have disagreed.

So the fact that the assessment that I make is different from that of the distinguished Senator from Maryland is in no way anything other than the differing judgments of two men conscientiously seeking the right answer to a very important question: I must say I would concur in the assessment made by our friend, now the senior Senator from Montana, that what we all do and what we are charged with doing is not to meet some test, either accurately or inaccurately interpreted here 200 years later, as laid down by our Founding Fathers, but indeed to use our own individual tests and to vote our individual consciences.

I think all Members of the Senate will do that, even those who might reach a different conclusion than I.

Mr. President, I suppose I spent as many hours in that hearing room as any other Member of the Senate. As one who has been intimately involved in the advise and consent process for past nominations, I felt a great deal of responsibility not only to spend time there, but to study the merits of the issue, and to try to glean from personal conversations with the nominee answers to questions that all of us in this body have a responsibility to answer before we put our seal of approval on any nominee.

I have to say, Mr. President, that after long and careful consideration of this nomination, I am pleased to be able to express my support for Judge Griffin Bell to be Attorney General of the United States. As the Judiciary Committee in the Senate advised and consented to the nomination of Judge Bell, I was glad to join in that confirmation, with confidence that Judge Griffin Bell has the capacity to be a truly great Attorney General.

It seems to me, Mr. President, that this is the test that all of us have to apply. We are not looking for someone without

imperfections. We have not had anyone who has met that test on this Earth for better than 1,900 years. We are not looking for someone who might meet all of the qualificatons that we would set forth if we were to set about picking the perfect Attorney General. In fact, I think in all candor and honesty to the committee Judge Bell himself pointed out that he had recommended, early in this election process, a number of outstanding attorneys that he thought would make good attorneys general.

In spite of all this, I felt that the question before all of us is: Would the man be a good Attorney General? I think we can confidently say that he will be.

As we began his confirmation hearings before the Judiciary Committee, Mr. President, I told Judge Bell that I would be less than candid if I did not acknowledge serious reservations about some of his activities and decisions in the past.

There is no point in avoiding the fact that I had reservations.

Judge Bell has taken some positions and expressed some beliefs with which I disagree. Among those was his support of G. Harrold Carswell for appointment to the Supreme Court, his decision which upheld the Georgia State Legislature's denial to Julian Bond of his duly elected seat, and his dictum in the Brown case implying that the President has broad inherent authority to authorize warrantless electronic surveillance of American citizens in spite of fourth amendment protections, when national security is involved. Some accusations about his activities for former Georgia Governor Ernest Vandiver also caused me concern. But the judgment that we must make in the Senate is, as I mentioned a moment ago, not whether Judge Bell's record is without flaws, nor if he is a perfect human being. None of us could pass that test—at least, speaking, as I suppose I should, for this Senator from Indiana, I certainly could not pass that test.

Rather, the judgment we must make is whether Judge Griffin Bell, has the ability and strength of character to recognize and to admit his errors of the past, to grow, and aggressively to pursue his pledges and the pledges of President Carter to enforce the laws, to assure equal justice and to protect individual liberties.

I certainly agree with my friend from Maryland that mistakes do not necessarily recommend one. But we must start from the foundation that whoever is nominated will have made some mistakes. We have to look at the kinds of mistakes, whether the mistakes now are acknowledged, and whether the nominee has learned so that he will not make the same mistakes again. Some of us may measure these mistakes differently. I must say that, having gone through the Haynsworth and Carswell nominations, I took some comfort in findng that in Judge Bell we have a man who does not try to hide and run away from his mistakes.

One of the major reasons that Clement Haynsworth was denied confirmation by the Senate was that he tried to make serious errors look as if they were the standard, accepted conduct of members of the Judiciary and people with good judgment.

On most of the instances that were presented to the committee in which I believed Judge Bell had error in the past, he acknowledged either that he had made a mistake or that circumstances had changed so that, given the 20–20 view of hindsight, he would now reach a different conclusion. I must say I took some significant comfort in this.

Judge Bell willingly responded to the accusations of his sharpest critics during the Judiciary Committee hearings on his confirmation.

To just touch on some of those criticisms, he said that his decision in the Julian Bond case was wrong. Clearly it was. He admitted that events subsequent to his decision in the Brown case have shown that his dictum on that case was too broad, and he expressed the belief that the President should voluntarily act within the constraints of the fourth amendment warrant clause to protect the civil liberties of American citizens. He pledged that, even if the President has constitutional authority to authorize warrantless electronic surveillance, he would try to assure that the President would not use that power with respect to American citizens.

As one who has been personally involved as a member of our Select Committee on Intelligence, working with the distinguished Senator from Massachusetts (Mr. KENNEDY), we have tried to place careful restrictions on electronic surveillance and other violations of privacy of our citizens in the area of national security. I again felt comforted by the fact that the Attorney General nominee said he not only believed there was room for Congress to act but that he would cooperate with us in placing constitutional guidelines on the snooping and invasions of privacy of Americans that have gone on for all too long.

Let me say to the Senate that Judge Bell did not repudiate his recommendation of Mr. Carswell for a seat on the Supreme Court. I wish he had. It would have been politically expedient for him to do, let me say. He did promise, however, that he would not recommend persons with records such as Carswell's for consideration for judicial appointments during his tenure as Attorney General.

After some members of the Judiciary Committee may have tired of hearing me ask him to repudiate Mr. Carswell, I finally came to the conclusion that perhaps this is a test of the character of the man; that he was unwilling to repudiate a man who was a friend and who now has fallen on unfortunate times. Judge Bell had been a personal friend of Harrold Carswell. He had gone to law school with him. Judge Bell's support had been solicited by other contemporaries on the fifth circuit court. He gave his recommendation in support of Mr. Carswell. That was a mistake.

But, rather than repudiate an old friend he chose, in the Judiciary Committee hearings, to look instead at his present thinking and to look to the future. He said he would not consider any person for a judicial appointment who had a civil rights record like Carswell's. Perhaps that speaks more of the man than easy refutation of past friendships and past support.

In any event, Judge Bell's commitments for future high quality judicial appointments are clear. I think we can rest confident in that fact.

It was important to me in weighing this nomination to give careful attention to the opposition to Judge Bell voiced by several individuals and groups whom I respect greatly.

Just as some of my colleagues who on the floor today are going to take issue with the qualities of this man—a judgment that I respect, having fought many tough battles on the same side with those colleagues—there are some organizations and some leaders outside this body with whom several of us have marched arm-in-arm in trying to see that certain goals were obtained and certain negative steps were not taken successfully.

Among those, without naming the entire list, are Clarence Mitchell, Aaron Henry, and the NAACP, Representative PARREN MITCHELL and the Congressional Black Caucus, Joseph Rauh and the Americans for Democratic Action, Jesse Jackson and PUSH, just to try to name a few of those whose value judgments I find over a period of time to be very close to the mark.

I know these men and the organizations that they represent to be thoroughly sincere in their dedication to civil rights and equal justice. Their testimony in opposition to Judge Bell, very frankly, gave me pause.

But I also took note of the strong support Judge Bell received from people whom I also respect, including many who dealt with him personally while he was a Judge on the fifth circuit court of appeals and as far back as the late 1950's, when he was a counsel to the former Governor of Georgia. Ernest Vandiver.

If the candidate before us was Governor Vandiver, with all he said and did, I feel we would have a different problem. That is not the case. We have a man who worked in a capacity which has been described differently by different people.

I must say the conflicting testimony from honest, able and fair minded people, many of whom have labored for much of their lives for civil rights, seems to demonstrate that well motivated people can look at the same information and reach different conclusions.

One of the things I struggled with, and I assume others struggled with and came to different conclusions, is how heavily to weigh a person's past record. I think that record is fair game to consider, as we look at a nominee some 20 years later.

But unless we accept the standard that one is to be forever foredoomed for value judgments that he made two decades ago, then it seems to me we have to look at the capacity of a man to grow. Even more significantly, some of us in this part of the country perhaps ought to try

to put ourselves in the shoes of persons making decisions two decades ago under entirely different circumstances than most of us in this body, who did not live in that part of the country, have experienced.

There have been a lot of changes in the South. We now have a man from Georgia sitting in the White House. Let me say very frankly, at one time there would have been very few people in the country who would have imagined it possible, not only for the man now there, but for anybody from Georgia to be sitting in the White House.

I think the President's election reflects a change in national attitude. We have put the country back together again and we want to keep it that way.

It seems to me that although national leaders who are concerned about civil rights have a sober responsibility, perhaps we should not be so pious as to establish our own judgments on standards that were met by people 20 years ago and who lived in a different part of the country than most of us have lived.

So I must say, as I tried to weigh this, I gave significant weight to the value judgments that were made by black leaders in the Georgia-Atlanta community who had worked with this man. To me, the appraisal that they made had value. Having worked with the man in struggling and trying to crack the door and let some fresh air into those dungeons of segregation 20 years ago, they were in a good position to test what the man was really made of and how conscientious he was in moving toward ultimately wiping away this blight on American society. They are better qualified than I am or some other well-intentioned leaders are who were not there and are applying a different standard with the 20–20 vision of hindsight.

Without at all being disparaging toward those who made this assessment and have come to a different conclusion, I wish to say it is awfully easy for those of us who have not been there to judge others who have. To me, to listen to those black leaders who had worked with Judge Bell and who concluded that not only did he do a passable job, but that he did a good job, made an impression upon at least this one Senator.

To look at some other aspects of Judge Bell's record, he has been praised for his accomplishments in seeking to improve the processes of the judiciary to serve the end of justice more efficiently for all Americans.

His skills and his devotion to that goal will be of great value to our country in reconciling the important need to improve access to the courts for resolving legitimate claims with the important need also to reduce court backlogs and caseloads which are often too heavy to allow careful deliberation.

Judge Bell also is firmly committed to the full implementation of the Juvenile Justice Act, for which I and other members of the Subcommittee To Investigate Juvenile Delinquency have worked so long. I am confident that we now can look forward to a new day in juvenile justice in which the prevention of juvenile crime will be a top priority of the Department of Justice. I am pleased that Judge Bell also intends to concentrate the Federal Government's drug enforcement efforts on the international kingpins of drug traffic who continue to cause such great tragedies in our country, especially among the young.

In making my assessment of Judge Bell's qualifications to be Attorney General, I have given substantial weight to his pledges to fulfill the promises of the Carter administration and especially to his specific pledges of strong enforcement of civil rights laws; protection of individual liberties; dedication to absolute integrity by public officials; monitoring of intelligence activites to prevent abuses; improving access to our judicial system for enforcement of important constitutional, consumer, and other individual rights; aggressive enforcement of antitrust laws; and assuring minorities and women their rightful places in the Department of Justice and the judiciary.

Of course, we all have to face the fact that pledges are merely empty words unless they are accompanied by the personal qualities that will assure their realization. Insofar as I have been able to determine, Judge Griffin Bell has the character, integrity, intellectual ability, and attitude toward public service which make his pledges worthy of our confidence.

I suppose that when you get right down to it, Mr. President, with the concerns that I had from the beginning, the thing that allayed them more than any other was the type of value judgment I tried to make of the man. History and testimony and promises are for naught unless the man involved has the character and determination, is made of the kind of stuff that understands that what he said and what he says are a great responsibility heaped on his shoulders, that the Office of Attorney General assume the importance that the Members of this body demand that it assume.

I came to the conclusion, both while sitting in hearings and through personal conversations with the nominee, that he is indeed that caliber of human being.

As always, I value the dissent of those who disagree with me, and I respect and honor our system which has not only permitted, but has assured, that those with differing opinions have had a complete opportunity for their opinions to be aired and considered. The process in which the Judiciary Committee considered this controversial nomination is a tribute to our system of Government. I cannot help but believe that the process also has been valuable for Judge Bell. From his experiences of the last few weeks, I am confident that he is more sensitive to the hopes and concerns of his fellow citizens as he undertakes the highest law enforcement office in the land.

For my part, I look forward to the years of the Carter administration with great hope.

I am anxious to get on with the unfinished business confronting our country. A good deal of that unfinished business is going to go through the Department of Justice. I offer my encouragement and support to Judge Bell as he undertakes to fulfill the commitments of the Carter administration to the American people. That will not be an easy job. I have every reason to believe that Judge Bell has the capacity to direct the Justice Department to the goals set forth by our new President. I am confident that we in Congress will be able to work together closely with Judge Bell in the years ahead to see that the Government of the American people never wavers from pursuit of the ideal of equal justice under law for all our citizens.

Mr. President, before concluding my statement, I would like to say to the distinguished chairman of our committee that I have sat in on a number of hearings before our Committee on the Judiciary in the 14-plus years I have been in the Senate. I want to compliment him for the openness, the accessibility, and the availability to that hearing on the part of the American people. I think we also owe a word of commendation to the members of the press. We kick them at times, and at times they deserve it, just as we deserve it. But I do not know of a hearing I have been involved in that has had the kind of constant attention through which the American people have had a better chance to see what is going on. I think more people in America today are able to make a judgment on the merits of this nominee than in any hearing I have ever sat on in 14 years in the Senate. If it had not been for our chairman opening up those hearings and making them available, this would not be possible.

I would like, before concluding, to ask unanimous consent to have printed in the RECORD at this time an editorial which appeared in this morning's Washington Post, entitled, "The Case for Griffin Bell."

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

THE CASE FOR GRIFFIN BELL

As the Senate takes up the nomination of Griffin Bell to be Attorney General, the pending question is not whether he is the ideal candidate but whether, as the President's choice, he ought to be confirmed. The distinction matters. We would hardly call Mr. Bell—as Mr. Carter did—"the most qualified person" in the country for the post. Indeed, Mr. Bell himself last fall suggested several people whom he considered well qualified. Mr. Carter may have settled on Mr. Bell, a long-time friend, as one among all reasonable choices with whom he felt most comfortable and compatible.

This emphasis on personal affinity between a President and the nation's top legal officer is rather discomfiting. Yet when compared with others, such as Robert Kennedy and John Mitchell, who came to the office by a similar route, Mr. Bell does have several points to his credit. Some are virtues of omission: he has not been the President's campaign manager. And it is not impossible to believe that he does want to run the Justice Department in a political way. Then there are the positive points; he does have judicial experience and is far better acquainted with constitutional law and the

problems of the legal system than either Mr. Kennedy or Mr. Mitchell was when appointed to the post.

Mr. Bell's record, specifically on civil rights matters, is of course what the critics find most troubling. The dispute is not over where he stands today, but over where he has been in the past. It is true that, as an aide to Georgia Gov. Vandiver in the late 1950's, and in dealing with desegregation cases on the circuit court, Mr. Bell did favor slow progress. By the benchmarks of today, and from the viewpoint of northern liberals, he seems to have advocated too little too late. Yet in evaluating what he did, it is essential to remember where he was. And we are impressed by the testimony of a number of Southern civil rights activists, black and white, that in the context of that region at that time, Mr. Bell was a constructive influence.

Thus, in our view, his civil rights record is not at all disqualifying. Moreover, in other areas Mr. Bell's statements have been very commendable. He has shown a refreshing sensitivity to problems of civil liberties. He clearly recognizes what kinds of changes need to be made at the FBI and seems determined to supervise that agency as closely as necessary. He wants to sharpen the Justice Department's crime-fighting abilities, improve the delivery of legal services and select better judges and U.S. attorneys. His one personnel announcement so far, that of Circuit Judge Wade H. McCree Jr. to be Solicitor General, is a high-quality choice. As we said the other day, it may be that Mr. Bell—far from being too political—is not yet sensitive enough to the political intricacies involved in every aspect of Justice Department business. But he seems to be a quick student whose practical education has already begun. Moreover, he is a man of substantial intelligence and staunch personal integrity. The nomination should be confirmed.

Mr. BAYH. Also, I ask unanimous consent that Fred Williams, Howard Paster, Nels Ackerson, and Irene Margolis be granted the privilege of the floor during debate and vote on this measure.

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

Mr. TALMADGE. Mr. President, will the distinguished chairman of the Committee on the Judiciary yield me 6 minutes?

Mr. EASTLAND. I yield whatever time the distinguished Senator from Georgia wishes.

Mr. TALMADGE. I thank the Senator.

Mr. President, I urge the Senate to advise and consent to the nomination of Griffin Bell to be Attorney General of the United States.

I have known Judge Bell for at least 30 years. He is qualified in every manner possible to be Attorney General. He has compiled a record of almost three decades of outstanding legal and judicial experience. In addition, he is recognized as an extremely able administrator.

Griffin Bell is a man of impeccable character and integrity. He is respected by members of the bar and the bench throughout the entire United States.

Judge Bell served approximately 15 years on the U.S. Fifth Circuit Court of Appeals. He was appointed to that position by the late President John F. Kennedy. The Senate confirmed him at that time, without dissent, and he served with honor and dignity in that position.

I am confident, Mr. President, that he will deal with an able and even hand with all matters that come before him and the Department of Justice, and that he always will uphold the letter and the spirit of the Constitution. He was a man of principle as Federal judge. He will be a man of principle as Attorney General.

Judge Bell, before the Judiciary Committee and in the news media, has been criticized by some civil rights groups. I may say that none of those groups or none of the civil rights leaders are from Georgia. In fact, the Honorable ANDREW YOUNG, Congressman from the Fifth District of Georgia, who has been nominated U.S. Ambassador to the United Nations, and who worked and marched alongside the late Martin Luther King, Jr., during the civil rights struggles of the 1960's, has expressed great confidence in Griffin Bell as Attorney General.

When the Supreme Court in 1954 handed down its decision in Brown against The Board of Education, it upset the statutory and constitutional system of school segregation in some 17 or 18 States in the Union that had been in existence since 1896, under the Plessey against Ferguson decision. This was a particularly traumatic occurrence in the South and, to a lesser degree, throughout the United States.

Judge Griffin Bell was a voice of moderation. He was a leader to whom people of both races listened during this critical time.

When Ernest Vandiver took office in 1959 as Governor of Georgia, laws on the statute books in the State required the closing of any school that was desegregated. Georgia was not alone in this situation. Many other States were in similar positions.

Judge Bell knew that the State of Georgia was about to reach an impasse. He very wisely sought to pour oil on troubled waters. He helped conceive the idea of organizing what became known as the Sibley Commission, which held hearings on public education throughout the length and breadth of the State of Georgia. The hearings were widely reported in the press and on television.

As a result, after the voice of the people had been heard, the General Assembly of Georgia repealed the law requiring the closure of desegregated schools. So, Judge Bell was primarily responsible for helping to remove the State of Georgia from the terrible dilemma it faced at that time.

His record speaks for itself. It indicates beyond doubt that he will be firm but fair in administering the Department of Justice, and in setting an example for all of the Nation in law enforcement.

Judge Bell exercised wisdom and leadership during a tumultuous and even inflammatory era in the States of the South. He has every right to be proud of the role he played as a moderating force at a time when moderation was sorely needed, and we are indebted to him for it.

I was very interested to read an editorial column in the Washington Post of January 6 by Eugene Patterson, who is presently editor and president of the St. Petersburg Times.

During the most troublesome years to which I have just referred, Mr. Patterson was editor of the Atlanta Constitution. He came to that position following the death of the highly respected, internationally renowned human rights advocate, Ralph McGill.

From 1964 to 1968, Mr. Patterson served as Vice Chairman of the U.S. Civil Rights Commission. Mr. Patterson wrote in this column:

When the dust settles, Bell is likely to be seen for what he is—an able and incorruptible lawyer of the highest character and integrity and a principled man, who on the balance of his actions over the past two decades, can be depended upon to demand that Civil Rights laws be obeyed.

This is an oustanding and well-deserved testimonial to which I fully subscribe. I ask unanimous consent that Mr. Patterson's entire column be printed in the RECORD.

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

BELL: "A GOOD MAN FOR A CLEANUP JOB"

(By Eugene Patterson)

Carter's larger reasoning in picking Griffin Bell, knowing in advance he would draw a troublesome reaction, is more reassuring than disturbing to those of us who have known Bell well over the last 20 years. Carter's whole cautious approach to his Cabinet selections shows he's not inclined to gamble or attract controversy lightly to his appointments. Why, then, did he expose himself deliberately to the heat he knew Bell's apointment as Attorney General would bring, with its surface overtones of political cronyism once again at Justice?

Chances are, the appointment signals a Carter determination to clean house at the department, including the FBI. For, when the dust settles, Bell is likely to be seen for what he is: An able and incorruptible lawyer of the highest character and integrity and a principled man, who on the balance of his actions over the last two decades, can be depended upon to demand that civil rights laws be obeyed.

If this runs counter to the impression given by the single-shotting of his background, his overall record need only be examined.

To comprehend what has happened during the last 15 years in Dixie, it is necessary to understand who, including Carter and Bell, made it happen. These are men who turned against Southern popular custom and their own ancestry to work toward rectification, in one generation, of racial wrongs spanning two centuries. Until that fact sinks in, along with the magestic meaning of it, the nation will continue to find it hard to understand the Southern administration that leads it.

True, there were greater white heroes than Carter and Bell in moving the South toward desegregation in the 1960s. But the pace of the march was less important than the direction the few leaders took in that time when too many politicians and judges were clinging to the safe popularity of the past. To go back from the present and glean isolated errors from the past of such men is to lose sight of their true measure: The sustained thrust of their courage and commitment in a time when it took courage to have courage. Bell qualified, as did Carter, and we Southerners

who watched them through those years know them for what they are.

I watched Bell come out of an Atlanta establishment law firm in the 1950s to serve as chief of staff to an upright but segregation-trapped governor of Georgia, Ernest Vandiver. Bell helped ease Vandiver into appointing a blue-ribbon panel, called the Sibley Commission, to hold hearings across Georgia for the purpose of educating the segregationists on the inevitability of public school desegregation. And when Alabama-style riots broke out when the University of Georgia was forced by the courts to desegregate, Bell was among the few who persuaded Vandiver not to follow George Wallace's example of inaction in the Autherine Lucy riot, but to send in the state patrol, which reclaimed the Georgia campus from the mob and protected the black students there.

These were critical, almost politically suicidal steps in that time, primitive as they may seem now. But they marked out the men of the future. Southerners measure men now on where they stood then.

Bell took the Georgia chairmanship of John F. Kennedy's campaign before it was by any means certain a Catholic and a "liberal" on civil rights could carry that state in 1960.

And once on the bench of the federal Circuit Court of Appeals, where he perceived himself to be a moderate bridge between the liberal judges and the conservatives who didn't want to move on civil rights, Bell wrote a strong record of upholding black rights to vote and to go to integrated schools.

Nobody's perfect. I felt Bell voted wrong in finding that the Georgia constitution empowered its legislature to deny a seat to an elected representative, Julian Bond. He didn't address the right or wrong of the legislature's act, as I recall. He simply felt it had the power to act, rightly or wrongly. The Supreme Court reversed him. So he erred. So that was one case. His record shows a voluminous and unswerving series of opinions requiring justice for blacks, including a period when, as he says, he was practically acting as "the superintendent of schools for Mississippi." That record deserves a fair examination by the hawks swooping at his Southern head.

Last February, when Bell resigned from the federal bench to re-enter private practice, I interviewed him and printed his own words, which state his philosophy at a time when he had no pressure on him and no reason to dissemble:

"The type of case coming to us has gotten mighty routine," he said, explaining his resignation at age 57. "I'll bet 40 per cent of them are criminal cases involving narcotics. It got to be a production line. There was little time to reflect. This was not the reflective court I went on 14½ years ago, judging great issues. . . . [T]he pace was too slow after the cases I'd known with larger meaning for the society and the nation. . . ."

Bell went on to recall with pride his part in ending the notorious county unit system of elections in Georgia; in helping to reapportion state legislatures and force just representation for all; in giving life to the Voting Rights Act for blacks in the South; and, exceeding all others in stress, in requiring desegregation of the schools of his native South.

"We contained a social revolution," Bell said 11 months ago. "The law did that. It was one of the most remarkable achievements in history when you look back on it. The federal court system proved to be a great instrument for the general good."

Taken whole, Griffin Bell is a level-headed lawyer of dependable character whose tough commitment to the principles of political rectitude and racial justice were case-hardened in the pressures of the 1960s when commitment counted. The Senate and the nation most likely will come to see that the President-elect has nominated a pretty good man for a cleanup job that can lead to restoration of faith in the Justice Department.

Mr. TALMADGE. Mr. President, it is my earnest hope that Judge Bell will be confirmed as U.S. Attorney General without further delay.

I thank the distinguished chairman of the Judiciary Committee for yielding this time.

Mr. President, I yield back the remainder of my time.

Mr. MATHIAS. Mr. President, I wish to join with the distinguished Senator from Indiana in acknowledging the impartiality and fair manner in which these hearings were held. There were, in fact, witnesses who were not accommodated in the first couple of days of the hearings and the chairman extended the hearings and called witnesses and instructed the staff to make the arrangements for witnesses.

So that I am not aware of any witness who wanted to appear who did not have an opportunity to appear. That is not to say there might not have been some witnesses we would like to have heard from that we did not hear from. We made some efforts to reach Governor Vandiver and others, and we found we were unable to do that. But the chairman, for his part, bent over backwards to make sure everyone who wanted to be heard was heard.

I want to join in the testimony of that fact and thank the chairman for his courtesy to every member of the committee.

Mr. President, the question of the attitude of the black community in Atlanta has been raised by both the Senator from Indiana and the Senator from Georgia.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a telegram from the board of directors of the Atlanta branch of the National Association for the Advancement of Colored People. This telegram states that they oppose the nomination of Griffin Bell to be Attorney General of the United States.

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

ATLANTA, GA., *January 19, 1977.*

Senator CHARLES MATHIAS,
Senate Judiciary Committee, Senate Office Building, Washington, D.C.

The board of directors of the Atlanta branch of the National Association for the Advancement of Colored People opposes nomination of Griffin Bell to be attorney general of the United States, Griffin Bell's key role as architect of the State's resistance to integrated education makes him unqualified to fill this post, the Attorney General is the Nation's lawyer, called upon to enforce the laws without partiality or regard to race, creed, sex or color. No one who joined those who said "never" or who stood in school house doors, or who gave aid and counsel to those who tried to thwart the Constitution of the United States, should be allowed to hold this high office.

JULIAN BOND,
President, NAACP.

Mr. MATHIAS. Mr. President, I yield 20 minutes to the Senator from Massachusetts (Mr. BROOKE).

The PRESIDING OFFICER. The Senator from Massachusetts.

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

Mr. President, I ask unanimous consent that Ralph Neas and Fran Farmer be granted privilege of the floor during the debate and votes on this particular matter.

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

Mr. BROOKE. Mr. President, I rise, reluctantly, to speak against the immediate confirmation of Griffin Bell as Attorney General. I am well aware of Presidential prerogative and the concomitant discretion and latitude which this prerogative gives to the President in selecting his Cabinet. In fact, I have never voted against the Cabinet nominee of any President, no matter what his party. But, I feel that the Senate would be remiss in its constitutional responsibilities if it did not carefully scrutinize the qualifications and also the performance and the promises of a candidate for the office of Attorney General. For that office, perhaps more than any other Cabinet post, requires great integrity as well as great sensitivity to the rights of the oppressed and the disenfranchised.

I will not speak to the merits of the confirmation at this moment. Indeed, I doubt that many persons in this Chamber could speak of the merits. For I feel confident that few of us have read the over 900 pages of testimony. Yet, it is critical that we take the time to do so. The integrity of the confirmation process demands it.

Unfortunately discussions about this particular confirmation show that a remarkable polarity along party lines exists about the fitness of this nominee. It would be shameful if partisan politics were allowed to mask the fundamental questions which we should be asking, the information and witnesses we should be seeking.

I fear that a double standard may be developing for nominees who appear before democratically controlled Congresses. One for Republican nominees and one for Democratic nominees. No one should be more mindful than we of the need to carefully examine those who will be in sensitive positions in our Government. Our recent troubles with Watergate, conflicts of interest, impropriety in financial arrangements cry out for us to exercise great caution and great care in selecting Attorneys General, judges, heads of regulatory agencies. Indeed, that is the very purpose and the very essence of the Senate confirmation process.

Regrettably I do not believe that the Senate in this instance has yet lived up to its "advice and consent" responsibilities. Indeed I think that a Republican nominee who had engendered this kind of controversey and contradictory testimoney may have been summarily rejected by this Congress.

I have studied the record, and find it replete with omissions, cavalier answers, factual disputes, and insensitive responses. I must wonder why persons

who—from their own knowledge—should have been mandatory witnesses were not called. Who, better than former Governor Vandiver himself, could describe the extent and quality of Judge Bell's participation in formulating massive resistance tactics for Georgia? Who, better than persons who clerked for Judge Bell or who argued cases before his court, can attest to his judicial temperament and can state whether allegations about his intemperate comments about integration, the poor, the rights of criminals, and access to the court are accurate. If allegations of conflicts of interest, breaches of the judicial canon of ethics, and unethical campaign activities from the bench have been raised, can any one of us feel reassured that these allegations have been successfully refuted?

To rush into a confirmation of a nominee for this high and sensitive post is simply too important to the future aspirations of millions of Americans, not just black Americans, but the poor, the disenfranchised, consumers, prisoners, laborers in the work force, and every citizen who is concerned about the integrity and the advocacy of the Department of Justice.

A scant few years ago, we sat in judgment on the fitness of not one, but two, Republican nominees for the Supreme Court. After exhaustive examination, we found them unfit. I strongly opposed those men, and I feel that their failure to win confirmation represented a triumph of process over lack of qualifications, shoddiness, and partisan interests. The hearings on those two individuals spanned months. And none of us felt compelled by partisan considerations or sectional balance to rush the process. I believe that same high standard of caution must prevail today.

To be sure, I recognize some distinctions between Cabinet confirmations and Supreme Court confirmations. Yet I feel that the Attorney General is the most important and highest Government official developing policy with regard to the legal rights of all citizens. That person must be an attorney of distinction, a person of principle, integrity, vision, and courage.

While these terms may apply to Judge Bell, I am concerned about a record which, on the eve of confirmation, is still murky and laced with charges and countercharges. We should be absolutely certain, absolutely convinced, absolutely and inalterably persuaded that Judge Bell is the man to guide the Justice Department in a new and more difficult era. For today, the status of our civil rights, rights to freedom of expression under the first amendment, rights of access to the courts, rights of the Government to demand dissolution of megacorporations, rights of prisoners, rights to demand remedial and affirmative action, have never been more important, more confused and more questioned.

These problems with the record give rise to several questions about the evidence and procedures used in the Judiciary Committee hearing, which I wish to pose to my colleagues on the committee. Unfortunately, the present record gives the appearance of a pro forma and even perfunctory hearing. The length of the hearings should not delude us. At many critical points in the transcript, the extent to which witnesses were pressed for corroborating evidence, or the lack of other corroborating witnesses is disturbing. It is true that the committee was able to elicit several glowing statements about future policies of the Justice Department and Judge Bell's willingness to be a strong advocate for certain important principles. But where there were factual disputes about Judge Bell's conduct or attitudes, the record indicates that the committee did not probe thoroughly nor adequately solicit witnesses to confirm or deny the allegations.

Mr. President, I hope that these questions can be answered to the satisfaction of all of us. If they are not, I will feel compelled to move to recommit the nomination of Judge Griffin Bell.

1. SHOULD JUDGE BELL HAVE PARTICIPATED IN CALHOUN V. LATTIMER, 321, F. 2ND 302 (FIFTH CIRCUIT 1963) (ATLANTA SCHOOL DESEGREGATION CASE)

My first inquiry is whether Judge Griffin Bell should have disqualified himself from sitting on the fifth circuit panel considering Calhoun against Lattimer, the Atlanta school desegregation case. The hearing record indicates that his legal involvement in the Atlanta case preceded by several years his appointment to the Fifth Circuit Court of Appeals.

According to the record, in January of 1958 a desegregation suit was filed in Atlanta. In November of 1958 Judge Bell and other lawyers traveled to Mississippi and to other Southern States to investigate the techniques of massive resistance. On February 3, 1959, the Georgia Legislature passed a package of antidesegregation legislation which has been the subject of considerable testimony and which the lawyers' group, including Judge Bell, apparently in whole or in part recommended.

On July 13, 1959, Governor Vandiver appointed a group of what were described in the Atlanta Constitution as segregationist lawyers and called them into a meeting at the Governor's mansion to discuss, among other things, the recently decided Calhoun case. A memorandum regarding that meeting was introduced as evidence during the hearings which discloses the views that were expressed by each of the participants in that meeting, including Judge Bell. Judge Bell is quoted as advising that he "doubts advisability of appeal—might put us in worse shape."

And then on June 17, 1963, Judge Bell, now elevated to the bench, cast the deciding vote in Calhoun in favor of the school board and actually wrote the decision approving the Atlanta plan.

Various witnesses before the Judiciary Committee, including Monroe Freedman, an acknowledged expert on legal ethics, have testified that Judge Bell's participation in a decision on a case in which he had previously been involved as a lawyer was a clear violation of the Canons of Judicial Ethics and the Federal recusal laws.

The relevant statutes and canons appear to support their argument. According to 28 U.S.C. 455—as it read in 1963:

> And Justice or Judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related or connected with any party or attorney so as to render it improper in his opinion to sit on the trial, appeal or other proceeding therein.

And the Judicial Canons of Ethics have long stated that—

> A Judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned.

Some may argue that Judge Bell was not actually of counsel within the meaning of section 455. However, the memorandum introduced in the record certainly indicates that Judge Bell gave counsel as to what course of action should be taken with respect to the appeal of the Atlanta school desegregation case. And as Monroe Freedman stated in his testimony:

> Presumably Judge Bell was talking to someone who was in a position to make the decision to take the appeal; otherwise, that language would appear to be in context nonsensical.

This recitation of the facts and the appropriate statutory and canon provisions deeply disturb me. There appears to be a violation of law or at the very least a marked insensitivity to judicial conflict of interest provisions regarding impartiality or the appearance of impartiality.

Unfortunately, the Senate Judiciary Committee report does not discuss this issue.

Mr. President, I would appreciate it very much if a member of the committee would explain on this floor now how they judged the evidence on this issue.

Mr. MATHIAS. Mr. President, if the Senator will yield, he is referring to the majority report, not to the separate views of the members of the committee which did raise the question.

Mr. BROOKE. The distinguished Senator from Maryland is correct. My question is referred to majority members of the Judiciary Committee.

Mr. BAYH. Mr. President, if the Senator is posing a question, I would be glad for him to go back and read that report and further to ask him to reread the hearings. Also he might reread, if he was not here, the acknowledgment by the Senator from Maryland of the kind of thorough hearings that were held.

The length of those hearings and the process we undertook and went through is a matter of record. The matter of procedure and coming to a different conclusion after having read the evidence are two entirely different things.

I want to say to my friend from Massachusetts, I do not think it is quite fair to challenge our thoroughness. If he will reread the record, he will find the point he raises mentioned. The conclusion of the majority was that that point, as well

as others with which many of us were concerned, was not sufficient to deny the President the advise and consent of the U.S. Senate on this nomination.

Mr. BROOKE. May I say to my friend from Indiana I have read and reread the record. I ask the distinguished Senator to point out that portion of the record, to which he refers, to enlighten me as to that portion of the record which he says supports the findings of the committee on that particular issue.

Mr. MATHIAS. Mr. President, if the Senator will yield again, the RECORD of yesterday includes on page 2037 an article written by Dean Monroe Freedman, who testified before the committee, in which he says:

> Judge Bell clearly violated that conflict-of-interest statute.

Now that is the record as it stands. The conclusions may be different. The Senator from Pennsylvania has been particularly active in this aspect of the case, and I think has been very helpful in making clear the problems propriety and ethical conduct which are presented by the nomination.

Mr. BROOKE. Mr. President, I would be very pleased to hear from the Senator from Pennsylvania if he would address that particular question.

Mr. HEINZ. I thank my distinguished colleague from Massachusetts for referring to me. I will be making a fuller statement in a few minutes.

Does the Senator have any questions which he would like me to respond to?

Mr. BROOKE. The answer to my question is not properly addressed to the Senator because he was a member of the minority, and as I understand it, the Senator wrote a minority view. The question was really posed to the majority, and I ask them again if they could explain how they judged the evidence on this issue.

I do not accept the response which was given to me by my dear friend from Indiana as really being responsive to the question.

Mr. BAYH. I do not expect my friend from Massachusetts to accept much of the response of the Senator from Indiana on this particular point since the Senator from Massachusetts says incorrectly that the whole hearing process was, I think to quote him, pro forma and perfunctory.

May I say to my friend, that I sat there and struggled and tortured myself throughout the hearings. If the Senator will go back and read the questions I asked Judge Bell he will see that it was not an effort by somebody acting in a pro forma and in a perfunctory way.

Perhaps if the Senator from Massachusetts had written the report it would have been more detailed because he was concerned about specifics and would have itemized them. But the report did generally touch on, recognize and then discount the concerns expressed by the Senator from Massachusetts with the following language:

> There was conflicting testimony by witnesses, both black and white, who had studied or been involved in the political situation in Georgia during the term of Governor Vandiver and who had been involved in school desegregations before Judge Bell. Some opponents also raised questions of judicial propriety in connection with Judge Bell's membership in certain private clubs from which he has now resigned.
>
> In light of Judge Bell's responses, the committee does not believe those questions are sufficient to deny confirmation.

Now, perhaps, that does not go as far as the Senator from Massachusetts wants.

Mr. BROOKE. What was the basis of that conclusion? That is the question. What was the basis of the Senator's conclusion that there was not sufficient evidence? The canons of ethics were before the Senator. The Federal code provisions were before the Senator. The appropriate questions were before the Senator. What was the basis of his conclusion?

Mr. BAYH. What does the Senator mean? We do not have any evidence that the nominee had violated the code of ethics. We had the judgment of Monroe Freedman who, frankly, I think is a very substantial scholar in ths area. That is a matter which, if the Senator will look at the record, obviously concerned the Senator from Indiana, having been intimately involved in other nominations involving conflicts of interest. Perhaps the Senator recalls the conflict of interest with respect to Mr. Haynsworth, for example, who had been recommended for appointment to the Supreme Court of the United States. Here was a man who was on the board of directors, one of seven, was a vice president, was a founding director of a company, and who sat on about half a dozen cases involving companies that did more than $1 million worth of business with this corporation with which he was intimately involved.

There is nothing close to that here. Compared to that we do not have a scintilla of conflict. There may be enough to make one a little uncomfortable; enough to make one ask penetrating questions. But in the school case, as the Senator from Massachusetts pointed out, the nominee never was a lawyer, never was a constituted counsel for any party involved. That is a fact.

I appreciate the fact that the Senator from Massachusetts raises the question. But to say we can really nail down a conflict of interest, I will say to my friend, is going beyond the evidence.

Mr. BROOKE. Mr. President, is the Senator from Indiana saying that the case for a conflict of interest is without a scintilla of evidence. Are you saying that in the Calhoun case, where Judge Bell had previously given legal counsel, and where he subsequently sat on the case and wrote the opinion, that there is no appearance of a conflict-of-interest?

Mr. BAYH. What does the Senator from Massachusetts say was counsel? He was part of a committee.

Mr. BROOKE. Is that the opinion of the Judiciary Committee? Does the committee believe that they did not have sufficient evidence, that Judge Bell did not act as counsel or did not give counsel?

Mr. BAYH. He did not act as counsel. The Senator is talking about legal canons of ethics. I assume he is not trying to reach out here and stretch for straws.

Mr. BROOKE. Not at all.

Mr. BAYH. The fact of the matter is the legal canons of ethics say that if you are a counsel in a case you shall be prohibited from participating on the bench in action on such a case.

Is the Senator from Massachusetts indicating, or suggesting, that Judge Bell was counsel in this case? The fact of the matter is that he was not.

The PRESIDING OFFICER. The Senator from Massachusetts' 20 minutes have expired.

Mr. MATHIAS. I yield 5 additional minutes.

The PRESIDING OFFICER. The Senator from Maryland yields 5 minutes to the Senator from Massachusetts.

Mr. BROOKE. Mr. President, I just cannot agree with my friend from Indiana. I guess this is about the first time we have not been on the same side of this issue. Maybe it is the first time we have ever had a Democrat nominated to be Attorney General since I have been in the Senate, and we have not had this issue before us.

I would like to move on because of the time limitations to some of the other issues and maybe we might get a clearer understanding of what the committee based its decision on.

Mr. BAYH. If the Senator will permit me just to interject 1 minute on my own time here, I will say to him, as I said to my friend from Maryland, it is disconcerting to me to find someone like the Senator from Massachusetts, with whom I have fought a lot of tough battles—we have won some and we have lost some—on the other side of this issue. But before he comes to the conclusion that this is a Democratic Congress or a Democratic majority of the Judiciary Committee going out here and rubber-stamping the suggestion made by a Democratic President, I wish he would go back and look at some of those questions asked of Judge Bell. They are not the kind of questions that are asked by Senators who have a preconceived notion of the direction the hearings are going to take.

Mr. BROOKE. I will point out to my dear friend and colleague that even on the question that was just raised in Judge Bell's testimony—and this is from the committee record—Judge Bell said

> I was not hired as its lawyer. I was selected as a lawyer, but I was not paid. The firm contributed my services as a public service. I was acting as a lawyer in every respect except that we did not charge for my services

I just cannot believe my colleague from Indiana is saying he was not of counsel because he was not paid. There are many lawyers who serve as counsel who do not get paid for it, but you certainly would not say he was not serving as counsel.

I mean if time permitted we could go right down question by question and answer by answer, and I am sure the Senator recognizes we cannot here draw the distinction that Judge Bell was not coun-

sel because he did not receive any remuneration for his services.

Mr. BAYH. That is not what the Senator from Indiana is saying. I did not wish to take any more of the Senator's time.

Mr. BROOKE. We are on the time of the Senator from Indiana and not on my time, are we not?

Mr. BAYH. We are looking at questions of violations of the canons of ethics. Judge Bell was not of counsel to a party in the case on which he sat as a judge. If that is what the Senator is talking about, those are the facts. Judge Bell was hired by the Governor to do a number of things. He was involved in a committee of lawyers that advised the Governor. If we are talking about whether the man actually violated the canons of ethics, the definition of counsel there, in my judgment, does not cover the services of the judge.

Mr. BROOKE. Mr. President, I just respectfully disagree with the judgment of the Senator from Indiana. He said he was correcting Mr. Freedman.

Mr. Freedman again, in the record, said:

> Therefore, it seems to be beyond question that he was acting of counsel with respect to that appeal.

I cannot see for the life of me how the Senator can stand and say that because he was not receiving remuneration he was not of counsel. I do not know what it takes to be of counsel in the mind of the Senator from Indiana. If he was giving legal counsel, he was of counsel. Even though he was not paid for his services, he was of counsel and he was giving legal counsel, and that legal counsel may have been taken. Then he turned around and sat as a judge on the same case on which he had given legal counsel. That is clear on the record. To me that is a conflict of interest. It ought to be to the Senator from Indiana a conflict of interest, and I think in any other case it would have been a conflict of interest.

Mr. HEINZ. Mr. President, will the Senator from Massachusetts yield?

Mr. BROOKE. I yield.

Mr. HEINZ. My recollection by way of the testimony is that Judge Bell, then Attorney Bell, indicated that while he was not receiving payment, and I believe I quote, "His services were contributed by the law firm."

Under those circumstances, I say to my good friend I think he is on the right track.

Mr. BROOKE. That is my recollection of the testimony, that his services were contributed by his law firm. As the Senator from Pennsylvania very well knows this is not unusual for law firms to contribute, particularly in cases involving municipal, State, and Federal Governments. Many times their services are contributed.

But one certainly cannot say that because they are contributed that that is not legal counsel. That is legal counsel, always has been, is, and I presume always will be, regardless of remuneration.

But I shall move on.

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

Mr. BROOKE. I hope the Senator will be using some of his time. That is all.

Mr. BAYH. I shall be glad to deal with this question later on. I apologize.

Mr. BROOKE. I am very grateful to the Senator attempting to answer these questions. I know they are very difficult questions to answer.

Mr. BAYH. They are not difficult to the Senator from Indiana.

It is difficult for the Senator from Indiana to get the Senator from Massachusetts to understand his point of view.

Mr. BROOKE. When I get a logical answer to my question, I assure the Senator I will accept it.

Mr. BAYH. I am glad to give an answer now if the Senator wishes me to give it.

Mr. BROOKE. I will on the Senator's time.

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

Mr. MATHIAS. Mr. President, I yield 5 additional minutes to the Senator from Massachusetts.

Mr. BAYH. I shall yield 2 minutes of my time so that the Senator does not feel I transgressed on his time.

The PRESIDING OFFICER. The Senator from Massachusetts has 5 minutes.

Mr. BROOKE. Plus the 2 minutes of the Senator from Indiana, which I accept.

No. 2. Should Judge Bell have participated in *Golden* v. *Biscayne Bay Yacht Club* (530 F. 2d 16 5th Circuit 1976) whether private club action in barring blacks and Jews from membership constitutes State action?

The second issue which I raise also involves the question of disqualification. In 1976 Judge Bell sat on an appeal regarding the Biscayne Bay Yacht Club's practice of excluding Jews and blacks from membership. Judge Bell at that time belonged to three clubs with exactly the same membership policies, and was receiving gift memberships from two of them. Judge Bell ruled in favor of the yacht club, and did not disclose his memberships to the lawyers in the case.

Witnesses before the committee have testified that Judge Bell violated the canons and Federal refusal statutes by sitting on this case.

The two relevant citations on this issue are 28 U.S.C. 144 and canon 3(c)1 of the Code of Judicial Conduct. 28 USC 144 states that where the judge has a personal bias or prejudice "either against a party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceedings."

Canon 3(c)1 provides that "a judge should disqualify himself where his impartiality might reasonably be questioned."

In his testimony Judge Bell stated that the Biscayne Bay case simply involved a judicial determination of the extent to which the yacht club had a nexus with a Government unit. Thus he felt that since the clubs to which he belonged did not fit into that category, the case did not involve a broader challenge of discrimination by private clubs and therefore his clubs, the Dining Club and the Capital City Club, would not be involved.

Judge Bell also testified that the fifth circuit judges had voted not to exclude themselves from such cases as a matter of principle. The question of disqualification and membership in the club was left to the judge in question unless it was the club of the judge. Judge Bell added that "nearly every judge would have been disqualified if I was disqualified."

But other witnesses testified that not only did Judge Bell belong to the clubs, but that he also received free memberships from two of them. This compounds the issue in my opinion. The fifth circuit did not discuss or vote in this aspect of club membership.

Several witnesses pointed out that at the very least Judge Bell should have put the facts on the record and given the parties an opportunity to consider whether to move for disqualification or whether to follow the statutory and judicial code procedure of waiving that disqualification—canon 3(d) of the Code of Judicial Conduct.

Indeed, Monroe Freedman testified that he had called the lawyer representing the plaintiff in the Biscayne Bay case and asked whether he would have moved for disqualification of Judge Bell had he known the facts relating to the possible conflict of interest. The lawyer told Freedman that—

> Not only did he feel very strongly about it and was confident that he would have done so but that he was even more certain that his client had extremely strong feelings about the matter and would have made such a motion.

The committee report states that "in light of Judge Bell's responses" to the questions of judicial propriety in connection with Judge Bell's membership in certain private clubs, "the committee does not believe those questions are of sufficient substance to question seriously his confirmation."

That is the majority speaking, not the minority. That is the majority speaking again.

I concur that the issue of Judge Bell's membership in private clubs alone, regrettable as it was, is not of sufficient substance to bar his confirmation. However, I do not address myself to that issue. My question to the Senator is: What is the committee's opinion of Judge Bell's apparent violation of 28 U.S.C. 144 and canon 3(c)1 of the Code of Judicial Conduct?

No. 3. Did Judge Bell comply with laws and regulations concerning reporting of financial benefits received from private clubs.

The record indicates that from 1961–76, while serving on the Fifth Circuit Court of Appeals, Judge Bell received gift memberships in the all-white Piedmont Driving and Capitol City Clubs of Atlanta. These gift memberships were worth about $2,000 a year.

While these gift memberships were not

illegal, witnesses during the hearing pointed out that since 1970 Federal judges have been required to file a form setting forth such gifts. It appears that Judge Bell either failed to file the form for a period of 5 or 6 years semiannually, which means 10 or a dozen such forms, or else in filing them he did not report the gifts.

In addition, canons on this subject were first adopted by the American Bar Association in 1972 and then adopted by the Judicial Conference in 1973. Canon No. 5(c)4 states that:

Neither a judge nor a member of his family residing in this household should accept a gift, bequest, favor, or loan from anyone except as follows:

(c) A judge or a member of his family . . . may accept any other gift, bequest, favor, or loan only if the donor is not a party or other party whose interests have come or are likely to come before him, and if its value exceeds $100, the judge reports it in the same manner as he reports compensation in Canon 6(c).

The record shows that at least 2 years elapsed between passage of the code and the first reporting by Judge Bell, at which time the judge did not report the private clubs as an outside income.

Judge Bell's responses to these allegations deeply disturb me. He stated:

I am subject to the Judicial Conference to the extent that I am willing to comply. Some judges have refused to comply with the Judicial Conference and never filed anything at all.

This response appears to indicate a startling lack of sensitivity. The canons of judicial ethics, although they do not have the force of law, have established accepted guidelines for the conduct of judges. Judge Bell seems to have almost a cavalier regard for their importance and applicability.

Unfortunately, the Judiciary Committee report does not address these important issues either. My question: How did the committee weigh the evidence regarding these allegations?

Mr. BAYH. Let us look at the Alabama school case.

I am not too sure we are going to reach similar final conclusions. But certainly I respect the judgment of the Senator from Massachusetts and know that he and all Members of this body will act as a matter of deep conscience.

Mr. BROOKE. I thank the Senator.

Mr. BAYH. What is the relationship that the judge had that makes the Senator believe in that Atlanta school case, the Calhoun case, he should have disqualified himself?

Mr. BROOKE. Are we back to the Calhoun case now?

Mr. BAYH. Both that and the Alabama case. There is no reason for the Senator from Massachusetts to have to sit here and labor through them with me; after all we are talking about a judge who has been on the bench and decided 5,000 cases. You are picking out two cases here to tell this Senate that the nominee does not have proper standards of judicial ethics, and I tell the Senator both of them are marginal, even if one were to come down on the side of the Senator from Massachusetts.

Mr. BROOKE. I cannot see how the Senator can say they are marginal. In the first case, the Calhoun case, very clearly Judge Bell was of counsel. He gave legal counsel, and he then subsequently sat as a judge on the same case on which he had given counsel. It seems to me, even leaving out the canons of ethics, and leaving out the appropriate Federal statue, any judge would say, "I have given counsel in this case; I, therefore, disqualify myself," and let another judge be appointed to sit in that particular case.

No judge should sit in judgment on a case in which he has been a party in interest or in which he has given legal counsel. The judicial canons of ethics and the relevant statutes are clear on this point.

Mr. BAYH. I am trying to get the Senator to answer a question here on why he believes Judge Bell should have disqualified himself on these cases.

Mr. BROOKE. That is my answer.

Mr. BAYH. The Senator does an eloquent job of trying to say we should not nominate Judge Bell, but he does not answer the question.

Is the answer to my question of why Judge Bell should not have sat on that case, that he represented a party in interest?

Mr. BROOKE. Because he was of counsel. Because he gave——

Mr. BAYH. Wait a minute.

Mr. BROOKE. In the Calhoun case. On this case——

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. BAYH. I yield myself a couple more minutes. He was of counsel to whom?

Mr. BROOKE. To the State.

Mr. BAYH. Was the State involved in the Calhoun case? The Senator is talking about a case in which the State was not involved, the Calhoun case, and in which the judge did not, as a lawyer, represent any party to the case.

Mr. BROOKE. I did not state that he was active as an attorney in the trial of the case. He gave counsel in a case in which the State was involved as an interested party.

Mr. MATHIAS. Mr. President, if I may interject—I think we are on the Senator from Indiana's time—I think it might be helpful to set the stage. The question of whether he was counsel or not seems to me to be strongly influenced by the fact that he went to Georgia, to Virginia, and to Mississippi to try to help devise the very laws which would govern the operation of the school systems.

Mr. BAYH. I think to accept the assessment of the Senator from Maryland, you have to accept the very strong feeling——

The PRESIDING OFFICER. The additional 2 minutes of the Senator from Indiana have expired.

Mr. BAYH. I will yield a couple more here, I guess.

You have to accept the very strong and eloquent position espoused by about half the witnesses that were familiar with the situation in Georgia.

We talked to some of the black people down there who were with the judge when all this was going on, who suggested that he was the voice of moderation.

You know, sitting up in Terre Haute, Indiana, I would exercise a different standard, or sitting in Boston, Massachusetts, I would exercise a different standard, but this all took place almost 20 years ago in Atlanta, and it seems to me we have to determine in our judgment right now whether the sensitivity evidenced by Judge Bell 20 years ago in Atlanta shows he is made out of the caliber of human being and sensitivity that will cause him to make the right decisions today as Attorney General of the United States.

Mr. BROOKE. To what standard of sensitivity is the Senator from Indiana referring? Certainly, I hope, not the standard of sensitivity of one who, knowing that he has served as counsel, would sit as judge on the same case. That is the sort of sensitivity we are talking about.

I would agree we have to look back to the time at which Judge Bell made some of his decisions. If we were to judge the decisions alone, they would not serve as much as these apparent conflicts of interest to illustrate the difficulties inherent in what he has done.

Mr. MATHIAS. Mr. President, if I may interrupt for a moment, in considering what standard we should apply, the standard was enunciated by the Supreme Court in 1958, in the case of Cooper against Aaron. The standard is this:

It was made plain that delay in any guise in order to deny the constitutional rights of Negro children could not be countenanced, and that only a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools could consitute good faith compliance. State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system.

That, I would submit to the Senator from Indiana, was the standard which prevailed all across the country in 1958.

Mr. BAYH. Mr. President, I am going to stop interrupting the Senator from Massachusetts' argument. Maybe I did not interrupt him; he asked me a question which I have been attempting to answer.

Mr. BROOKE. That is correct; the Senator did not interrupt me. He just failed to answer my question.

Mr. BAYH. No; I think the Senator is partly right. I failed to answer it the way he wanted it answered.

I am going to just answer the question, and then not speak to it any more, because it is obvious that the Senator from Massachusetts does not agree with me.

If we are talking about what constitutes a violation of the canon of ethics, it says, "Thou shalt not sit in judgment on a case in which you have been of counsel, or been a party in the case."

All of the allegations and indictments—accepting them at face value, as expressed very strongly and very eloquently by the Senator from Massachusetts—about his being of counsel and giving advice, he gave that advice to the Governor of Georgia, and neither the Governor of Georgia nor the State of Georgia were a party in the Calhoun case. One may say he should not have done it, but if we are talking about violating a canon of ethics, I do not see how you can say a man violated a canon of ethics when he represented someone who was not even a party to the case on which he subsequently sat as judge.

The PRESIDING OFFICER. Who yields time?

Mr. BROOKE. Mr. President, Judge Bell's role as legal adviser to Governor Vandiver is important for three reasons. First, he has denied participating in a program of massive resistance to the desegregation of Georgia's public schools and states initially that he urged compliance with the law. Under questioning by the committee, he altered his stand somewhat. There is a disturbing lack of corroborating evidence and testimony in this regard. Yet, we know that a body of law was drafted, did pass the Georgia legislature and was signed into law. And we do know that the laws were segregationist in their intent and in their impact. Briefly, those laws:

First, authorized the Governor to close any public school within a school system to preserve the peace, dignity, and good order of the State, meaning schools under desegregation orders.

Second, authorized the Governor to close any unit in the State university system to preserve the peace, dignity and good order of the State.

Third, prohibited any city or county having an independent school system from levying ad valorem taxes to support integrated schools.

Fourth, set age limits on those in the university system.

Fifth, facilitated establishment of private schools by allowing taxpayers credits on State income taxes for contributions to such private schools.

Since the actual bills are so patently illegal and anti-integration, a second issue is raised about the extent of Judge Bell's participation. The record is singularly unhelpful in this regard, and more evidence, deeper and more pointed questions should be posed. More testimony should be solicited. If the committee develops a more extensive record on this issue, we can ascertain Judge Bell's candor and veracity. This is truly critical, because the Attorney General, above all, must be a man of integrity and truth. His answers are somewhat evasive, confusing, and incomplete on the issue of his participation in the development of these laws, and give rise to the following questions:

Why did the committee fail to call Governor Vandiver?

Mr. BAYH. No one requested that Governor Vandiver be called.

Mr. BROOKE. No one requested it?

Mr. BAYH. That is right.

Mr. BROOKE. As a lawyer, Governor Vandiver certainly was a person who had a most unique knowledge of the facts. It seems to me he was the most logical witness the committee could have called. Why was he not called?

Mr. BAYH. If the Governor——

Mr. BROOKE. In the interest of an objective inquiry into the facts, why was he not called?

Mr. BAYH. I am sure the Senator can go down a list of 50 people who may have had some familiarity with the case. The question was whether Vandiver could have given us better information than other witnesses could have. Frankly, I do not think anybody even requested that Vandiver be called so he was not.

Mr. BROOKE. What efforts were made to search the Georgia Archives for records pertaining to the meetings, activities, and strategies employed in formulating the Georgia legislative package?

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

Mr. BROOKE. Mr. President, I ask for an additional 5 minutes.

Mr. MATHIAS. I yield.

Mr. BROOKE. Will the Senator from Indiana be kind enough to answer that question?

Mr. BAYH. I think in deference to my friendship with my friend from Massachusetts I would prefer to let him finish the questions. I will take note of them and answer them on my own time. I do not like to get involved in a shouting match with him of all people. When operating on my own time I can answer the questions in my own way without the Senator from Massachusetts feeling compelled to rebut my answers at this moment. I will be glad to answer the questions when the Senator has completed.

Mr. BROOKE. I will continue to pose the questions and I would be grateful if the Senator will answer them.

Mr. BAYH. Let me just suggest that I in no way feel my friend from Massachusetts believes that I am about to back away from a question, but I hate to try to answer a question at the same time he is rebutting it before I even get it answered. Could the Senator go ahead and make his case? I will be glad to answer his questions. I am sure the Senator feels very strongly about this. I will do my best to answer his questions as I see them. I am sure they will not be answered to the satisfaction of my friend from Massachusetts, but that is what makes the Senate like it is. We come to different conclusions and have different judgments.

Mr. BROOKE. Having no alternative, Mr. President, I will proceed.

Why were no witnesses called who could clarify the extent of Judge Bell's role in drafting the bills, and specifically testify as to the origin of the concepts embodied in those bills?

Why did the committee fail to call Richard Ashworth, Governor Vandiver's press secretary during the period in question. We have been informed that Mr. Ashworth would have firsthand knowledge about many of the events which occurred, and that he is presently working in Washington. It appears that it would not have been unduly burdensome on him or for the committee to hear his testimony.

Can the committee explain its failure to call Hankum Perry, an Albany, Ga., attorney who allegedly worked with Judge Bell in formulating the Georgia legislative package?

Did any person on the committee examine and evaluate the fragmentary documentation which Judge Bell states would shed no light on the issues?

Can the committee state where Judge Bell searched for these documents? Did the committee also perform a document search?

Can the committee describe its action with regard to the so-called privileged letter which Judge Bell did find in the files? Did the committee attempt to reach Governor Vandiver, to seek a waiver of the privilege from him? Why was there no challenge to this very attenuated claim of privilege by a committee member?

Did Judge Bell produce any evidence which corroborates his testimony that he was a moderating influence?

The committee apparently was satisfied with the level of candor and with the answers of the nominee. But the record does not reflect the basis for that acceptance. First, Judge Bell insisted that he was in favor of complying with the law in 1958–61. And let me remind my colleagues that the law at that time was Brown against Board of Education of Topeka, Kans. Brown held that separate is inherently unequal, and that integration was required. Yet, later on, Judge Bell alters his stance somewhat, stating that he was a "moderating influence," that everything he did was to keep the schools open. And this may be so. But, did the committee press the nominee as to what he personally did to insure that the schools would be open, and integrated, not open and segregated? Judge Bell elaborated further, stating that the laws were admittedly segregationist, but were "less so" than other laws on the books. And finally, he says if there was wrongdoing, it was in ignorance. I remind my colleagues of Governor Vandiver's own characterization of Judge Bell as "one of the best legal minds in the State."

Ignorance in that event, and for a circuit court of appeals judge and possibly the next Attorney General of the United States, seems a strange defense. I believe that these equivocal answers further confuse an already cloudy situation. My question is can the committee cite any concrete evidence which corroborates Judge Bell's characterization of his participation?

OTHER ISSUES

First. Judge Bell refused to repudiate Judge Carswell. Yet, his explanation of relationships among brother judges and his motivations in writing the letter were never satisfactorily explored. In addition, while he explained his mistake about the timing of his endorsement, I am deeply

concerned about what his recommendation says about his perceptions on standards of judicial excellence and preservation of the integrity of the judiciary, even where friends and political associates are involved. How did the committee evaluate the evidence on this issue?

Second. During the hearings, controversy and questions were raised about the possibility that Judge Bell had urged in a speech before the Atlanta Forum in 1972 that the parties to the Atlanta school case get together and settle it without their attorneys present. This suggestion from a sitting judge would have been highly irregular and highly improper. Yet, the committee only received testimony from a supporter of Judge Bell about this meeting. And, the committee report is absolutely silent on this issue. Did the committee attempt to identify or call other objective corroborating witnesses who were present at the event or lawyers who were parties to the subsequent settlement?

Mr. President, the distinguished Senator from Maryland, the floor manager of the opposition side of this nomination, has been most gracious and generous in his time and I will not go on much further.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I yield 5 minutes to the Senator from Michigan.

Mr. RIEGLE. Mr. President, may I inquire of the chairman of the committee if he might give me 10 minutes' time at this point to reply to the Senator from Maryland.

Mr. EASTLAND. All right, we will give the Senator 10 minutes.

The PRESIDING OFFICER (Mr. MELCHER). The Senator from Michigan is recognized.

Mr. RIEGLE. I thank the chairman. I thank the Senator from Maryland as well.

If I may address my first comment to the Senator from Massachusetts, I want to indicate to him that there have been a number of important points he and the Senator from Maryland have raised which trouble me as well. I must point out to the Senator that not all of us on the majority side did vote affirmatively on the Bell nomination. Just for the sake of the record I voted present in the committee and will be voting today differently than my majority colleagues on the committee.

Mr. President, I rise to speak today only after long and sober thought. As I just said, I was the only majority party member of the Judiciary Committee to withhold my recommendation that we confirm Attorney General-designate Griffin Bell. I deeply feel the weight of responsibility to set forth as clearly as I can the reasoning and basis in facts for that judgment.

As is well known, the Judiciary Committee conducted extensive hearings on this nomination—hearing and cross-examining Judge Bell at length under oath—as well as a broad range of witnesses testifying both in favor and in opposition. I was present for most of those proceedings and I made a determined effort to hear and evaluate each and every point advanced.

While I am not a lawyer by professional training, I have spent 10 years in the other body and have participated in a vast number of committee hearings of all types. I have applied that experience in this case.

From the outset it had been my hope to reach a firm conviction that Griffin Bell deserved my support—the formal stamp of approval the Constitution requires me to either give or deny. That responsibility for judgment, while in the end mine alone, is something I must exercise in trust for the 9.4 million constituents I represent—and in a larger sense for the Nation as a whole. I have weighed this matter in that light.

Let me also say that I have found it very difficult to set to one side my personal feelings for Griffin Bell, which I have been developing on a one-to-one basis. On that level, I feel a kindness and friendship toward him. From all appearances, he is honest and forthright. I do not sense in him a capacity knowingly and actively to inflict hurt on another. I believe his honest intention, if confirmed, is to serve with honor and equity. In fact, he has made a number of important pledges on the record to be active in the pursuit of the rule of law and the equal application of justice. These are encouraging signs.

Having said these things, I have nevertheless come to the conclusion that this nomination falls short of what is needed—what was promised during the campaign—and of what I can, with a clear conscience, accord my own stamp of approval.

The reasoning which I am about to set forth is not designed to try to persuade others here how to vote. I understand and respect the fact that each of the 100 of us must and will reach a private judgment on this matter. Today, I seek only to share with you my own reasoning for casting a dissenting vote for a nominee I had hoped to support.

During the past 10 years, I have served in Congress under six different Attorneys General. Two of them have been convicted of crimes and one is now on his way to prison. To me, the Attorney Generalship is the most important of all the Cabinet posts at this time.

Because the Attorney General becomes the top law enforcement officer in the country, he must seek to extend the rule of law and equal justice to all our citizens. National progress to legally end any and all forms of discrimination based on race, religion, sex or age depends primarily on the forceful efforts of the Attorney General. Rigorous enforcement of the antitrust laws, and responsibility for firm management over the FBI also rests on the shoulders of the Attorney General. We hardly need remind ourselves that the Attorney General also must act against any illegal actions undertaken by the executive branch or anyone in it.

To my mind, a suitable nominee ought to: First, meet the very highest standards of independence; second, have a proven record of the aggressive pursuit of justice; third, consistently display human sensitivity; fourth, possess exceptional and distinguished professional ability; fifth, possess a record that does not cause serious national divisiveness; and sixth, be someone whose qualifications, when taken as a whole, are fully consistent with the stated pledges and promises of the Carter Presidential campaign. Only by substantially meeting the above criteria could a particular nominee keep faith with a solemn commitment made and remade during the long campaign months of 1976—and which was bonded and sealed by a common exchange of voting faith last November 3.

To my mind, there is no justifiable reason for us to be asked or compelled to accept any Attorney General nominee who is not a towering figure—and one who does not fully meet all of the abovementioned criteria.

I know some may say that maybe these are different criteria than we have applied in the past. I hope they are, because I do not think our criteria in the past have been good enough. I do not think John Mitchell ever should have been confirmed as Attorney General in this country, but he was. So I hope we are changing and lifting the criteria. That is one of the reasons I am here, to try to help do that.

As a nation of some 215 million citizens, we are rich in talent. Yet the new administration claims that it could not—in the whole length and breadth of our Nation—find any candidate for Attorney General superior to Judge Bell. I find that an unacceptable assertion. I have yet to talk to a single person who does not concede that an array of able men and women exists whose overall qualifications exceed Judge Bell's. Why were these people either not considered—or passed over? No acceptable answer has been offered by the administration or its spokesmen. That is because there is no good answer.

When former Special Prosecutor Leon Jaworski appeared as a supporting witness for Judge Bell, he was asked whether Judge Bell was the best person available. He was frank to say that Judge Bell was not the best that could have been found. His exact quote was this:

> I would be prepared to say that Judge Griffin Bell, despite my high regard for him, as you have heard, is not necessarily the best qualified man that could be found.

This question has nagged at me; Why not the best? Why not the best when we are talking about the Nation's chief law enforcement officer—and the one Cabinet office most degraded and abused in recent years. The rights and hopes and lives of millions of our people are directly involved here. Where then in the entire Cabinet is there a greater need for someone of unassailable excellence? To my mind, looking across the entire Carter Cabinet of 1977, we ought to find, sitting in the Attorney General's chair, an individual who is the best of the best.

So I have tried to reconstruct the process of how Judge Bell was selected to find

out what special and compelling reasons warranted his being named. And here the evidence is disturbing. Let us take first the test of independence.

The record shows that, rather than establishing clearly an unquestionable independence from the President, we instead find both the appearance and fact of a direct personal relationship. Judge Bell was a financial contributor to the Carter Presidential campaign—and assisted in the process of raising money from others. Further, his association with the President was close enough that Judge Bell was directly involved in constituting a list of prospective Attorney General nominees. And of course, we have the well-known connection to the Kirbo law firm. Here again, we have a close personal tie-in; a community of interests which links Judge Bell to the President—indirectly through Mr. Kirbo, Mr. Carter's close friend and personal adviser.

By pointing out these relationships, I am not suggesting wrongdoing or any belief on my part that the executive branch would ever behave outside the law, or that it would not be brought to account by Mr. Bell if it did.

But I am bothered by the appearance of cronyism—by the fact that the personal relationships are closer than I am comfortable with. And, lest someone think otherwise, if I were today faced with the 1960 situation of confirming a President's brother as Attorney General, regardless of the individuals involved, I would unquestionably vote against confirmation.

So, on the matter of certifiable independence from the President, it is not sufficiently clear cut for me to believe that all citizens could rest easily on this point. In fact, to many I have spoken with, this appointment, for this reason, has actually created some new cynicism. Some thoughtful critics of the Bell nomination have asked me pointedly what exceptional qualifications he brings as a clear offset to the appearance of a personal closeness to the President and the President's friends. I have found myself at a loss to identify these exceptional qualifications. As a result, some have concluded that Mr. Bell's exceptional qualification is his relationship to the President and the President's friends. I am hurt by this, as I do not want my President's effectiveness and ability to lead impaired by executive decisions that lend themselves to this perception.

To me, this is no small matter, because it creates public doubt. We ought not have to settle for public doubt on so profound an appointment and I cannot put my stamp of approval on a nomination that has that effect.

The second criteria for me is what I term a proven record of the aggressive pursuit of justice. Here, several things trouble me. The first of these is Judge Bell's role as the leader of the Governor's legal task force during the Vandiver years in Georgia, where every legal means was used to prevent or delay the end of racial segregation of the public schools. Judge Bell's personal efforts at that time are ambiguous at best—but no verifiable evidence was found to show that Judge Bell was a dissenting voice within the Vandiver inner circle—or that equal access to public schools without regard to race was achieved through his participation even one day sooner than massive resistance within the law would allow.

The committee was not helped much by Judge Bell in this area because his personal recollections were least clear for this period of his past public involvement—and he could find no written records or other memoranda to indicate exactly what part he did play during the Vandiver years.

In sum, the record is unclear—the questions left without satisfactory answers. I again ask why should we be required to accept a nominee whose record is ambiguous on so vital a matter? I find no good answer to this question.

On the matter of his judicial opinions in the fifth circuit, I have not examined the legal record myself and have had to rely on the advice of other legal scholars I have counseled with. While some I spoke with gave him low grades when the measuring rod was the "aggressive pursuit of justice," I tend to put greater weight on another point. It is that no one has come forward to cite Judge Bell's judicial record as one of uncommon excellence or as evidencing a grasp of the law that would have earned him a general reputation as a great jurist. From what I have been able to learn, Mr. Bell seems to have been a courteous, workmanlike judge with a generally undistinguished record one way or the other. He voluntarily left the Federal bench early in 1976 to resume the private practice of law.

Several criteria are involved in the issue of Judge Bell's membership in private clubs that practice discrimination based on race. As is generally known, Mr. Bell just days ago reached a personal decision to resign from these clubs, but for reasons unclear to me he delayed taking that step until the very day the Judiciary Committee was originally scheduled to vote on recommending his confirmation. Moreover, Mr. Bell has made it quite clear to me in his testimony that he will most likely resume membership in these clubs when he ends his term of service as Attorney General.

When I asked Mr. Bell his intention on the matter, he responded saying:

> I will not say what I am going to do when I get out and become a private citizen again. We do not have any sort of system in this country where one gives up rights for life like you send them to the penitentiary or something like a felon, and from then on you are on some kind of restriction.

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

Mr. RIEGLE. Will the Senator yield me 5 additional minutes at this point?

Mr. MATHIAS. How much more time would the Senator like?

Mr. RIEGLE. Probably at the most, 10 minutes.

Mr. MATHIAS. May I yield at this time?

Mr. RIEGLE. I thank the Senator.

Mr. MATHIAS. I think what the Senator is saying is extremely important. It needs more time and we will try to find it.

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

Mr. RIEGLE. Continuing the colloquy, Judge Bell commenting further said:

> I think I have gone beyond the call of duty.

And later with some feeling he concluded:

> I do not know of anybody who has had to agree with what they will do for the rest of their life just to hold some government job.

To my mind, of course, the Attorney Generalship is not just "some Government job" as Mr. Bell himself later acknowledged. But what is the point here? Mr. Bell in my opinion seems to lack an understanding of the meaning of his membership in private clubs that practice race discrimination.

At no time did he say clearly and forcefully that he objected to these practices, that he had fought actively to change them, or that the rejection of members based on race troubled him deeply. At no time did extensive questioning in this area touch any nerve of outrage about the practice of race discrimination in this form. Rather, the tone of his responses were much more that of one who was grudgingly surrendering membership in these clubs—and would most likely later rejoin them when no longer Attorney General.

Mr. Bell's manner and method of handling this issue troubles me. To my mind, it shows a lack of sensitivity in the area of equal rights—and taken with his service for Governor Vandiver and his conservative record of judicial findings in human rights cases, I find a basis for the concern that has been openly expressed by various civil rights groups.

I do not think we can ever again afford an Attorney General in America who has a blind spot when it comes to moving aggressively in any and all cases where someone's full and equal rights are being denied. Minority people, who in countless instances have never been able to secure a full and equal share of civil rights here in America, have learned from painful and bitter experience that they must judge very carefully any individual in whom they must entrust their legal fate. It is significant to me that the most active national civil rights organizations have enough apprehension about Judge Bell that they have come forward and are openly opposing him.

I deeply feel that we deserved an Attorney General who was clearly on the side of finally and fully achieving a complete and equal share of civil rights for all our people. I expected an Attorney General that could unite us as a people—one that would not be a divisive figure—one whose record could readily earn the full faith and confidence of all reasonable observers. Griffin Bell's nomination is greatly deficient in this respect, and

I find no compelling reason for his selection in the face of this handicap.

This leads me finally to the issue of whether the Bell nomination keeps faith with the recent promises and representations of the Carter Presidential campaign—a campaign I strongly and openly supported. The Carter campaign was one of new hope—most especially to minority groups who for long centuries have been denied the basic rights and full citizenship accorded the rest of us. I believe the Carter campaign promised us far more than Griffin Bell as Attorney General. To my mind it promised a towering figure as Attorney General, one with an unambiguous record, someone clearly independent of personal ties with the President, who would aggressively pursue justice for all. It would also be someone who could unite the country—one worthy of strong support from all the major interest groups most readily affected. But no, we are being asked to accept and place our stamp of approval on something far different.

I cannot find within me the justification for doing so.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MATHIAS. Mr. President, I yield the Senator 3 additional minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 3 additional minutes.

Mr. RIEGLE. I thank the Senator.

To my mind, with 215 million Americans to choose from, we owe it to ourselves to find the best. That has not been done in this case. For this reason and the others I have cited, I must vote against confirmation.

I say in addition that I very much wanted to vote for this nominee and I take no pleasure in voting against him today. But I think this is a deadly serious matter. I think the Attorney Generalship is the most important post in the entire Cabinet.

I appreciate the courtesy and interest of my colleagues in hearing me out on this matter. I yield back the remainder of my time to the Senator from Maryland.

Mr. MATHIAS. Mr. President. I thank the distinguished Senator from Michigan for his very thoughtful, very comprehensive statement.

I know the kind of personal anguish and pain that such a statement costs. In the past 8 years, I have stood in the same shoes in the case of Judge Haynsworth and again in the case of Judge Carswell in which I had to differ with the judgment of a President I had supported.

It is not an easy thing. It takes great courage and great dedication. I thank the Senator for both these qualities which he has exhibited here today.

The PRESIDING OFFICER. Does the Senator from Maryland care to yield time?

Mr. MATHIAS. Yes. I yield 5 minutes to the distinguished Senator from Illinois (Mr. PERCY).

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

Mr. PERCY. Mr. President, after extensive examination of the evidence concerning Griffin Bell's qualifications to serve as Attorney General, I have regretfully decided to vote against the confirmation of his nomination.

I state now the principal concerns that I have.

In reaching this decision, I have applied the same standards I have followed for a decade in measuring my own recommendations to the Federal bench. I believe the nomination of the Attorney General requires more stringent standards than any other Cabinet post.

Taking into account the trauma and tragedy that we experienced in recent years involving the Justice Department, one question stood out in my mind above others: Will the Attorney General-designate be independent of all political outside forces? In the past, we have had such nonpartisan independence in the Justice Department, most recently under Attorney General Edward Levi. We have learned at great cost to the Nation that we should not retreat from that principle.

Griffin Bell has known the President since childhood. He is reported to be closer to the President personally than any other Cabinet appointee. He is also a close friend and partner of the President's chief political adviser, Charles Kirbo. Unfortunately, Judge Bell's close personal and political friendship with the President could give the appearance of being inconsistent with the President's promise of an independent and nonpolitical Attorney General. And it is also the closeness between these two men that has caused me the greatest anguish and difficulty in arriving at my final decision.

In addition to my concern about Judge Bell's independence is what I perceive as Judge Bell's attitude about civil rights. I believe that Judge Bell could lack the sensitivity so vital for the position to which he aspires. I am particularly concerned that while he has admitted that his decisions in several important cases were "mistakes," he has given us no evidence that he fully understands today the corrosive nature of those decisions. I refer specifically, as an example, to the Bond decision unanimously reversed by the Supreme Court though there are others which are also compelling.

His decisions in some cases indicate that he may have gone along too much with the temper of the times, rather than adhering to the law. Such a flaw, if continued, in the Attorney General could only risk the rights constitutionally guaranteed to all of the American people.

This administration has promised us the best. Yet, even Judge Bell's strongest supporters were less than enthusiastic. His proponent whom I so greatly admire, Leon Jaworski, said:

> Judge Griffin Bell, despite my high regard for him, as you have heard, is not necessarily the best qualified man that could be found.

Jesse Jackson, along with several other prominent black leaders, voiced fear that those who speak out against Griffin Bell's nomination will suffer reprisals and will lose favor with the new administration.

I do not believe this. The Carter administration is not an administration of vindictiveness such as we experienced several years ago. I am confident that there will be no retribution to anyone, including Jesse Jackson, for voicing one's conscience and exercising one of our most precious rights, the freedom of speech.

The confirmation process is an essential part of our constitutional responsibilities. It was established by our Founding Fathers as a necessary check against Presidential authority and as a way to review the qualifications of public servants who are not subject to the "honing down" process sometimes painfully and frequently experienced by an elected public official. We must grant confirmation with the utmost care.

I deeply regret that I have not had the chance to discuss these concerns directly with Griffin Bell, but I look forward to that opportunity in the near future.

My friend and valued fellow Illinoisan, Justin Stanley, president of the American Bar Association, believes that Judge Bell will be a fine Attorney General. Mr. Stanley also believes that Judge Bell has a great capacity for growth; he properly informed the Judiciary Committee of Judge Bell's many accomplishments as a lawyer and as a judge on the Fifth Circuit Court of Appeals. Leon Jaworski commented that Judge Bell was known during his term on the bench as a "fairminded" jurist. These are hopeful signs. No one will be more pleased than I if Judge Bell turns out to be a great Attorney General.

I have no doubt that his nomination will be confirmed. However, based on my reading of the evidence, I feel compelled to oppose his nomination as the best way of evidencing my concern. It is the only negative vote that I have or will cast on the Carter Cabinet. I believe that, on balance, President Carter has attempted to select the best.

I shall amplify one point, with respect to the immense power assumed by a Cabinet official and head of a major department such as the Justice Department. The process that publicly elected officials go through is a humbling process. It brings us down to size. It causes us to reexamine everything we have done or thought and puts us to the test. The confirmation process is in a sense a substitute for that.

In this case, I hope I will be proven wrong. I pledge to take the floor every time I see evidence that Mr. Bell, as Attorney General, has proven me so. I hope and pray that I can take the floor many times.

Mr. BAYH. Mr. President, I yield 10 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 10 minutes.

Mr. KENNEDY. Mr. President, I will be voting "aye" on the nomination of

Griffin Bell to be Attorney General of the United States. I have decided to support Judge Bell's confirmation after thorough analysis of his personal and professional attributes, including his honesty, integrity philosophy, professional qualifications and past activities.

The importance of the Office of the Attorney General cannot be underestimated Although the Department of Justice is one of the smallest departments of the Government, the leadership of the Attorney General in establishing Government legal policy and enforcing Federal laws inevitably affects every other department and agency. In this sense the Attorney General establishes for an entire administration the attitude and approach that will be taken to the rule of law.

At the same time, the President should have some latitude in choosing his Cabinet—in appointing persons he knows and has confidence in, and who are committed to carrying out his programs and policies. Senator Phil Hart used to remind us frequently that members of the Cabinet serve at the pleasure of the President and, therefore, the Senate should give its consent to a nomination unless there is a conflict of interest or other impropriety, or a lack of qualification of the nominee. The nomination of Judge Griffin Bell should be judged against these standards. Judge Bell was a practicing lawyer with a leading Atlanta law firm until appointed to the fifth circuit court of appeals by President Kennedy in 1962. He served for 14 years on the bench, and only last year returned to his law practice.

Attorney General Robert Kennedy was pleased with the President's choice of Judge Bell for the circuit court. The new Attorney General's first public address after assuming the office in 1961 was given on Law Day in Augusta, Ga. It was a hard-hitting speech. It emphasized the commitment of the new administration to securing equal rights under the Constitution for black Americans. And it challenged the people of Georgia to participate in bringing about desegregation in a timely and effective fashion. Atlanta attorney Griffin Bell was on the rostrum with the Attorney General. While some in the legal and political establishment of the State blanched, Griffin Bell stood up to be counted amongst the supporters of the new administration's civil rights policies.

Judge Bell's experience on and off the bench provides him with a broad perspective on the many problems confronting the Department of Justice. His honesty and integrity go unchallenged. And his attitudes and beliefs have been fully explored in 6 long days of hearings before the Judiciary Committee. Judge Bell was asked to restate his views on significant issues several times, and he returned for a second round of questions after opposition witnesses were heard. On the basis of this entire record, and applying the standards which I believe appropriate to this important post, I have reached my conclusion to support the nominee.

There is one troublesome aspect of Judge Bell's record which cannot be ignored. While he may have enforced and applied the law, he did not exercise leadership in the development of civil rights law at a time of critical and rapid change. Furthermore, before he became a judge, Judge Bell was closely associated with the Georgia Governor's resistance against desegregating that State's schools. These concerns were underscored by the testimony of witnesses long active in the civil rights field, with whom I have had a long association, and who I respect and admire.

But the Senate must judge the nominee not only on his past activities, but also on his present commitment to enforce the laws vigorously and fairly and to exercise leadership as Attorney General, in light of his demonstrated integrity. Throughout the hearings I was favorably impressed by many of the positions Judge Bell took, and by his candor in expressing his views. Judge Bell was questioned at length on his activities and attitudes regarding civil rights, and his responses reflect no reservation or hesitation toward using fully his authority as Attorney General to achieve equal rights for minorities.

On the important questions that were asked of Judge Bell in this regard, he said he would personally insure vigorous enforcement of the Federal civil rights laws and the Constitution. He demonstrated that he recognized the difference between his past role as a judge deciding cases, and his future role as the chief legal officer of the United States. In the latter role, he recognized and emphasized that his responsibility is to be a positive, strong advocate for civil rights. I asked Judge Bell numerous questions on this topic; in responding to my questions, he said that, if confirmed, he would—

Move to strike down zoning and other laws used to prevent minority families from securing housing of their choice;

Oppose legislation that would interfere with the power of the Federal courts to design remedies for desegregation;

Actively assure that Federal programs do not subsidize discriminatory activities, and promote equal rights within the Federal Government;

Carry out fully contract compliance requirements and other Federal laws to promote equal employment;

Insure that the Justice Department's policy would be to treat "sex" as a suspect classification, subject to a "compelling interest test" under the equal protection clause of the 14th amendment;

Support providing attorney's fees in important public interest cases.

I find these views to indicate a strong commitment to civil rights.

Let me turn to the broader range of issues facing our next Attorney General. In his answers to questions asked by members of the Judiciary Committee, Judge Bell indicated his sensitivity to the many issues that the members of the committee, and I particularly, view as vital if our system of justice is to operate effectively and fairly and in a manner that will protect the constitutional rights of citizens.

Judge Bell affirmed his commitment to legislation requiring judicial warrants for national security wiretapping; to giving high priority to investigations of organized crime and Government corruption; to developing an effective national policy on handgun control; to establishing charters for the FBI and intelligence agencies; to strong enforcement of the antitrust laws; and to developing workable class action procedures.

Judge Bell has shown his awareness of the issues facing us, and a commitment to seeking reform of our civil and criminal justice systems. I sincerely believe that Judge Bell will, to the best of his ability, seek to have the positions he stated in his testimony regarding these matters and those relating to civil and constitutional rights adopted as departmental policy or enacted into law.

In sum, I have concluded that Judge Bell is qualified to serve as Attorney General. No one has questioned his legal ability. No one has raised any question regarding his integrity. No one has challenged the policies he has stated he would pursue—including full enforcement of the civil rights laws—which are the policies many of us believe should be of highest priority to the new Attorney General. If Judge Bell fulfills his own commitments and the pledges of President Carter, then he will have gone beyond the standards established by his critics, and my own as well. I have confidence that he will.

Therefore, I will vote to confirm the nomination of Griffin Bell to serve as Attorney General.

Mr. BAYH. Mr. President, I yield 5 minutes to the distinguished Senator from Missouri.

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

Mr. DANFORTH. Mr. President, on January 14 on the Senate floor I expressed some concerns about Attorney General-designate Bell on the basis of comments made by him before the Judiciary Committee with respect to appointing a new Director of the Federal Bureau of Investigation.

My concerns were twofold: First, I had worked as attorney general of the State of Missouri with Clarence Kelley when he was the police chief of Kansas City, Mo. I believe Clarence Kelley to be a first-rate law enforcement official, a very decent human being, and a very excellent public servant.

But more important than my personal regard for Director Kelley was my concern for what I considered to be a very bad precedent of compelling or requesting the resignation of a person who is the Director of the Federal Bureau of Investigation and replacing the Director with changes in the White House and with changes of the party in power.

Yesterday afternoon, Director Kelley wrote Attorney General-designate Bell and stated in his letter that he, Director Kelley, intended to retire as Director of the Federal Bureau of Investigation effective January 1, 1978.

I have spoken with Mr. Kelley about this letter twice on the phone. I have pressed him on it as hard as I can press any man, and I have concluded on the basis of my conversations that his letter stating his desire to retire is, in fact, a voluntary act on his part; that this letter does, in fact, reflect what he wants to do with his life, and that he is not responding to some pressure, direct or subtle,

from Attorney General-designate Bell or from anyone else. Therefore, I honor that desire from the standpoint of Clarence Kelley.

I have also spoken at some length with Judge Bell on this matter. He has stated to me most emphatically that he agrees with the principles set forth in the 10-year act respecting the Federal Bureau of Investigation, and he has pledged himself to faithfully abide by the letter and the spirit of the 10-year statute.

In addition, Mr. President, I have over the past month or so had the opportunity of speaking with individuals who, in other capacities, have worked most closely with Judge Bell in several matters. I spoke with Judge James Finch of the supreme court of the State of Missouri, a very excellent jurist himself, who has worked with Judge Bell on matters of court reform. Judge Finch went out of his way to praise Judge Bell as being a very progressive and active force in the field of reforming the judiciary.

This morning I spoke on the telephone with Dr. Benjamin Mays, formerly the president of Morehouse College in Atlanta, Ga., now the president of the school board of Atlanta, a leading black educator for many, many years, and a person who, for many years, has been in the forefront of the civil rights movement, and I asked Dr. Mays his reaction and his impression of Judge Bell.

Dr. Mays was highly complimentary of Judge Bell and stated that he has had several occasions to work with him and to be exposed to him, and that he would recommend the confirmation of Judge Bell.

For these reasons, Mr. President, it is my intention to vote in favor of confirmation.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield 10 minutes to the distinguished Senator from Pennsylvania (Mr. HEINZ).

I might say, in yielding this time to him, that I think the committee owes a particular debt of gratitude to him. He was, in effect, cast up upon our shores by the peculiar process by which new Senators were assigned to committees. He rendered a signal service to the committee. He has been unusually diligent, and I want to recognize the very fine contribution he has made.

I yield him 10 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 10 minutes.

Mr. HEINZ. Mr. President, I take this opportunity to compliment our distinguished colleague from the State of Maryland (Mr. MATHIAS) for the outstanding work he has done in the Committee on the Judiciary. Indeed, working with him has been a very valuable experience for me.

It is true that by the luck of the draw I was appointed to the Committee on the Judiciary and found myself immediately faced with the considerable responsibility of examining the qualifications of Judge Griffin Bell to be Attorney General of the United States. Quite frankly a month ago I would never have dreamed that today I would find myself in the middle of the controversial fight we have here today over Judge Bell's confirmation.

But since I have had the opportunity to participate in the extensive hearings of the Committee on the Judiciary on this nomination, and since I have had the opportunity to listen to the testimony of 23 witnesses as well as the tesimony of Judge Bell himself, I feel compelled to inform our distinguished colleagues of the reasons I concluded that Mr. Bell should not be confirmed for this important post.

In listening to the debate a moment ago I was reminded of a familiar quotation, namely:

> . . . the Constitution makes clear that we are not supposed to be a rubberstamp for White House selections. We are not intended merely to be an outer boundary to prevent the appointment of thieves, madmen, or fanatics. We do not meet our duty if we place the sole burden on those who question a nominee's qualifications, and no burden on those who propose him.

Mr. President, those words are not mine. They were uttered on the floor of this Senate several years ago by the distinguished Senator from Massachusetts, Senator Kennedy, when he was opposing the nomination of Judge Haynsworth.

I think all of our colleagues today agree that the Attorney General of the United States must be a strong and dynamic symbol of equal justice for all under law. The man or woman who holds that office must be an individual of unquestioned integrity, and now more than ever he must be a figure who can help restore public faith in the integrity of our Government and the fairness of our legal system.

Through a series of absolutely tragic episodes, faith in our legal system, and in our system of Government has been undermined. Confidence has been undermined by those who held positions of trust at the very highest reaches of authority. In the last 8 years, two men who have held the position of Attorney General have been convicted of crimes. It is in this context that we must approach the nomination before us today.

In the past 8 years, abuses occurred in the administration of justice because justice became a means to be manipulated by willful men rather than an end in itself to be secured for the American people. On repeated occasions, men who served as the highest law officers in the land degraded the Office of Attorney General by failing to carry out their trust with the independence that the job demands. Rather than looking to the law and to a sense of justice for guidance, these men looked to partisanship and friendship as the stars by which they steered their course. By doing so, these men steered our Nation to the brink of tragedy and to a national crisis of confidence.

If confidence is to be restored, then independence must be fully restored to the administration of justice. In considering this nomination and this nominee, every Member of this body must ask himself whether we are confirming an individual who represents our determination to make the Department of Justice a politically and administratively independent servant of the people.

Fortunately, in making this judgment we are not asked to explore unchartered waters. The Senate has spoken on this subject, the new President has spoken on this subject and the legal profession has given us guidance on what we have a right to demand from our next Attorney General.

The Senate spoke on this subject only last year, when it adopted the Watergate reform bill. As our colleagues know, we set a high standard for the next Attorney General in that bill when we passed an amendment prohibiting a President from appointing a senior campaign official to that post. In adopting this amendment, the Senate recognized that politics has no place in the administration of justice. We recognized that the public is ill-served when the President is served by an Attorney General who is a political ally and who has been sensitized by the President's political needs. Today is the first opportunity that this body has had to apply both the letter and the spirit of that amendment, and it is a decision we must each make in good faith with the American people.

President Carter has set what can be called a clearer and even higher standard. Speaking before the American Bar Association on August 11, 1976, the President said:

> But following the recent presidential elections, our Attorney General has replaced the Postmaster General as the chief political appointee, and we have on recent occasions witnessed the prostitution of this most important law enforcement office . . . As much as is humanly possible the Attorney General should be removed from politics and should enjoy the same independence and authority and should deserve as much confidence as did the special prosecutor during the last few weeks of the Watergate investigation.

I for one applaud the high standard that the President has set for us in these deliberations. My decision to oppose this nomination is a decision to support these specific principles on which the President ran and was elected. I agree that we should try "as much as is humanly possible" to insure that the Attorney General is removed from the arena of politics. I agree that the next Attorney General should deserve as much confidence as did the special prosecutor. But I do not believe that this particular nominee represents our best effort to remove the taint of politics and cronyism from the administration of justice. And I do not believe that this particular nominee will begin as he would want to and should begin from the position of confidence that the American people have a right to expect from the highest law officer in the land.

Some of our colleagues may not be familiar with the work of the American Bar Associations' Special Committee To Study Federal Law Enforcement Agencies. I shall inform our colleagues about this committee's work and its report as briefly as I can because the conclusions in this report address the specific task which we face today. This bar association committee stated that removing partisan politics from the Attorney Gen-

eral's office "is the essential precondition for restoration of public confidence in the administration of justice." Again, I ask each of our colleagues to consider whether this nominee meets this "essential precondition," because we can have no greater goal than restoring public faith in the system by which justice is administered in this great Nation.

For the benefit of our colleagues who have not had a chance to hear the record on Judge Bell's relationship with President Carter, let me take a brief moment to recount it to them.

First, Mr. Bell acknowledges that he is a close personal and family friend to the President. President Carter and Judge Bell grew up close to one another, their families were close, and the two men have retained this closeness and affection for one another throughout their adult life. I think this degree of affection and personal loyalty speaks well for both men.

Second, Judge Bell is a friend and a law partner to one of the President's closest political advisers, Mr. Charles Kirbo I do not mean to imply in anyway that there is something insidious about this relationship, but it undeniably draws the Attorney General-designate closer to the President in a personal sense and closer to his circle of intimate political advisers.

Finally, Judge Bell has himself acknowledged on the record in the committee that he played an active role in President Carter's recent campaign—a more active role than I had been aware of prior to our hearings. According to Judge Bell's testimony, he served the campaign in the following ways:

First, he helped raise money prior to the Pennsylvania primary.

Second, he wrote a campaign speech for Mr. Carter which the Democratic nominee subsequently delivered in Detroit.

Third, he helped prepare another campaign address that President Carter delivered to the American Bar Association in Atlanta.

Fourth, he prepared the questionnaire which President Carter used to interview prospective Vice-Presidential candidates; and

Fifth, he helped advise the President on the development of his position on amnesty during the campaign.

In view of the fact that each of us is concerned about the need to restore independence to the Justice Department, I think it may be appropriate to take a hard look at Judge Bell's close personal and political alliance with the President. Just as we would have a negative presumption against any nominee who came to us with a record of racism and racist statements, I think we must also have a similar negative presumption against any prospective Attorney General who comes to us with a close personal and political relationship with the President whom he is to serve.

The PRESIDING OFFICER (Mr. SASSER). The Senator's time has expired

Mr. HEINZ Mr. President, will the Senator from Maryland yield me 5 additional minutes?

Mr. MATHIAS. I yield 5 additional minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator has 5 additional minutes.

Mr. HEINZ. Of course, this negative presumption must be rebuttable, if the proceedings of this body are to be fair. But in view of the fact that this nominee will be faced with many instances when his public duties may run contrary to his obligations to a long-standing friend and ally, I think each of us must take a hard look at Judge Bell's record in resolving conflicts of interest and his sensitivity to this critical aspect of the job.

I think we have seen far too many instances of the attitude that to get along, you have to go along. I would like there to be no doubt about the ability of the next Attorney General, our Nation's chief law enforcement officer, to say, "No," and mean it and make it stick, to a President of the United States.

As a member of the Judiciary Committee, I have had an opportunity to examine this question closely. I regret to report to my distinguished colleagues that the results of my examination are not positive ones. In too many instances, Judge Bell broke the spirit, if not the letter, of the canons and laws covering judicial ethics. And on repeated instances, he has not demonstrated the sensitivity to conflict-of-interest questions that his new duties would demand of him.

One particularly troublesome example is the Biscayne Bay Yacht Club case. Briefly, the circumstances surrounding that case are that in 1976, Judge Bell sat on an appeal of the Golden against Biscayne Bay Yacht Club case, regarding the yacht club's practice of excluding Jews and blacks from membership. Judge Bell at that time belonged to three clubs with generally the membership policies similar to those of the Biscayne Bay Yacht Club, and he was receiving gift membership from two of those three clubs.

Judge Bell subsequently ruled in favor of the yacht club, but did not disclose his memberships in the three clubs to the lawyers in the case before his sitting on the case.

Dean Freedman, of the Hofstra School of Law, testified that Judge Bell violated the canons and the Federal recusal statutes by sitting on this case.

The second matter of concern to me is that of Judge Bell's role in the now famous case of Calhoun against Latimer. I would like to briefly, describe the conflicts that arose in this case. In 1963, Judge Bell sat on the fifth circuit panel considering Calhoun, the Atlanta school desegregation case. In 1959, however, Mr. Bell had given legal advice to the Governor of Georgia and to the Georgia officials on how the school board should handle the litigation involving Calhoun against Latimer, and from 1958 to 1961 he had given the Governor of Georgia legal assistance in preparing laws in response to, and largely intended to frustrate, this lawsuit.

Judge Bell cast the deciding vote in Calhoun in favor of the school board. His participation in the decision in the case of Calhoun against Latimer, in which he had previously been involved as a lawyer and of counsel, was, according to Dean Freedman a violation of the canons of judicial ethics and of Federal recusal laws.

In both of these cases, a leading expert on judicial ethics has concluded that Judge Bell violated the dictates of law as well as the canons of judicial ethics. I respect Dean Freedman's views. He was formerly the chairman of the Federal Bar Association's Committee on Disciplinary Standards and Procedures. He is the author of "Lawyer's Ethics in an Adversary System," a book which won an award of distinction from the American Bar Association. He is a qualified expert on judicial ethics in both Federal and State courts.

The PRESIDING OFFICER. The Senator's 5 minutes have expired. Who yields time?

Mr. MATHIAS. I yield the Senator 5 additional minutes.

Mr. HEINZ. I thank the Senator.

I think Dean Freedman's conclusions must be cause for concern. But even if I do not accept his conclusion that Judge Bell in fact had broken the law with regard to judicial ethics and conflict of interest questions, it is clear to me that Judge Bell has not exhibited the sensitivity to these questions to avoid the appearance of impropriety. And as my colleagues know, the appearance of impropriety in this case can be as critical as an actual impropriety, especially at a time when we are trying to reestablish public confidence in our system of justice.

The distinguished senior Senator from Indiana made this point clear during his discussion of an earlier Presidential nominee. He has said that "the appearance of bias is as important as actual bias." He criticized an earlier nominee for failing to have taken "those precautions in his personal and financial relationships which are necessary to avoid even the appearance of impropriety in the eyes of those who might appear before him." These are relevant criticisms, these are important criticisms, and they apply now in this case as clearly as they have in any other.

There is another problem in Judge Bell's record which I feel compelled to discuss with my colleagues. That is Judge Bell's failure to report his free memberships in private clubs, as required by the Canons of Judicial Ethics as adopted by the U.S. Judicial Conference in 1973.

Specifically, from 1961 to 1976, while serving as a Federal judge, Judge Bell received gift memberships in the all-white Piedmont Driving and Capital City Clubs of Atlanta. These memberships were worth about $2,000 per year. While merely accepting these gift memberships was not illegal, Bell was required, in the opinion of Dean Freedman, to report them, at least from 1970 on. All during the 6 years that Judge Bell filed reports with the U.S. Judicial Conference, he failed to disclose these gifts.

I might add, Mr. President, that when I questioned Judge Bell about his failure to report these free memberships, as he was required to do, he simply stated that he was "subject to the Judicial Confer-

ence to the extent that I am willing to comply." These words deeply trouble me, because they reflect an attitude that does not belong in our Government. Either Judge Bell was saying that he was above the rules of the Judicial Conference or that he need not have complied with the rules because the Judicial Conference had no enforcement authority. Either way, his answer is unacceptable and should not be accepted by this body.

I am not saying to you today that Judge Bell is a dishonest man. All I am saying to my distinguished colleagues is that Judge Bell's record on questions of conflict of interest show a lack of sensitivity—a lack which we cannot accept in our Attorney General. Judge Bell, if confirmed, may be a great Attorney General, because men can grow, but after listening to him and more than 20 other witnesses, I must say that enough reasonable doubts have been created to warrant concern. In my view, if I were to vote in favor of Judge Bell's nomination, I would be taking a calculated risk with the hopes and aspirations of the American people. I am not willing to take this risk. I think we must do better than that. I think we owe it to the American people to live up to the standards we have set for ourselves, that President Carter has set for us and that the American people demand.

Mr. President, I would be less than candid if I did not admit that my opposition and vote against Judge Bell is a difficult one.

I have personally found Judge Bell to be a man of considerable candor and charm. I know that he is the new President's personal choice, and that many sincerely believe this lodges a strong presumption in his favor.

Indeed, I sincerely wish, as I expect the vast majority of the American people do, that President Carter will be a good and hopefully a great President. I wish to promote, not frustrate, our new President's successful performance of his great responsibility.

Notwithstanding these concerns, I must vote against Judge Bell's confirmation. To fail to do so would be to fail my convictions that the Senate must set the highest attainable standards for our chief law enforcement official, to fail in the expression of my reasonable doubts as dictated by my conscience, and to fail my obligations to 12 million Pennsylvanians and to the Nation we represent. For these reasons, Mr. President, I will be voting with sincere and deep regret against the confirmation of Judge Bell.

Mr. MATHIAS. Mr. President, does the Senator have any time remaining?

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I thank the Senator, and I will tell him I do not intend to use all 10 minutes.

First, Mr. President, I commend the distinguished Senator from Pennsylvania (Mr. HEINZ) for an excellent statement, to which I subscribe wholeheartedly.

Mr. President, the first reason I oppose Judge Bell for this nomination is that the Attorney General should not be a close friend or close associate of the President of the United States. Watergate most recently taught us that the immense power of the Presidency can be corrupted and made vivid the fact that the President of the United States could violate the law with serious consequences for our country.

In all fairness, Mr. President, President Nixon was not the first President to play fast and loose with the law and, unfortunately, he will not be the last.

Mr. President, when anyone breaks a Federal law, the responsibility to act is the Attorney General's.

This body should not have to review the President firing the Attorney General of the United States in the infamous Saturday night massacre to remind it of that.

The Attorney General should be separate and apart. He should not be a brother of the President, or an ex-law partner, or a campaign manager, or an old and close friend of any kind.

The Attorney Generals in this century who typify the kind of independence I am talking about have been men like Edward Levi, who has just finished a distinguished term under President Ford; Homer Cummings, who was Franklin Roosevelt's Attorney General, and Harlan Stone who served in Coolidge's administration and prosecuted the Teapot Dome felons.

Mr. President, the distinguished Senator from Pennsylvania has pointed out the close relationship with the President of Mr. Bell. They did share a near lifelong friendship. It was Judge Bell who introduced Mr. Carter to Charles Kirbo, widely known as the President's closest confidante.

Mr. Bell and Mr. Kirbo are law partners in the same Atlanta firm.

Judge Bell promoted Mr. Carter's Presidential candidacy, and offered his advice during the campaign.

As Mr. HEINZ has just said, we need an Attorney General who will say "No" to a President, mean it, and make it stick.

The Attorney General should be a vigorous champion of equal justice and equal opportunity for all in this country, regardless of race or creed.

Anyone who believes we now have that kind of equal justice in America is blind. We have indeed passed into law a series of statutes designed to provide equal educational opportunity, equal opportunity in housing, in employment, in credit, in public accommodations, as well as in voting and holding public office.

But we have a long, long way to go to enforce these laws. The next few years provide a great opportunity for vigorous, aggressive action by the Attorney General of the United States to make the promise of racial justice these laws imply a reality.

In too many cases the laws have had no enforcement. The equal access to credit for example in borrowing for home mortgages has been on the books since 1968, for more than 8 years. But banks and savings and loans do not even keep records of turn-downs by race—the first and the vital element in any kind of enforcement of that law. Study after study has indicated that gross discrimination against blacks continues in lending.

It is almost twice as hard for a black to get a mortgage with the same income, the same stability in his job, and the same kind of credit as a white. This is against the law, and the law has not been enforced.

In this area as well as in many others we need an Attorney General who will enforce the law.

Judge Bell may be a reasonable arbiter, but I am opposed to his nomination because there is nothing in his record to show that he will be the kind of champion of civil rights that the principle law-enforcement official of the Federal Government must become.

For these reason, Mr. President, because Mr. Bell's association with President Carter has been too close and because there is no indication he will enforce the civil rights laws with vigor we need and have not had, I must oppose him.

I yield back the remainder of my time to the Senator from Maryland.

Mr. MATHIAS. Does the Senator from North Dakota want to proceed at this time?

Mr. BURDICK. I would like to be granted about 5 minutes.

Mr. MATHIAS. The Senator may go forward, and the Senator from Kansas will follow.

Mr. BAYH. Mr. President, I yield 5 minutes to the Senator from North Dakota.

Mr. BURDICK. Mr. President, there has been some discussion in the Chamber about the effect of honorary and complimentary memberships in private clubs and how it might affect this nominee.

At this time I would like to read into the RECORD the Advisory Opinion No. 47 which was adopted on October 14, 1975, by the Advisory Committee on Judicial Activities of the Judicial Conference. Bear in mind the date of this document is October 14, 1975.

There has been some reference by various speakers to the point that there were some rules involved applying to honorary memberships prior to that date. But this is the Judicial Conference Advisory Opinion. I read the following:

ACCEPTANCE OF COMPLIMENTARY MEMBERSHIPS IN PROFESSIONAL AND SOCIAL CLUBS

A judge inquires as to the propriety of accepting an honorary or complimentary membership or the use of club facilities without membership in a purely social club, in this instance a social club which has recreational facilities including a golf course. He would pay the usual fees and charges for meals, greens fees and other services but would not be required to pay dues or an initiation fee. Similar inquiries have been made regarding other social and professional clubs.

It appears to be a rather common and long-standing practice in some communities to extend honorary memberships to judges, members of legislative bodies, high-ranking members of the executive branches of government, members of the clergy, military officers and college or university officials.

The honorary or complimentary membership is a gift or favor and the propriety of its receipt is most directly covered by Canon 5C(4), which provides in part:

C Financial Activities.

* * * * *

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows.

(a) a judge may accept a gift incident to a public testimonial to him . . .;

* * * * *

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds $100.00, the judge reports it in the same manner as he reports compensation in Canon 5C(4)(c).

The receipt of an honorary membership in a purely social club would be permitted under Canon 5C(4)(c).

Before accepting such membership the judge should ascertain that the club is not involved or likely to become involved in litigation in the federal court.

He must also consider whether the offer of the honorary membership is designed to exploit his judicial position. Just as a judge may not utilize the power and prestige of his office to persuade others to contribute to a charitable enterprise, he must be sure that the honorary membership is not being offered to persuade others to become members of the club, or lend the presitge of his office to advance the private interests of the club.

If the club offers such memberships to a broader group of public servants than judges, i.e legislators, clergy, etc. or, if it has a tradition of extending such memberships and offers them to all persons holding that position, there is less likelihood that the appearance of influencing the judge will arise. If he has not previously been a member of the club and is singled out for such treatment, he should consider carefully how the receipt of this gift membership may appear to others. The judge must be especially cautious in this respect if the officers or directors or the members of the committee conferring such membership are attorneys practicing before him whereby the membership could convey the impression that some lawyers are in a special position to influence him.

If the value of the honorary or complimentary membership exceeds $100.00, it must, of course, be reported as a gift on the Semi-annual Public Report of Extrajudicial Income.

CROSS REFERENCES

Canons 2, 5C(4) and 6.
Advisory Opinions Nos. 17 and 19.

Mr. President, this did not become effective until October 14, 1975. Judge Bell retired from the bench, as you know, in March of 1976 It is quite correct that in his reporting at the end of the year 1975, this membership was not reported. That was an error. But this was a new ruling, a new advisory opinion. It was issued only as of October 1975.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the distinguished Senator from Kansas (Mr. DOLE).

Mr. DOLE. Mr. President, I rise reluctantly to oppose the nomination of Griffin Bell to be Attorney General. I have studied the record, and find myself, for once, in agreement with Joseph Rauh. It is because he seems to be consistent, when I see so much inconsistency on the floor. It is refreshing, it is heartening and it is encouraging to note that, despite the very difficult decision he had to make, he stuck by principle and made the hard decision. Having supported Governor Carter, it must have been difficult.

Not having supported Governor Carter, I, too, find that it is quite difficult, because I share the view expressed by every Senator, that a President should have the right to name his Cabinet officers. In fact, I have not opposed and do not intend to oppose any other nominee advanced by President Carter. But there are at least three areas that trouble this Senator with this nomination.

I am familiar with a letter written by Clarence Kelley, which Senator DANFORTH, the distinguished Senator from Missouri, referred to earlier. Before the Committee on the Judiciary, Griffin Bell made it very clear that he planned to dismiss FBI Director Clarence Kelley, and I believe this may have forced his early departure. It is known as the squeeze play. Whether they have given him 1 year to pack, I do not know. Whether it is an independent decision of Clarence Kelley, I do not know. But the point was that Judge Bell made the statement in public hearings that Clarence Kelley would be removed. I think Mr. Kelley heard it on television. Apparently, no one contacted him in advance. This does not indicate a sensitivity that many feel should be required.

I feel that Clarence Kelley has done an outstanding job, that he has directed the FBI in a fair and nonpartisan manner. He came to the Nation's top law enforcement agency at a time when Bureau morale was at its lowest level.

In the early 1970's, attempts by the White House to exert political pressure on the FBI and its then Director, L. Patrick Gray, brought home to us all the need to insulate this sensitive agency from political pressures. As a result, Congress passed section 203 of the Crime Control Act of 1976, prescribing a fixed 10-year term for the Director of the Federal Bureau of Investigation. The concept of a single 10-year term, which I support, was designed to shield the FBI Director against undue political pressure from the executive branch and, at the same time, minimize the chances that the Director himself would become too powerful. Because of this statute, some doubt exists as to the legality of removing Mr. Kelley before his term expires, but I assume that question is now moot, as Mr. Kelley indicates that he plans to leave in January 1978.

In response to a question from Senator KENNEDY on January 12, Judge Bell admitted that this could pose a problem. He said:

With regard to the director, as you know, he is serving under a ten-year term and can be removed for cause. The legislative history is not too clear on what "cause" is.

Nevertheless, Judge Bell hinted strongly that he will force Director Kelley to resign prior to the termination of his term.

During the same exchange with Senator KENNEDY, Judge Bell stated:

(Director Kelley) wants to assist in the transition which will have to come because of his age and the retirements in the management of the FBI.

I do not know whether we will come to the point where Director Kelley would do anything more than at some appropriate time ask that he be permitted to assist in the transition period.

So, I think we will look forward to having a new Director of the FBI before too long. That is the way I see it now. That is after having met with him and having talked with him.

In my view, Judge Bell's announced intention to oust Director Kelley without cause would contravene the spirit of the 1976 Crime Control Act and would be a gigantic step backward in establishing a truly independent Federal Bureau of Investigation.

Despite the fact that Director Kelley has now indicated he intends to retire next January, Judge Bell's previously announced intention to force the FBI Director to resign demonstrates a lack of sensitivity on the need for a fair, impartial, and nonpolitical Federal Bureau of Investigation.

A second aspect of this nomination that troubles this Senator has been referred to by other Senators. That is Judge Bell's close political association with the President. I am in no way implying that the political connection between Judge Bell and President Carter has been in any way improper. But if we have learned anything from the Watergate scandals, and we were told much about these scandals throughout the campaign, I think it is that the Department of Justice should be totally nonpolitical, a view voiced often by President Carter himself during the 1976 campaign.

The President set a high standard for the next Attorney General. On August 12, 1976, then-Governor Carter said:

As much as humanly possible, the Attorney General should be removed from politics, and should enjoy the same independence and authority and should deserve as much confidence as did the special prosecutor during the last few weeks of the Watergate investigation.

Then-Candidate Carter said, time after time, we had to end the buddy system in Washington. I think that we could say very honestly that Judge Bell and President Carter have been or were at one time or are now buddies in the proper sense.

On many occasions, the President called for a Department of Justice shielded from political pressure and influence. In my view, Judge Bell's nomination does not quite measure up to the standards enunciated by the candidate who is now President of the United States.

Judge Bell is by no means nonpolitical. He contributed money to the President's campaign, raised funds from other sources, wrote campaign speeches, and was involved in the Vice-Presidential selection process. He is, in the words of Joe Rauh of the Americans for Democratic Action, "part of Governor Carter's political group."

Judge Bell has been very candid with the committee in explaining his political activities. In response to a question from

Senator HEINZ on January 11, Judge Bell outlined his political ties with the President:

Governor Carter has said that he wanted to appoint an Attorney General who was non-political. On one occasion I think he said he would appoint someone who had no major role in his campaign.

During the campaign the few things I did all had to do with the role of lawyer. I prepared the questionnaire which was used in propounding questions to the people who were being interviewed to serve as the Vice Presidential candidate.

On one occasion I wrote a legal memorandum on the difference between a pardon and amnesty. I helped prepare the speech that Governor Carter gave at the annual meeting of the American Bar Association in Atlanta. I helped prepare the speech that he gave on crime in Detroit toward the end of the campaign.

I did raise some money at one point. It was during the Pennsylvania primary which woud have been in April or May. I was back in the law firm. They had a Georgia fund raising. They were trying to raise money in Georgia.

I had that role in that breakfast, and I also, myself, gave $100 to the campaign *at that time*

That may not indicate direct control of the campaign, but it does indicate a rather active participation by Judge Bell.

Mr. President, the President should be able to select an individual in whom he has absolute trust and confidence. He has that trust and confidence in Judge Bell. But, as has been said by Martin Nolan of the Boston Globe, the nomination of Judge Bell smacks of "political cronyism," the very kind of appointment which President Carter himself criticized during the campaign.

DOUBLE STANDARD

In the final analysis, Judge Bell's nomination troubles me because of the double standard for confirmation of political appointments which is evident today and which permeated the scrutiny of Mr. Bell in the Judiciary Committee.

Let me pose a few hypothetical questions. They will serve to illustrate what I mean and hope to suggest what I mean by the emerging double standard.

The distinguished junior Senator from Massachusetts (Mr. BROOKE) touched on this earlier today.

I have no doubt that Mr. Bell's nomination will be supported by the majority of this body. But would this Senate be as eager to confirm this nomination if last November's election had turned out differently, if President Ford had won and nominated a man with the same background as Judge Bell to be Attorney General?

I do not think so.

Would the same Senators who are prepared to vote for confirmation today have voted the same way for a nominee of a Republican President who belonged to restrictive country clubs?

I do not think so.

Would not this body be more troubled by a Nixon or Ford nominee who upheld the right of a southern legislature to ban from its membership a duly elected black citizen?

Oh, yes, I think so.

Would the Senate confirm a Republican President's appointment of a close political associate, a man who contributed a sizable sum to the President's campaign, a man who raised money from businessmen, a man who wrote campaign speeches, a man who the Americans for Democratic Action labeled a part of the President's "political group"?

The answer is obvious.

I suggest, as has been suggested in hearings, that of all the Cabinet nominees, the nomination for Attorney General should be held to a higher standard for the reasons stated on this floor.

This Senator can remember standing here during the deliberations on the distinguished jurist from South Carolina, Clement Haynsworth. I recall being rather active and participating in that debate. I frankly felt a mistake was made and said so at the time. I supported as strongly as I could the efforts of the two distinguished Senators from South Carolina because I believed they were right.

I had the same feeling about Mr. Carswell at the time.

The standards have changed even since then.

We have elected a President who made Watergate an issue in the campaign, who talked about all the things that happened in the Republican administration, about the Attorneys General, about how they were appointed, about the need to insulate the Attorney General from politics.

JUDGE BELL'S INTEGRITY

Mr. President, I have no doubt that Judge Bell is an honorable man, unquestionably a man of character and high integrity. He will be confirmed. I do not doubt for a moment that he will attempt, to the best of his ability, to provide fair, evenhanded leadership at the Department of Justice.

As I stated, I am troubled on three different fronts. One, by his announced intention to remove or fire Clarence Kelley. Two, I resent the double standard for confirmation for Presidential appointments. Three, as has been stated by many on this floor with reference to the civil rights record.

I feel I must register my protest.

The PRESIDING OFFICER. The Senator's additional time has expired.

Mr. MATHIAS. I yield 3 additional minutes to the Senator.

The PRESIDING OFFICER. The Senator is recognized for 3 additional minutes.

Mr. DOLE. For these reasons, I will vote against the confirmation of Judge Bell to be the Attorney General of the United States.

I yield back the remainder of my time.

Several Senators addressed the Chair.

Mr. MATHIAS. Does the Senator from South Carolina wish to speak at this time?

Mr. HOLLINGS. Yes. I had checked around a bit. I did not check thoroughly enough.

Mr. MATHIAS. The Senator from Indiana has the time on the Senator's side, unless he wants to come to our side.

Mr. HOLLINGS. I ask the Senator from Indiana to yield me 10 minutes.

Mr. BAYH. I yield the Senator from South Carolina 10 minutes, or as much as he needs.

The PRESIDING OFFICER. The Senator from South Carolina

Mr. HOLLINGS. Mr. President let me say at the very outset that in this 10 minutes alone I will not have sufficient time to cover all the points.

Now I can get to my distinguished friend from Kansas. Mr. President, in order to clarify a record that I read recently in a review. they said some deal had been made at one time whereby the distinguished senior Senator from South Carolina was to be able to make an appointment to the U.S Supreme Court and his recommendation was Clement F. Haynsworth.

The fact is that I was the junior Senator who recommended Clement F. Haynsworth through the President, Richard Nixon, at the time that my senior and distinguished colleague (Mr. THURMOND) recommended Donald S. Russell.

Now, of support, I do not want to have any misunderstanding there. But having handled the Haynsworth appointment on the floor of the U.S Senate, I am fully aware of who helped and who hindered, and there was so little help at the particular time that those who did come to our assistance on the Republican side of the aisle were singular and I do not forget for a second and I am still just as grateful as I ever was for the Senator from Kansas assistance.

Senator DOLE was very instrumental in helping us try to hold the line at the time that the minority leader and the minority whip were day in, day out, saying, "Mr. President, withdraw the nomination."

We were not having our trouble in those days from the Democrats. We were having our trouble from the Republicans on their side of the aisle

So I listened as advisedly as I could when my friend from Kansas (Mr. DOLE) started speaking about private clubs and who would recommend and who would vote for whom.

Now, the record would show I voted for Attorney General Mitchell and I was entertained at a private club that was restricted by John Mitchell. I could go down all the little items now that we are going to be pick, pick, picking on

I am glad in a way, perhaps that he raised the issue of private clubs, because if we went through the Senate and got all out of the Senate who belonged to private clubs, then we could all adjourn and go home, because there would not be a quorum here.

That subject has been dropped almost dramatically ever since Mr. Bell himself withdrew from those two private clubs.

I think back historically as we have come into the full bloom of civil rights and equal justice under the law as to who would ever be qualified under the measure given by my friend the Senator from Maryland, and now the Senator from Kansas I am amazed at both of them. They are brilliant, objective very able colleagues and I just did not think they would engage in this kind of nonsense.

No. 1, as I sat at the counsel table in December of 1952 when we argued the case of Brown against the Board of

Topeka, the issue at that time, Mr. President, was "separate but equal."

It was not after Chief Justice Vinson had withdrawn and Justice Earl Warren had been made Chief Justice and then told us to go back out and come in later to argue, in and of itself, that segregation was unconstitutional.

So the very issue that we argued in December of 1952 would disqualify all the judges and all the courts and everybody connected therewith.

In fact, I met Thurgood Marshall one day—if we are going to start disqualifying historically—and we had breakfast in the old Union Station down here. I do not believe you can do that any more. They broke it up at a cost of about $30 to $40 million. At that time, we both got in early, about 5:30 one morning, and we ate breakfast together. Admittedly, it was a sort of dramatic experience. We were not in 1952 eating with blacks, I say to the Senator from Kansas, but Thurgood sat down along with Dean Robert Figg of the University Law School.

As attorneys on the case, we talked, and Mr. Marshall said:

You know, I don't guess it's generally known what problems we have. A few weeks ago, I advised Governor Adlai Stevenson to take a black family in Cicero, Illinois, and send them back down to Mississippi for safe keeping. Governor Stevenson heeded my advice, and the family was sent down, because it was too terrible and traumatic a situation in Cicero.

Under historical balance and the record now, we have to disqualify Governor Stevenson, disqualify Justice Marshall, or anyone else, because that was the wrong thing to do. We purists of 1977 just will not look at the history and the record made in this country.

I would go right on down the line to Roy Wilkins, himself. We went to the head of the NAACP. After we had lost the case, we said:

Mr. Wilkins, we've got to do this with all deliberate speed. Let's integrate the first grade the first year; the second year, the second and third grades; the third year, the fourth and fifth grades and so on.

He though it was a good idea. But it could not be accepted on the floor of the Senate, because it was not accepted by some of his counsel. One of them was Miss Greenberg. She raised the question that we were going to give out the constitutional rights on the installment plan, and that was totally unreasonable and unconstitutional, and they could not stand for that for a second.

So, whereas, for a 12-year period, from 1954 to 1966, we could have had the elementary and secondary grades totally integrated in my State and every other State, we had to wait for Martin Luther King to start the bus boycotts, the demonstrations, and then, unfortunately, we saw the outright murders and burnings and everything else. We had not learned anything.

I hope we can sit down and learn what was observed only a week ago by Johnny Poppin, formerly of the New York Times and now publisher of the Chattanooga Times, of Chattanooga, Tenn. I started this political game back in 1947, and Johnny Poppin was a stringer down South.

Incidentally, the publisher of the Chattanooga Times owns the New York Times. I have a hard time for the New York Times to understand that. I tried to get treatment there, I say to the Senator from Wisconsin, from the New York Times, but they do not act like we in Chattanooga or the southland have any effect whatever.

Mr. Poppin went to Jackson, Miss., two or three Fridays ago. I do not know the exact date. He was a guest speaker in Jackson, at the same place he had been the guest speaker in 1948.

He said that in 1948, there was a totally white segregationist, irate mob that he had to address, and they had blood in their eyes and lynch in their hearts. He went there only a few Fridays ago, and he said:

Look at it. It was a totally integrated audience. There were black political leaders, more than in any other State in all of America.

I wish the Senator would rise and try to counter that statement. Whether one is from New York, Wisconsin, Michigan, or wherever, see how many blacks there are in public office and see how many Mississippi has. He said:

I looked at the business leaders and the educational leaders; and looking over that audience and addressing them at the time, I said to myself, and then later in the speech, "where else but in the United States of America could this whole change come about in a 25-year period, where we can accept each other and live with pride with each other and finally have equal justice under law?"

The PRESIDING OFFICER. The Senator's 10 minutes has expired.

Mr. MATHIAS. Mr. President, this is a fascinating social review of what has been happening in this country. It does not have a great deal to do with the nomination before the Senate, but I will be happy to yield 2 additional minutes.

Mr. HOLLINGS. I will take 3 or 4 additional minutes.

Mr. BAYH. Mr. President, I yield the Senator from South Carolina 5 minutes. The Senator from Maryland has been very generous.

Mr. HOLLINGS. The Senator from Maryland is going to get judicious. The issue has been private clubs. The issue has been where you have been going and who is really accepting his fellow man. The issue is, who has been able to take advantage of this change over the past 25 years. It is a social thing, and it is a legal thing. When the social matter becomes constitutional, then I say to my colleague that we have equal justice under law. So I do not yield a second on the social change.

We did not rewrite a single word in the Constitution from Plessy against Ferguson, in 1896, until May 17, 1954. This was not changed. So do not get legal or constitutional with me.

We began to look at the people of America and we sat at the place. I will never forget Hays, the lawyer, and Spottswood Robinson, how they could fight in the frontline trenches and have to sit on the back of the bus when they got back to America. As a young segregationist lawyer who had made talks, that had an effect on me, and I hope it will have some effect on my colleagues.

I happen to know Griffin Bell, and I know Governor Vandiver. I do not know whether my friends from Georgia have had an opportunity to talk, but it is good for a fellow Governor from South Carolina, and I am sure the former Governor of Oregon, Mr. HATFIELD, and the former Governor of Connecticut, Mr. RIBICOFF, will tell Senators that our friend Ernie Vandiver was an outstanding Governor. He was not a redneck Governor. This kind of virus is spreading throughout this body, that somehow Griffin Bell had on his hands a George Wallace standing in the doorway—segregation now, segregation forever. That is totally untrue of Ernie Vandiver. The truth is that he did an outstanding job as the Governor of Georgia.

Yes, his counsel and chief adviser was Old Grif. Now let us carry that down, because we are going to have to disqualify some other people.

How did Griffin Bell ever come to the brench? Incidentally, this is the first time we had a fellow who served 11 years in the judiciary. All of them have been political henchmen, relatives, or otherwise. Here is one with 11 years of distinguished service. I know. I have had hearings, as acting chairman of the State-Justice-Commerce Committee on Appropriations, and have been in the forefront, and I have it in this prepared talk, as to the leadership given in the judicial branch by Griffin Bell of Georgia.

Back in 1960, we had, if we might refer to it as the opposition did even in the primary, this wet-behind-the-ears Senator from Massachusetts who had made his money on Scotch whisky. He had gotten out of Harvard. He had a very poor record in the U.S. Senate. It was not easy to support Jack Kennedy down South against Lyndon Johnson.

We were in the background, Old Grif and myself. We worked. As a result, I went to President Kennedy, and to Bobby Kennedy to ask for Griffin Bell's appointment to the Circuit Court of Appeals.

Should we besmirch the memory of both Jack and Bobby Kennedy in this body, because they took all these things we are talking about? No one said there is anything wrong with his judicial temperament or his record for 11 years on the Fifth Circuit Court of Appeals, but they all want to go back. He had that record when John Fitzgerald Kennedy found him adequate and outstanding enough to be made a judge of the circuit court, and this body confirmed his nomination.

Mr. NUNN. Mr. President, will the Senator from South Carolina yield for just an observation?

Mr. HOLLINGS. I am delighted to yield.

Mr. NUNN. I want to concur in what the Senator from South Carolina is conveying to this body, that it is very easy to look back in 1976 and judge actions that took place in 1960.

I happened to run against former Governor Vandiver in 1972 for the U.S. Senate seat. He is one of the most respected men in Georgia, a man who served as Governor, and he is respected not only in Georgia but in the whole South. Because he served during a period of time which was the most difficult time in the history of Georgia for at least the last 100 years, I want to concur in what the Senator from South Carolina is saying, that it is awfully easy now, but it was very difficult to be in the arena back then making those judgments. Both former Governor Vandiver and Griffin Bell had as much to do with the moderating influence in the South and in Georgia as any two people I know of. So I want to join my colleague in his comments.

Mr. HOLLINGS. I thank my distinguished colleague from Georgia.

We worked together and we made a lot of mistakes. We do not have total integration by any manner of means. We have removed the kidney stone, but there are still pains there, and we have got a lot of good work to do. We will never get it done with the measure of those who oppose Griffin Bell.

Now, to go to the matter of schools, I was glad to find out, since I saw that momentarily——

Mr. MATHIAS. Mr. President, will the Senator yield at this point, because he says Governor Vandiver was not one of those Governors who stayed at the schoolhouse door and said, "Stay out." I would just like to recall to him what Governor Vandiver did say. I am quoting from his inaugural address in 1960.

The PRESIDING OFFICER. Is the Senator from Maryland speaking on his own time?

Mr. MATHIAS. I asked the Senator to yield.

Mr. HOLLINGS. The Senator from Maryland has the time.

Mr. MATHIAS. This is what he said:

We are going to resist and we are going to resist again and again and again, and we will exhaust every legal means and remedy available to us, and when I say every legal means and remedy I mean every legal means and remedy.

By that emphasis in my voice, I am trying to transmit to the Senator what is printed in this official document here.

Mr. HOLLINGS. Please credit old Griffin Bell for being foursquare about it. He said what he was doing at that particular time. But in 1976, 16 years later, do the Senators say in their mail-out, which I do not have before me, and I have a little meeting on natural gas so I do not want to make any wisecracks about that because, if I do, they will get ahead of me in the meeting, but, on this matter of private schooling, I had a little documentary sent around to me by Senators, those who are opposing Griffin Bell, and it had on there how "We are going to make it easy for you to find these sins in the record." One of the sins was supporting private schools.

I looked at the list of Senators and I said, "You know, that strikes me." I knew that one of the Senators went to Phillips Exeter.

I wonder how much, talking about what Griffin Bell said—by their acts shall ye know them—what about all this talk by these fellows around who are going to support public schools? I say to them do not be mailing out these documents, coming out here from Phillips Exeter and all of the private academies and colleges in America, talking about "We have to vote against Griffin Bell because I am for equal education."

How many of you fellows have had a daughter attend the District of Columbia public schools? I had my daughter attend. She went to Woodrow Wilson which had a black principal, Carl Rowan, Jr., by the way, was her classmate, and they are good friends.

Since we have to find out who are supporting private clubs and schools, she attended that school. They had riots in the halls. She told me, "Daddy. I am staying there because it has a good principal and they are good teachers."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAYH. Mr. President, I will yield the Senator from South Carolina whatever time he needs.

Mr. HOLLINGS. Just a couple of minutes.

I did not want to disregard the sham we are seeing going on now of pick, pick, pick, on a fellow who has really proven his worth, a fellow who has really proven his mettle with 11 years on the fifth circuit court.

Incidentally, about his letter with respect to Carswell, go ahead and impeach every judge if you really believe what you are saying. Impeach every judge who also wrote a letter about Harold Carswell. I think there were 44 or 45 Senators who voted for Carswell, and let us vote them unfit to sit, and get rid of those votes too as we are getting ready to get rid of this man.

I would like to say to the Senator from New York, he said we should have one standard, we do not have one standard overseas. We should have one standard here in this body. I could take rule after regulation on equal employment in the Senators' offices, on OSHA—on OSHA we would all go off to jail if that safety crowd came around and looked at my office. But we always put out all these measures like a bunch of sanctimonious souls racing around, pick, pick, and picking like we are the only ones with a conscience, we are the only ones with a record of decency and equality and justice, and I get a little fed up with listening to that.

When you get an outstanding man like this gentleman from Georgia who has got commonsense, he is long on it, he has been through all of these things, and he has made 140 integration decisions so that they call him the school integration judge—he has worked and been appointed—my gosh, we have got to get rid of Chief Justice Burger because he has appointed—I have it in my record here, he has appointed Judge Bell to the Judicial Council to make certain studies and surveys and report back. Judge Bell was responsible for tremendous progress.

That is within our judicial branch. But here we have a man voting for him, here is a man appointing him, the Chief Justice himself, so you had better get rid of him, too. If we are going about this appointment that way let us stand up and we will go about it and we will call the roll and see who is in the clubs and see who has one standard that the distinguished Senator from New York talks about, and let us bring that standard home to this body and quit making the record for later elections, and running us down and disparaging us like we are a bunch of redneck, bigoted southern politicians trying to get one of their crowd in as the Attorney General so that we can lynch the judicial process of the United States. That is pure poppycock.

The fact of the matter is Jimmy Carter looked them all over and picked out a good one.

Mr. President, I support Griffin Bell's nomination to be Attorney General of the United States. This is an outstanding selection, and I commend President Carter for the wisdom of his choice. In Jimmy Carter and Griffin Bell, we have leadership which can and will do much to polish the tarnished image and substance of our system of justice.

No one has to be told that our judicial system today stands indicted in the eyes of many Americans. Years of wrongdoing at the very top—in the Justice Department, in the White House itself—underminded our traditional American confidence. White collar crime in the top-most corporate based rooms call into question the workings of our economic system. Crime in the streets continues to make most of our big cities unsafe and unpleasant. The new administration has an unparalleled opportunity to enhance the substance of justice, thereby to polish its image and to restore to the average American a feeling of trust in the basic rightness of what goes on in law enforcement and criminal justice.

For several days, Griffin Bell has been testifying before the Senate Judiciary Committee. A look at the transcript of these hearings shows an astonishing depth and breadth of knowledge of the law, and of what needs to be done to make equal justice for all a reality across this land of ours.

It is unfortunate that media coverage of the hearings focused almost exclusively on one single facet of the Justice Department's responsibilities. It is a vital facet, of course, but the preoccupation with this one area necessarily denied the general public a look at Judge Bell's beliefs and proposals across the whole spectrum of the Department's jurisdiction.

Judge Bell has been criticized by several witnesses on his civil rights enforcement. However, it is his stated position that ". . . I intend to have a vigorous Civil Rights Division. I intend to have people there who will carry out the law. I have no hesitancy about that at all."

On sex discrimination he has expressed an opinion that the 14th amendment should be interpreted to make sex discrimination constitutionally suspect criteria, as in the case of racial discrimination. Since the Supreme Court has not so interpreted the amendment, he sees a need for the equal rights amendment.

Judge Bell has stated his intent to use open housing laws against restrictive

zoning that has excluded minority housing. His belief is that breaking up residential segregation is preferable to placing the burden of desegregation on schoolchildren. In the voting rights area, Judge Bell expressed that the right to vote is "the most important right" of Americans and he has promised to argue for the constitutionality of the Voting Rights Act. However, he further states, and I agree, that coverage should be extended to the entire country so that no one's right to vote is interfered with.

Now, does this sound like a man who should be criticized for his civil rights enforcement? I say no. Judge Bell has participated in over 140 school desegregation cases while serving on the fifth circuit. The record shows that he is credited with changing the course of school desegregation in the fifth circuit by his order in Alexander against Holmes County to desegregate now rather than maintain the status quo and remand to the district court for the development of a new plan as had been the prior practice.

The cases go on and on showing Bell's participation and enlightened decisions in many diverse cases involving prior restraint, loyalty oaths, the right to be served in public places, voters registration, reapportionment, equal employment opportunities, jury selections and prisoners' rights.

Also, as for his years as adviser to Governor Vandiver, the record shows Judge Bell was a counselor in moderation. These were the days of "massive resistance" to integration and yet Georgia survived this period without violence. Judge Bell instigated and conducted biracial meetings to keep black leaders informed and it has been stated that these were the first biracial meetings of any kind in Georgia. Warren Cochran, executive director of the Atlanta Negro Voters' League and one of the participants in these meetings, testified that Judge Bell had voluntarily convened the meetings and that Bell stated, "I am trying to convince Ernest Vandiver to change his position."

Now the record is in, and the volumes of evidence confirm what I have known for a long, long time—that Griffin Bell not only believes in, but has labored effectively for, equal justice for all Americans. He began those labors before it was considered the vogue thing to do. He began because he believed. And working with those whose attitudes had to be changed, he helped bring about that profound alteration which has liberated black and white together in the South. It was through the long, arduous, often behind the scenes toil of men like Griffin Bell that the South achieved so much. And while we still have a long way to go, it is now generally accepted that the Georgias and South Carolinas of our land have gone farther and done better than most of the States in the other regions of the country. I am encouraged by what Griffin Bell had to say at his confirmation hearings. I do not find any equivocation, any back tracking, anything at all which would make me suspect that he was less than 100 percent committed to the concept of equal justice for each and every one of America's 215 million citizens. I find Judge Bell, on this score as well as the others, to be eminently qualified for confirmation as Attorney General.

Let us look now, in the few moments I have, at some of the nominee's attitudes toward his other responsibilities as the President's chief law enforcement officer. Judge Bell realizes full well that justice delayed is justice denied, and he means to do something about it. The problem is too easily diagnosed as overcrowdedness—where case upon case remains on the court dockets despite our judges' best efforts to keep up with their exploding caseloads. But even when the judge finally reaches a case for disposition, litigants are still often deprived of justice by procedural rules that often appear to delay merits and keep the case at the pretrial state for interminal months and sometimes years. And as many others have recently emphasized, there are additional roadblocks in the paths of justice. The Court has rewritten the law of standing, to block many worthy lawsuits at the door of the courthouse; it has interpreted the class action rules in such a way that a number of worthwhile consumer suits are often too expensive to litigate; it has interpreted the rules governing the award of attorneys' fees in such a way that many persons cannot afford to pay their lawyer to pursue a case. In short, the sum of all these, and other, procedural, nonsubstantive roadblocks is the thwarting of justice at the courthouse door.

The crisis might be one where the focus must be not only on justice as an end product but on the delivery of justice to all citizens. I am particularly impressed with Judge Bell's determinations to do something about the delivery of justice in America. For nearly 15 years, he has been an outstanding jurist on the Nation's largest appellate court, the U.S. Fifth Circuit Court of Appeals.

Judge Bell has served several years on the Board of Directors of the Federal Judicial Center here in Washington. This is the arm of the Federal court system devoted to finding ways to improve that system. He has also served as chairman of the Judicial Center's Committee on Innovation and Development.

Just this past year, Judge Bell became chairman of the American Bar Association's Standing Committee on Judicial Administration, testimony to his standing among his judicial associates.

Chief Judge John R. Brown of the fifth circuit has called Judge Bell the father of two significant innovations in that court which have resulted in an increase in the number of cases that actually get decided by the court, and therefore, the number of parties who ultimately receive a resolution of their cases. One such procedure is what is called "screening." By the use of special panels where unanimous consent is required, many cases are decided without the necessity of oral argument. Another innovative rule allows the court to decide some cases without a written opinion. In some instances, appeals are made in cases where oral argument simply will not help the ultimate disposition of the case and in others an opinion will serve absolutely no precedential value. Both measures conserve the judges' valuable time for the actual decisionmaking process.

Most recently, and at the request of Chief Justice Warren Burger, Judge Bell served as chairman of a task force which studied various problem areas in our judicial system and made specific recommendations on how to deal with them. The current president of the American Bar Association, Justin Stanley, praised Judge Bell's work on that task force during the confirmation hearings.

During the course of the confirmation hearings, Judge Bell discussed at length some of his very definitive ideas on how to improve the delivery of justice on this country.

I would like to highlight just a few of these:

First, Judge Bell very eloquently described the difficulties faced by persons in urban communities simply because the courthouse is so far physically from their homes. To meet this problem, he described an idea that he first discussed in his task force report. Judge Bell suggests the creation of what he calls "neighborhood justice centers," where people could take their everyday disputes to be resolved by whatever means is most appropriate—an example is arbitration or mediation, or of course in some instances before a judge. Such a system would insure that many more people would get their disputes settled. In many ways such a system would allow the benefits of the justice-of-the-peace system of an earlier era, but with the modernization and consistency which modern jurisprudence demands.

Judge Bell is aware of the need to open our courts up again to actions by defrauded consumers and others whose grievances too often go unredressed today. He agreed with Senator KENNEDY'S statement in one portion of the hearings that Congress should pass legislation to empower courts to award attorney's fees to litigants to bring lawsuits that benefit the general public interest—which of course might dictate different results than the Supreme Court's recent decisions that disallowed such fees in such circumstances.

Judge Bell also spoke of his desire to make a class action device workable. As we all know, a class action today never reaches the merits in most cases because courts find that the size of the plaintiff class makes the suit "unmanageable." Judge Bell would work with Congress and the courts to introduce new procedures that would allow the size of the class to be reduced in court at any time. Such rules are far too complicated for extended discussion for our purposes now, but in Griffin Bell our country has the opportunity to utilize the services of one who is experienced, capable, and dedicated to the proposition of improving the peoples' justice.

A fundamental component of a free society is a free market. Antitrust laws are intended to insure vigorous but fair competition in trade and commerce. Consumers benefit from such competition by getting the best quality goods and services at the lowest price.

But not all the markets in America are truly competitive. A high-ranking Government official estimated about 2 years ago that antitrust lawbreakers were costing American consumers over $80 billion each year.

Judge Bell has promised a vigorous antitrust enforcement policy. He would personally review policies and practices of the Antitrust Division and its regional offices to insure that a course of vigorous enforcement is being followed. Many officials have talked a good game of antitrust, but previous few have followed through. I believe Judge Bell is determined to follow through.

Several specific proposals will be carried out to promote antitrust enforcement:

First. Judge Bell will work to simplify complex litigation. Often the most important antitrust cases are the most complicated, consuming extraordinary judicial resources, lawyers' time and taxpayers' dollars. Judge Bell will work to find procedures which will simplify and expedite such cases.

Second. In order to dramatize to a judge the need to move any antitrust matter through the courts, Griffin Bell has stated that as Attorney General he would appear personally in key cases to urge a judge to get a case moving that had been unduly delayed.

Third. Judge Bell proposes to hire expert trial lawyers with antitrust experience, on a temporary basis, to litigate important cases which are unusually complex.

Fourth. Too often the antitrust criminal is permitted to go free or is punished by a slap on the wrist. Not too long ago a judge imposed a sentence which required the lawbreakers, not to go to prison, but to make speeches to business and civic groups about the seriousness of antitrust enforcement. But who could take such a sentence seriously as a deterrent?

Judge Bell will seek severe penalties for price-fixers—and he has stated that he will appear personally at sentencing hearings to dramatize the important point that antitrust criminals are just that—criminals.

This discussion of just a few of Judge Bell's plans in the field of antitrust enforcement show that he recognizes the necessity of vigilance and strong action. He is committed to taking an activist approach to antitrust matters. His testimony shows that he cares about those who are cheated by the white-collar criminals in the corporate board rooms. Here, as elsewhere, I am confident of real progress by a Justice Department under the capable leadership of Griffin Bell.

I wish I could continue, Mr. President, but in closing let me just say that I find Griffin Bell to be uncommonly well-qualified for the task ahead. He has the head and he has the heart to accomplish great things and to widen the vistas of justice for all Americans. I cast my vote for confirmation with genuine enthusiasm and confidence, and I urge my colleagues to approve this good and able man as the next Attorney General of the United States.

I have already taken advantage of the time given me by my distinguished colleague from Indiana, so I will yield back the remainder of my time.

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

Mr. HOLLINGS. Yes, I will be glad to yield.

Mr. DOLE. The Senator from Kansas shares the same opinion about Griffin Bell, his integrity and honesty, as the Senator does. But I am concerned about the FBI and Judge Bell's comments that Clarence Kelley would be removed.

Does the Senator have any quarrel with the way Clarence Kelley has performed his service as FBI Director?

Mr. HOLLINGS. I am not a good witness because I have mixed feelings. When I saw Watergate and furniture and everything else, we have had furniture——

Mr. DOLE. That was something——

Mr. HOLLINGS. Let me complete the answer. We have had these things with respect to furniture and various emoluments. We have not seen a boosting, let us say, of the morale at the FBI. Now, maybe that is Clarence Kelley's fault. I think President Ford did all he could in a 2-year period bringing back respectability. In the 2 years given Clarence Kelley, he had personal illness in his family and a loss and everything else of that kind, and I would not judge him harshly.

I have never thought it through thoroughly. He certainly has not come forth now in the FBI—since we have had hearings—the FBI has not really regained its prestige, its credibility that I think it should have regained, and perhaps someone else could do a better job, but I have not looked at that.

Mr. DOLE. As a matter of principle the question may not be Clarence Kelley, but should an incoming President have a right to remove the FBI Director? Should it be political? That is the broader question.

Mr. HOLLINGS. Well, we voted on it that it should be 10 years. I think the Senator from Kansas supported that, and I supported that in order to get it away from Presidential appointment.

Mr. DOLE. It shall be a 10-year term. It does not say the President shall have a right to remove him without cause.

Mr. BAYH. Mr. President, will the Senator allow me to interject a thought, since our good colleague from Missouri has had more extended conversation with Director Kelley than anybody here——

Mr. DOLE. I am not from Missouri.

Mr. BAYH. No, I know the Senator is not, the Senator is from Kansas. I do not think the Senator from Kansas was on the floor at the time and that is why I interjected this. The Senator from Missouri has had a couple of rather extensive conversations with the distinguished Director of the FBI and is convinced that the letter which Director Kelley sent suggesting his desire to retire was totally and completely voluntary and was not the squeeze play that our friend from Kansas suggested, and everybody can look at that as they see fit. But I thought perhaps at this time it would be important to note that the Senator from Missouri had talked to the man and did come to the conclusion that this was a voluntary resignation letter.

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

Mr. HOLLINGS. I yield Thank you very much.

Mr. DOLE. May I have 2 minutes to pursue this?

The PRESIDING OFFICER Who yields time?

Mr. DOLE. May I just have 2 minutes?

Mr MATHIAS I yield 2 minutes to the Senator from Kansas.

Mr DOLE. If the Senator from Indiana will agree I shall pursue this one step further.

Let us forget for a moment that it is Clarence Kelley. Let us just say that it is a member of the Federal Bureau of Investigation who has 7 years left on his term. Does the Senator from Indiana believe that the President has a right to remove him without cause?

Mr. BAYH. No.

Mr. DOLE. That he has a 10-year term?

Mr. BAYH I supported that act

Mr. DOLE. That if he wished to stay he could unless cause was shown?

Mr. BAYH. Yes I do not think that is the question or point here Let me say that I can see how after Mr. Kelley has gone through what he has gone through and been subjected to what he was subjected to he would be in a position of looking for a rest I say honestly I have not talked to Director Kelley, and that is why I interjected the information garnered from at least, as I understand it two conversations one of our colleagues had with Director Kelley, in which he suggested very strongly that this was a voluntary resignation; it was not a kind of squeeze play thing. To answer the Senator's question I agree with him on the 10-year term

Mr. DOLE. The follow-up question is: If Director Kelley should change his mind, having written the letter, would he have the support of the Senator from Indiana?

Mr. BAYH. I assume so yes I would like to see that man who changes his mind as the seasons change I should look at that.

Mr. DOLE. He may feel better. He has been under some distress, with backaches and other things

Mr. BAYH. Perhaps the Senators from Kansas and Indiana feel better

Mr. DOLE. I am feeling better each day.

Mr. BAYH. The Senator from Georgia has been patient here I yield him time How much time does he need?

Mr. NUNN. Five or six minutes

Mr. BAYH. I yield 7 minutes to the Senator from Georgia

The PRESIDING OFFICER The Senator from Georgia

Mr. NUNN. Mr. President 2 weeks ago I had the privilege along with my senior colleague, Senator TALMADGE, to appear before the Judiciary Committee to introduce President Carter's nominee for Attorney General, my good friend, Judge Griffin Bell I regret that this nomination was not considered by this

body last week. However, I take this opportunity to share some of the thoughts which I expressed before the Committee on the Judiciary to the full Senate today.

In recent years the character and integrity of our law enforcement institutions, and the individuals who administer them have been severely questioned. As a result, Federal efforts to combat the increasing crime rate in this country have been undermined and the confidence of the American people in their Federal law enforcement officials has gone to a low level.

President Carter's selection of Judge Griffin Bell as our 72d Attorney General was encouraging to me because of my confidence that Griffin Bell possesses the qualities and capabilities that will enable him to reverse these negative trends and restore the confidence of the American people in our system of justice.

This country needs an Attorney General who has a proven record as a leader, innovator, and administrator. The Attorney General must be a person who has the confidence of the President. He should be dedicated to the rule of law, vigorous in spirit, and able to effectively organize and administer the many facets of the Department of Justice. Judge Bell unquestionably in my opinion, possesses these qualities.

He is a man noted for his candor, quickness of mind, and possessed of the highest character and integrity—a man of principle and independence. His record as a lawyer and jurist is prodigious. His public career is as well documented as any person ever to be considered for this high post. Judge Bell is well-known in Georgia, in the Fifth Judicial Circuit and throughout the Nation for his service as a judge and innovative leader in the area of judicial administration.

Griffin Bell's public career began on a note that marked his interest and devotion to public education. During the time I was a law student at Emory University in Georgia, Griffin Bell, as a lawyer and later adviser to former Georgia Gov. Ernest Vandiver, was the architect of the Sibley Commission which is universally credited with being the vehicle that saved the Georgia Public School System during those tumultuous and potentially explosive times.

It is sometimes difficult to truly appreciate the significance of these events without putting them in the proper context.

I was very interested in the dialog between the Senator from Maryland and the Senator from South Carolina about former Governor Vandiver in those times that took place then, and I think people have to realize that the quote of the Senator from Maryland was an accurate quote that reflected a mood of a great majority of the people of Georgia, when Governor Vandiver was inaugurated, and to his great courage Governor Vandiver, with the help of Griffin Bell, decided that that was not the appropriate course for Georgia. With Griffin Bell's help, instead of closing the public school systems, which was the mood when he took office, the school systems of our State were kept open so that black and white alike could get an education.

One person who watched these facts transpire was the Pulitzer prize winning former editor of the Atlanta Constitution, Eugene Patterson. He recently wrote the following words in the St. Petersburg Times:

> But the pace of the march was less important than the direction the few leaders took in that time when too many politicians and judges were clinging to the safe popularity of the past . . . to go back from the present and glean isolated errors from the past of such men is to lose sight of their true measure: The sustained thrust of their courage and commitment in a time when it took courage to have courage. Bell qualified . . .

Biracial meetings were virtually unheard of in those days in the South, but it is characteristic that even then, Griffin Bell led blacks and whites to talk, and meet together in order to move toward common goals. There are many citizens, both black and white, in Georgia, who remember and applaud Judge Bell's role in preserving public education in Georgia and in counseling the rule of law. One of Georgia's premier black colleges, Morris Brown, recently honored Judge Bell with an honorary doctorate of humane letters. In presentation of this degree, the college emphasized the impact of the Sibley Commission, for which Judge Bell was responsible, on the resolution of these events. And I quote the black college in Georgia that gave this award in the fall of 1976:

> At a time when the entire South was emotionally supercharged over the issue of school integration, the Sibley Commission held a series of public hearings throughout the State in favor of public education rather than closing schools in the face of desegregation. This vote was one of the crucial steps in helping to preserve public education for all Georgia children.

In 1961, President Kennedy appointed Judge Bell to the U.S. Court of Appeals for the Fifth Circuit, the Nation's largest. Much could be said about the next 14½ years of Judge Bell's tenure on the fifth circuit bench. He wrote over 500 opinions, and during that time participated in thousands of cases. As Bill Shipp wrote in the Atlanta Constitution on January 1, 1977:

> Griffin Bell not only witnessed his South land in torment, he played a significant role insuring equal rights for all in restoring a measure of tranquility and order to the seething region

Bell's record as a Judge in the fifth circuit demonstrates a major leadership role in the development of school desegregation, voting rights, employment discrimination, labor cases, and cases involving the jury selection process. To my knowledge, no Federal judge in the United States has been involved in more school cases than the 140 which Judge Bell has had to consider. His dedication to the public school system was typified in his recent remarks at Morris Brown when he closed his address with the following message:

> I revere public education as we know it in America. It is the passport of every American child to the social and economic mainstream. I pledge to do whatever I can to see that public education is improved and maintained as a great public institution.

The PRESIDING OFFICER (Mr. ANDERSON). The Senator's 10 minutes have expired.

Mr. NUNN. Mr. President, will the Senator yield me 2 additional minutes?

Mr. MATHIAS. I will lend the Senator 2 additional minutes and try to get them out of the Senator from Indiana.

Mr. NUNN. I will take it from this side.

The PRESIDING OFFICER. The Senator from Georgia is yielded 2 additional minutes.

Mr. NUNN. Apart from his formal participation on the bench, Judge Bell took an early interest in innovating reforms in judicial administration to aid and effectuate the administration of justice. The Fifth Circuit's Chief Judge Brown, for example, has called Judge Bell the father of many of the Fifth Circuit innovative screening and expediting procedures.

These experiences, within his own circuit, and his growing national reputation in the judicial administration field led to his appointment in 1973 to the board of directors of the Federal Judicial Center in Washington. He also served as chairman of the Committee on Innovation and Development. In 1976, he became chairman of the American Bar Association Standing Committee on Judicial Administration. Also in 1976, he chaired a task force of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice which made concrete recommendations designed to improve the administration of justice.

Mr. President, in closing, I believe that it is important to bear in mind the fact that it is much easier to sit back in the protected confines of 1977 with the perspectives provided by hindsight, and criticize decisions made as much as a decade ago than it is to sit in the chair of the decisionmaker with the crisis at hand and fulfill the responsibilities imposed by our Constitution.

As Theodore Roosevelt said:

> It is not the critic who counts; not the man who points how the strong man stumbled, or where the doer of deeds could have done them better. The credit belongs to the man who was actually in the arena.

Mr. President, Griffin Bell has been in the area. I believe that he possesses the experience, vision, dedication, and character to bring about the restoration of faith in our judicial system and in the Department of Justice.

I urge colleagues in the Senate to support his confirmation.

I say to the Senator from Indiana that the Senator from Maryland graciously yielded me 2 minutes, and I hope that the Senator from Indiana will have enough time remaining to take those minutes out of the time on this side.

Mr. BAYH. I will be glad to more than compensate our friend from Maryland. It is pretty hard, however, to keep up with his graciousness.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the distinguished Senator from Connecticut (Mr. WEICKER).

Mr. WEICKER. Mr. President, with the exception of their judgment, that of President Carter in offering the nomi-

nation and that of Judge Bell in accepting it, it is not my intention to direct criticism toward either of those gentlemen, but rather to discuss the principles that are involved in the course of this nomination.

I can assure the Senate, Mr. President, that I am as tired as my colleagues probably are of reminding them of the years past, in playing the constitutional "grump," in being the skunk at the confirmation garden party, but the fact is that it really does not do us much good to gain the knowledge we have over the past several years if we do not make use of it. And I can assure you that that truth, much of which was brought forth by Members of this body, is going to be ignored with approval of this nomination.

We are not involved here in an historical review. The issue is not racial equality. The issue is not private schools. The issue which is the largest spiritual problem facing the country today is a lack of belief in the justice system. Too many Americans believe there are two standards of justice, one for the powerful and one for the weak. One for friends. One for enemies. Such a belief, if allowed to continue, will be the cause of our own demise.

I came to Washington in 1968, at a time of violence and confrontation, here as in other parts of the country. I remember the establishment, be it the political establishment, the media establishment, or the educational establishment, trembling in its boots as to whether or not the Nation was going to survive, and, as a final, last, desperate step, I remember that establishment turning to the Nation and saying two things: "Work within the system" and "believe in our system of justice."

More so than the National Guard, the D.C. police, the Army, or anyone else, it was that reservoir of belief, which managed to right the ship of state in those violent times. Now the question has to be asked, in the light of what it is the country has learned since 1970, if confronted with such a crisis again, and the establishment once again turned to the American people and said, "Believe in our system of justice," in the light of facts now known, would there be a positive response on the basis of the condition of our justice system, or would the response depend on who it was that was asked.

Unfortunately, in the country today it probably would depend on the person being asked. Because the fact is that individual after individual—based on knowledge, no longer on speculation—believes that political friendship, personal friendship, economic status, political power—that is what determines justice in the United States.

You know, the significance of Watergate for this body was not the guilt or the innocence of Richard Nixon. That was not our mandate. It was not our directive. The significance was the assault on our institutions and principles. And certainly one of those institutions was the Justice Department.

Let me read to the Senate, if I might, the few pages that covered this point in my own report:

ENUMERATED POWERS AND DUTIES

The so-called enumerated powers and duties of the President's office are set forth beginning with Section 2 of Article II. That Section grants the President direct power over Cabinet officers, and much testimony before this Committee demonstrated how those officers were used on behalf of the President's office.

An Attorney General, for a significant period of time, ran the President's re-election campaign while still in office at the Justice Department. His reason for this role was that, "it is very, very difficult to turn down a request by the President of the United States," even though the Attorney General himself later testified that he felt such a role in politics while still in office was wrong. Memos from CRP, such as one entitled "Grantsmanship", suggesting an effective method of "insuring that political considerations" be used in Federal programs, were sent to the Attorney General from May 1, 1971, onward. At one point, it was even suggested that the Attorney General wield the power of his office to keep a Republican contender off the primary ballot in Florida. That campaign role also included an extraordinary meeting in the Attorney General's very office, to review plans for bugging, mugging, burglary, prostitution, and kidnapping.

Another Attorney General was placed in the awkward position of being asked immediately after the Watergate break-in to help get Mr. McCord out of jail before he was identified. He was soon thereafter warned of White House concern with a too aggressive FBI investigation. He was then asked to provide raw FBI Watergate files, perhaps improperly, to the White House. That same Attorney General was later used as a secret contact with this Committee's investigation of Watergate, and was then removed from office in an apparent connection with the Watergate affair. He eventually became the first Attorney General in history convicted of a crime, for his testimony about the ITT matter.

A third Attorney General was forced to resign his office when he backed the Special Prosecutor's procedure for obtaining Watergate evidence from the White House.

An Assistant Attorney General was also asked to provide raw FBI Watergate files, again improperly, to the White House, and was later told by the President not to investigate the Ellsberg break-in. Another Assistant Attorney General was forced to resign when he backed the Special Prosecutor's decisions in the Watergate case. Still another Assistant Attorney General gave confidential Justice Department and FBI intelligence information to the President's re-election campaign, at the direction of the White House.

Three Attorney Generals and three Assistant Attorney Generals. And all this was done on behalf of the presidency, which has a Constitutional responsibility to "take care that the Laws be faithfully executed." [111]

Subsequent revelations by other committees and other institutions spelled out other abuses of that office. I am amazed with the preoccupation with law and order on the part of the powerful, while the weak, the small, and the powerless in this Nation are unable to articulate their resentment at the special lawless and orderless justice practiced by those powerful.

That is why it was important when former President Ford put Edward Levi into the position of Attorney General, because for once it was not a brother, it was not a campaign manager, it was not a personal friend, it was an individual of high professional competence and independence who filled one of the most powerful offices in the land. And so, in a very practical way, that very important corner of Watergate, had been turned.

And there was a realization in this body as to the special demands of the office of Attorney General. I remember when we tried to put the limitation on the term of the FBI Director. Why? Because we did not want that office politicized. And I remember the Bentsen amendment, which I opposed, which specifically would deny anybody involved in politics from ever being considered as Attorney General, because certain of our Members tried to articulate their newly found reverence for the power that was invested in the Attorney General's office.

In that same Watergate report that I wrote, I recommended that the Office of Attorney General be elected. I dropped that aspect in committee because people said to me, "We will do this by Executive order or we will put into place the necessary legislation to make sure that never again will this office fall into the hands of political friends, relatives, or close personal friends."

Well, I have learned the lesson.

I ask for an additional 5 minutes, Mr. President.

Mr. CHAFEE. Mr. President, I yield 5 minutes to the Senator from Connecticut.

Mr. WEICKER. I thank the Senator. The promises of my colleagues are not enough and Executive orders are not enough. Unless reform is in writing, it is not going to happen.

Does everybody in this body really understand the deep cynicism that exists among the American people when it comes to our system of justice?

It is not a cynicism with Republicans. It is not a cynicism with Democrats. It is a cynicism with an establishment that writes its own rules.

When will we stop paying in the currency of the Constitution and its principles the price of quiet for our time.

With the Nation still plagued by a perception of unequal justice in America, it is vital that the country's chief law enforcement officer not be chosen from among a President's pals or politicos.

The Attorney General, above any other appointed official, must be an individual who not only is impervious to the political and personal demands of a President, but also appears impervious as well.

Although I am concerned by Mr. Bell's mediocre record on civil rights, my opposition to his nomination is based on the urgent necessity to correct in style and substance the widely held belief that there are two standards of justice in the United States.

The American people are tired of watching brothers, campaign managers, law partners, and old friends sprinting the inside track to the Justice Department. The truth that has been gained over the past several years is not much good unless we act on it. Unfortunately, more often than not, blindfolded Justice has not been holding scales, but rather the President's hands.

[111] U.S. Const., Art. II, sec. 3.

This ended with the appointment of Edward Levi—a brilliant lawyer, educator, and free spirit. With the nomination of Griffin Bell, how soon these lessons are forgotten.

It may be said of Mr. Bell and President Carter, with no slight to either man, that when viewed in light of recent history, extending their old, personal, political friendship into the office of Attorney General perpetuates rather than dispels the image of old, personal, political justice.

The travesties and the injustices of the past several years did not go away with the election of a new Congress or a new President, and they cannot all be cured by legislation. So many have to be rectified by sound commonsense judgments. The Bell nomination is not such a judgment.

There is going to be another time of difficulty as there was in the late sixties and early seventies. I hope to God that when the establishment turns to the American people and says, "Believe in our system of justice," the facts will support belief. Up to this moment I see little to support it, including this nomination.

Mr. President, I yield back the remainder of my time.

Mr. MATHIAS. Mr. President, I yield 5 minutes to the Senator from Rhode Island (Mr. CHAFEE).

Mr. CHAFEE. Mr. President, my vote on this matter is a particularly difficult one. I as a temporary member of the Judiciary Committee, I sat through many hours of testimony. We listened to more than a score of witnesses. Judge Bell came through as a man of integrity, intelligence, and ability.

I certainly respect the desirability of granting the President the greatest possible leeway in the selection of his cabinet. However, I do think that the criteria for judging a nominee for Attorney General are stiffer than that for judging other Cabinet members.

The Attorney General is more than just the attorney for the President or for the Government; he has a special role in that he is the attorney for all the people. This special role goes further than that. It seems to me he has to have a deep concern for the minorities, because he is the spokesman for them as he attempts to enforce the laws that are to protect their rights.

To me, this issue was not one of private clubs, Judge Carswell, or the FBI. It is in the area of civil rights that Judge Bell's record troubles me.

His role as voluntary legal adviser to Governor Vandiver in the 1958–61 period has been discussed, and we are constantly told to appreciate the temper of the times. I think that is a fair admonition. But as we read the statements that were made by the Governor as we review the laws which were submitted at that time in which Griffith Bell had a hand, it does not seem to me that was the voice of reason.

Then we proceed to the consideration of Judge Bell's role in the civil rights cases, especially those dealing with school desegregation. I found them troubling.

There undoubtedly is a lack of confidence as regards the nominee among the minority groups, as was evidenced by the flow of witnesses who came before the committee. It would not be fair to label that just a concern. It is far deeper than a concern, as we heard from Mr. Mitchell, from representatives of PUSH, the ADA, and the other groups.

I do not think for 1 minute we should be controlled by the opinions of those groups. But I do believe they should be taken into consideration. Those opinions are of consequence.

I believe it is important, as President Carter said less than a week ago in his inaugural address, that there be "a serious, purposeful rekindling of confidence." In this nomination we do not have that rekindling of confidence for our Nation.

For those reasons, I am opposed to the nomination of Judge Bell.

Mr. THURMOND. Mr. President, who is handling the time?

Mr. BAYH. Mr. President, I would be glad to yield to the Senator. How much time does he desire?

Mr. THURMOND. I believe 5 minutes.

Mr. BAYH. I yield 5 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, the Committee on the Judiciary had lengthy and indepth hearings on the question of whether Judge Griffin Bell is qualified to serve as Attorney General of the United States.

No single bit of testimony can be singled out to determine whether Judge Bell will be a good Attorney General. No single case can be singled out to determine whether Judge Bell will be a good Attorney General. To achieve balance and justice, the whole man and his complete record must be placed on the scales.

Judge Bell was born in Americus, Ga., on October 31, 1918. He was graduated cum laude from the Walter F. George School of Law, Mercer University. He served his Nation in the U.S. Army during World War II, rising to the rank of major. Judge Bell spent over 12 years in the private practice of law in Savannah and Atlanta, Ga. President John F. Kennedy, in 1961, nominated Griffin Bell to the Fifth Circuit Court of Appeals. He spent over 14 years on that bench.

I have carefully reviewed the record of Griffin Bell as a Federal judge, a lawyer, and a man. In addition to my review, I have had the benefit of the views of his critics and supporters who have seen fit to comment on his nomination. My evaluation leads me to conclude that Judge Griffin Bell will make an able Attorney General of the United States.

Frank T. Read, dean of the Law School, Tulsa University, is reported to have recently completed a 5-year study of the desegregation decisions of the U.S. Fifth Circuit Court of Appeals.

Through interviews and analysis, Dean Read found Griffin Bell extremely influential and a leader of the center—I repeat, of the center—of the 15-judge court whose members run the spectrum of judicial philosophy. Judge Bell presided over 141 school integration cases between 1961 and 1975. He was supervisory judge for 150 school districts in Mississippi and was a member of the panel of judges charged with enforcement of the Supreme Court desegregation rulings for large cities such as Mobile, Ala.; Jacksonville, Fla.; and Orlando, Fla. His record is there and it is called mixed by some on civil rights issues; it is called good by others. Some say his record is bad. To me, his record is that of an independent thinker—I repeat, an independent thinker. He is his own man.

Griffin Bell is a man of keen intelligence and high integrity. Almost all who have known him longest and best say he is a man with sensitivity toward civil rights and individual rights.

Judge Bell has for years been active nationally in efforts to streamline the judicial system. As Attorney General, he will be able to devote his time, intelligence, and energy to the problem of overcrowded court dockets.

As a skillful negotiator, I am sure that he will cut litigation where it should be cut by negotiation and settlement.

Mr. President, President Carter said:

My prediction is that Griffin Bell will be a great Attorney General.

I, too, am convinced that he will do a good job for our country. Thus, my vote will be cast for his confirmation.

Mr. President, an editorial appears in the Washington Post today concerning the nomination of Griffin Bell. I had intended to put it in the RECORD, but I believe it has already been submitted by the distinguished Senator from Indiana.

Mr. President, I shall not take time to go into this full record, but I wish that every Member of the Senate had the opportunity to read the testimony of Mr. Jaworski, which begins on page 48 of the transcript of the hearings in the Committee on the Judiciary and ends on page 92. Mr. Jaworski has studied carefully the record of Griffin Bell and he investigated Griffin Bell before he was appointed to the circuit court. He has been in touch with him on many other occasions. Mr. Jaworski's opinion is a resounding yes, that he is a man of capacity, a man of courage a man of character and Mr. Leon Jaworski feels that he should be confirmed.

Mr. President, I shall not take time to go into all of this record, but I want to say that I understand some of my colleagues have brought out a comment of Mr. Jaworski on page 60:

I would be prepared to say that Judge Griffin Bell, despite my high regard for him, as you have heard, is not necessarily the best qualified man that could be found.

Mr. President, I repeat that statement:

. . . despite my high regard for him, he is not necessarily the best qualified man.

He did not say he was the best or not the best. He said he was not necessarily the best. But I am afraid those who quoted Mr. Jaworski stopped there. He goes on to say:

At the moment, there comes no one to mind. But I would be surprised if there were not others in this land who, in my experience, may well be better qualified. But I am convinced that he is a thoroughly qualified man for this post.

Mr. President, how can you say any one man is the best qualified man in

the United States? The point is, is he a qualified man? Mr. Jaworski says he is a qualified man. President Carter says he will make a great Attorney General.

Mr. President, he made another good point here which I think is important. He says:

I would be shocked if this man ever yielded to pressure.

To me, that is very important. Courage is a quality around which all others rest, probably the most important quality of a man. If Mr. Griffin Bell has the courage to resist pressure and stand up for what he thinks is right, that is, indeed, a very top quality.

He made another point here, too, that Mr. Griffin Bell is the kind of man who would seek the best advice he could get. Mr. Bell realizes that he is not infallible. He realizes that he does not know it all, so to speak. He would not hesitate to seek advice. Mr. Jaworski says that, in his opinion, he would seek the best advice possible. I think that is important, too.

Mr. President, I could go ahead here and quote many, many things from this record which are very favorable to Judge Bell, but I do not think it is necessary. I believe that the Senate wants to be fair on this nomination. I want to say that Mr. Bell, although he grew up in the South years ago and there was segregation of the schools in the South because the laws required it—the Federal law was in accord if there were equal facilities. When the law changed, the South has obeyed the law. There is no section of the country today where the law is respected more than in the South. There is no section of the country where race relations are better than in the South. We are proud that we have not had many of the troubles in the South that have occurred in other parts of the country.

Although Griffin Bell comes from the South, no one can accuse him of discrimination or can it be said that he would act in any way other than a fair and just manner. I hope the Senate, without hesitation, will approve this fine man who has such an excellent record as a lawyer, as a judge, and as a man.

I ask unanimous consent that Mr. Jaworski's entire testimony follow my remarks in the RECORD.

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

TESTIMONY OF LEON JAWORSKI, HOUSTON, TEX.

Mr. JAWORSKI. Mr. Chairman, my name is Leon Jaworski. I am a practicing attorney with the firm of Fulbright and Jaworski, with offices in Houston, Washington, and London.

I first became acquainted with Judge Griffin Bell when I was requested by the then Chairman of the American Bar Association's Federal Judiciary Committee, Bernard G. Segal, in July of 1961, to investigate Judge Bell's background, experience in the practice of law, his character and other matters pertaining to his qualifications, to sit as a member of the United States Court of Appeals for the Fifth Circuit.

It was stated to me by Chairman Segal that the then Deputy Attorney General, Nicholas Katzenbach, had requested, on behalf of then Attorney General Robert Kennedy, that the committee conduct such an investigation and that if Griffin Bell was found to be qualified, it was the intention of President Kennedy to appoint him. Inasmuch as I was the member of the American Bar Association's Standing Committee on the Federal Judiciary, representing the Fifth Circuit, the matter was placed in my hands for the mentioned investigation report and recommendation.

I am attaching to this statement, as Exhibit A, a copy of the report that I filed on July 25, 1961. These reports go to each member of the committee and based on it, as well as other information that may come into the hands of members of the committee, a vote is taken.

Judge Griffin Bell was unanimously approved for a well-qualified rating and this was reported to Deputy Attorney General Nicholas Katzenbach and, in due course of time, Griffin Bell was appointed to the judgeship on the Fifth Circuit Court of Appeals.

When these reports are compiled and forwarded to the Chairman of the Standing Committee on Federal Judiciary of the ABA, they are considered confidential. Because of the lapse of time, the fact that Judge Bell is no longer on the court and for other good and sufficient reasons, I have removed the stamp of confidentiality from this report. Before doing so, I had the approval of the present president of the American Bar Association.

Although Attorney General Robert Kennedy did not undertake to dictate or to influence the findings of the American Bar's Committee on the Federal Judiciary, I was aware—as were others on the committee—that the Attorney General did not want appointees to the Federal judiciary who had any notions or concepts of racial discrimination.

Griffin Bell, at that time, was not personally known to me and I had to depend upon others to furnish me the information that would enable me to come to a conclusion as to his qualifications.

The report speaks for itself, but it is of significance that Judge Bell, after full investigation, was given a well-qualified rating. That is a somewhat unusual rating for one who has not sat as a judge before. The only rating given higher than this one is that of "exceptionally well-qualified" and it is given—as I think you know—in rare instances and then where unusual experience, such as a period of service on the bench, exists.

Had not both Attorney General Robert Kennedy, as well as Deputy Attorney General Nicholas Katzenbach, been convinced that Griffin B. Bell was fair-minded and possessed no racial prejudices, his name would never have been submitted to the President of the United States for appointment.

May I add that had I believed, as a result of the investigation I conducted, that Griffin Bell was biased on the isuse of civil rights, I would have found him to be disqualified and so recommended to the committee.

May I also add that, after witnessing his performance on the bench and the personal experiences I had with Judge Bell at the time of the contempt proceedings against Ross Barnett for violating the orders of the Fifth Circuit Court of Appeals in the admission of James Meredith to an institution of higher learning in Mississippi, I am convinced that my appraisal of him in 1961 was accurate.

Without entering into a prolonged review of the unfortunate conditions that existed, resulting in the bringing of civil as well as criminal contempt proceedings against Governor Ross Barnett and Lieutenant Governor Paul Johnson, let me allude briefly, if you please, to a summary of what is important in the consideration given to Judge Bell's qualifications for service as Attorney General.

Because Attorney General Robert Kennedy, Deputy Attorney General Nicholas Katzenbach, Assistant Attorney General Burke Marshall and Assistant Attorney General John Doar had personal contacts and made official decisions relating to the position of the United States Government in the Meredith matter, Attorney General Robert Kennedy asked me to serve as Special Assistant Attorney General in representing the United States Government in these contempt proceedings.

The Chief Judge of the Fifth Circuit Court of Appeals, Judge Elbert Tuttle, approved of this appointment. I was called to Washington to talk with Attorney General Kennedy and with Nicholas Katzenbach and concluded it was my duty to serve in this capacity. I did so as a public service, without compensation.

Before the Fifth Circuit Court of Appeals, sitting en banc, considered the criminal contempt proceedings, a number of hearings were held relating to the taking of steps to restrain Governor Barnett and others from interfering with the admission of James Meredith to college. It so happened that in the early stages of the issuing of restraining orders and injunctions, Judge Griffin Bell was one of three judges who participated in these proceedings.

I have attached, as Exhibit B, to this statement that part of the Fifth Circuit Court's own recitation of these early proceedings, restraining orders and injunctions, which antedated the bringing of the contempt proceedings and which were embodied in the certification by the Fifth Circuit Court to the United States Supreme Court.

In several instances before the final hearing, which the court entertained en banc, Judge Griffin Bell was one of three members who sought to restrain and to enjoin Ross Barnett, Paul Johnson, and administrative officials from barring James Meredith from the university.

The certified question, you may recall, related to whether Governor Barnett should be entitled to a jury trial. By a narrow margin, the United States Supreme Court held that so long as the term of confinement, if found guilty, would not exceed six months, the respondent would not be entitled to a jury trial. It is significant to point out that both Mr. Justice Black and Mr. Justice Douglas joined in the dissent, urging that the respondent, Governor Barnett, be accorded a jury trial, regardless of the punishment.

When the certified question was answered by the United States Supreme Court and the matter was returned to the United States Court of Appeals for the Fifth Circuit, the Fifth Circuit Court, with Chief Judge Elbert Tuttle still presiding, appointed Judge Griffien Bell to represent the court in working with counsel on both sides in determining the procedures that should be followed in bringing the respondents, Barnett and Johnson, to trial.

Chief defense counsel, Charles Clark, now a member of the United States Court of Appeals for the Fifth Circuit, and I, along with my associates, Burke Marshall and John Doar, had informal conferences with Judge Griffin Bell for the purpose of determining the procedures to be followed and to agree on a solution of some of the problems that existed as to how the trial was to be conducted and where, and so on.

Judge Bell was completely objective and fair-minded in the consideration of the various matters that arose in these conferences and I represent to this committee that, as the chief representative for the United States Government in these conferences, I was completely aware of how judicious was the conduct of Judge Bell and the fairness with which he approached the problems that arose. I believe you will agree.

It was an accolade to Judge Bell that he was selected by the court as a whole and, especially, by Chief Judge Elbert Tuttle to work with counsel in the solution of some of the problems that existed prior to trial and after working with Judge Bell in several

sessions, I could well understand why this selection was made.

As conferences were being held and steps taken to set up the trial for criminal contempt, Governor Ross Barnett and others made full compliance with the court's orders and purged themselves of the contempt for which they had been cited. The court then determined that there was nothing to be accomplished by holding the trial. One morning I received a copy of an order of the court dismissing the case.

I am here for only one purpose. I offered to come to represent to you that in my experience with Judge Griffin Bell he exhibited open-mindedness, fairness and a commendable judicial approach. I have never known him to do other than to embrace the rule of law and, after all, this is the test to be applied to appraising the work of a man on the bench.

In sitting as a judge, he may have made mistakes. But I would like to ask what judge is there who has not made mistakes?

I think that we would all want to bear in mind that apparently justices on the United States Supreme Court have made mistakes from time to time, at least in the eyes of their successors. Otherwise, we would not have the changes in judicial decisions that we see from era to era.

Even beyond that, I know that I have had occasion to change my views on matters of policy, and of law; and if Judge Griffin Bell had not had occasion to do so, I would not be enthusiastic about him as the Attorney General.

I have brought for the record today statements which include such parts of the court's own certification that recite what happened in the Meredith case. These recitations point out the activities of Judge Bell as a member of the three-judge court and also as a member of the court sitting later en banc.

Thank you very much, Mr. Chairman.

Senator BAYH (acting chairman). We will, without objection, put in the record the additional matters that you have attached to your statement.

[Material follows:]

Senator BAYH (acting chairman). Mr. Jaworski, I do not need to go on at great length relative to the importance of sensitivity in the area of human rights. It is probably the most important responsibility of the Attorney General to be an advocate in support of these.

I assume from what you said, from your personal and professional contact with Judge Bell, you feel he would meet the standard being an advocate in support of and to protect the rights of those citizens whose rights might be threatened.

Mr. JAWORSKI. I do so, sir.

Senator BAYH. Are you familiar with the Cisnero case, the Corpus Christi case in 1972?

Mr. JAWORSKI. I took a look at a few of the cases.

Senator BAYH. I bring that out because that was used by a preceding witness. I am not familiar with all the facts of the case, but that was used by a preceding witness who opposed Judge Bell as evidence of his lack of this kind of sensitivity.

Mr. JAWORSKI. I just do not think that conclusions can be drawn on the basis of a result of any one decision.

I would be inclined to agree that, if there existed a pattern of decisions that indicated a certain attitude consistently, this is something that could be taken as an index of that man's heart and mind. But just because a lawsuit is lost, one cannot draw that conclusion.

Certainly, those of us who believe strongly in civil rights are bound to be in error at times in the positions we urge. It would be very strange if we were always correct.

So the fact that there can be pulled through the computer or otherwise some decisions in which Judge Bell did not hold with the advocates who espoused certain positions on civil rights just does not impress me at all.

Senator BAYH. Senator Mathias?

Senator MATHIAS. Mr. Jaworski, it is a great pleasure to welcome you back to this committee. I am happy that you are here under happier circumstances than some of the previous visits that you paid to us.

Mr. JAWORSKI. I want to take occasion again to thank you, as I also want to thank Senator Bayh and others present here, for having permitted me to come to you and sit down and talk with you during the dark days that I faced. This committee as a whole have backed me up to the point that I was enabled to do the job that I was asked to do.

Had it not been for this committee under a special arrangement, my fate may well have been otherwise.

Senator MATHIAS. I do not think this is an occasion to simply trade compliments, but I think the committee had a certain basic confidence in you which made it possible for all of us to do a hard job at a hard time.

What I suppose we are here for today—and I said this last night to Clarence Mitchell and to Judge Bell, who were both in the room at the time—is to avoid another hard time like that. Whatever the disposition of this nomination may be, we want to make a record which is so clear that the guidelines will be apparent to both the Attorney General, his subordinate in the Justice Department, to those of us who have some oversight responsibilities here, and to the whole American public.

We examined Judge Bell's record in some detail. There was a colloquy yesterday in which I did not participate. I may not be able to quote directly; the clerk has not yet provided us with the transcript of yesterday's testimony. It went to the point that the nominee was about the only qualified lawyer that they could find.

Perhaps some of the other members of the committee might be able to quote that more correctly. I have trouble with that——

Senator BAYH. If I may interrupt my friend?

Senator MATHIAS. Yes.

Senator BAYH. I think that question was directed at the judge. He was quick to point out that he did not believe that was the case. He thought there were others who were equally well-qualified and perhaps better qualified than he, but the President had a number of considerations that he based his final judgment on.

I do not think it would be fair to suggest that that was the conclusion.

Senator RIEGLE. Would the gentleman yield on that point?

Senator MATHIAS. Yes.

Senator RIEGLE. That did arise on two occasions. The first time around was the first day, for which there was a transcript. There was a response by Judge Bell to the effect that they had a hard time finding candidates. They had some difficulty in filling this particular job.

When we got into that in more detail is the second day; it developed that there had been a list of people put forward and that he himself had advanced a list. In the end, he was asked to accept this job.

But it is clear from the early part of the record they were having some difficulty with the process in coming up with enough people that met whatever the criteria were that were being applied. We never did really pin that down.

Senator MATHIAS. That is very helpful. That is exactly the part of the colloquy to which I was referring.

Mr. Jaworski has been a president of the American Bar Association. He has had an extremely distinguished career and practice of law in his home state and throughout the country.

He might be able to enlighten the committee a little bit on whether you think, given the standards of excellence that are available in the American Bar Association and the American bar, that this nominee is on a par with the most excellent candidate that could be submitted to this committee.

Let me say that there are tough questions ahead. I do not have to tell you that. I mean questions in the business field and antitrust questions. We may not be handling them right at all. Maybe even the approach that we are making to monopoly questions may be wrong. We have not done serious legislating in that field for a hundred years.

There are many questions which affect the lives of every American that are going to be dealt with by the next Attorney General. So the complexity of these problems surpasses anything which we have had experience with in the past.

Given the kind of standard of performance that is going to be required and given the kind of standard of excellence among lawyers at the bar with whom you have been associated throughout your life, what sort of a rating would you give this nominee?

Mr. JAWORSKI. Senator Mathias, as you were speaking I was running through my mind possible appointees. I would be prepared to say that Judge Griffin Bell, despite my high regard for him, as you have heard, is not necessarily the best-qualified man that could be found.

At the moment, there comes no one to mind. But I would be surprised if there were not others in this land who, in my experience, who may well be better qualified. But I am convinced that he is a thoroughly qualified man for this post.

I know one thing that has not been mentioned. I would be shocked if this man ever yielded to pressure. He is just not built that way.

The other matter that I am completely certain of is that he would seek the best advice that he could get. If he were in doubt about a course to follow, in doubt about what his judgment should be, he is not an arrogant or opinionated individual.

I can say this further. Among the lawyers who practice in the Fifth Circuit and some of them who came from other circuits, Judge Griffin Bell was rated very, very highly, perhaps as highly as any member of the court.

I want to add one matter that indicates how difficult his position was when he sat so early in his experience as a member of the court that had to deal with the Meredith matter. There were two judges, both from the South, who dissented in the granting of these restraining orders and these injunctions and took the action that was taken.

So, despite his background and despite the fact that he comes from the South, he had the courage of his convictions. As a consequence he went right down the line in the issuance of these restraining orders in support of the rule of law.

So I came back to this. I am satisfied that he is qualified. I am satisfied he would make a very fine Attorney General. I cannot conceive of anything ever going on in this office that has gone on in the office as we recently became familiar with.

This is about the best way I can answer the question, Senator.

Senator MATHIAS. The orders that you refer to were orders that would clearly have been dictated by the existing opinions of the Supreme Court.

Mr. JAWORSKI. I think you mean by decisions that had antedated the Meredith experience.

Senator MATHIAS. Yes.

Mr. JAWORSKI. The Supreme Court decision that I referred to came along after these orders that Judge Bell had entered. But, you see, they all related not only to civil contempt but criminal contempt also.

A court has to go quite far in order to

determine that these restraining orders should be issued and that this contempt action should be taken. He never did waver on that. He had his own views with respect to where the trail should be held. I am not so certain that he was not right about it. He felt it was a matter that should go back to the District Court and that the District Court should hold the contempt proceeding rather than the Circuit Court. He was not the only one who felt that way about it.

Senator MATHIAS. One of the problems that you faced as Special Prosecutor was that of troublesome issues had been swept under the rug. After the initial sweeping, any good housekeeper is embarrassed about that; so you begin to cover up, cover up, cover up. Instead of grappling with the problem initially, you put it aside and cover it up.

Do you think that there is any likelihood of that occurring in the Justice Department with Griffin Bell?

Mr. JAWORSKI. I think the likelihood of that happening, whether Judge Griffin Bell is the appointee or whether someone else is, I just cannot conceive of that happening. This is due largely to the position that this group and other groups have taken in government.

I think the leaning might be in the other direction of perhaps not facing an issue quite as boldly, for fear that somebody might misunderstand. I have said once or twice before that one of the results of Watergate may have been that the pendulum, in the eyes of some people, has gone too far in the other direction.

I am talking about a feeling of unwillingness to hold certain conferences with certain people except under certain conditions, for fear that it might be misunderstood.

I just cannot conceive, and I would be terribly disappointed if Judge Griffin Bell ever participated in any of the conduct that——

Senator MATHIAS. I want to make this clear. I am not talking about criminal conduct. I am talking about postponing dealing with a problem which later can be found extremely troublesome. In other words, are you going to grasp the problems?

Mr. JAWORSKI. You used a good expression. It was swept under the rug; it was forgotten deliberately in the hope that it would pass on.

Senator MATHIAS. I do it myself sometimes. One hopes that a thing will go away, or on the road to Damascus you will have some sudden light. Lo and behold, it becomes a pretty big problem.

Mr. JAWORSKI. I am a little bit surprised at your confession, Senator Mathias, because I did not find you that way when I was talking with you about some of the Watergate problems.

I guess it is a way of life. Probably all of us are guilty of it at times.

You were one of the first senators to whom I had to talk in confidence. I came to see you because I felt a need to talk with you. It was when I first discovered what I was up against. I had the same privilege with the entire committee and the same privilege with Senator Bayh.

Senator MATHIAS. Thank you, Mr. Jaworski.

Senator BAYH (acting chairman). Senator Riegle, do you have a question?

Senator RIEGLE. I appreciate your coming and sharing your thoughts with us today.

I want to be just a little bit clear on the depth of your firsthand knowledge of Judge Bell. I listened to most of your statement; I was called out of the room for the first part of it.

Can you, in just a brief summary, give me a clear sense for the length and depth of the insight, based on your own personal experiences and chances to see him in action?

Mr. JAWORSKI. Thank you, sir.

I shall explain my principal participation in the practice of law over the last ten years. I argued more cases in the Fifth Circuit Court of Appeals than anyone from my part of the country, as far as I know. This came about, Senator, because in a number of instances where a case had been lost in the lower court by other attorneys, I was then employed to handle the case in the Fifth Circuit Court of Appeals and several times in the United States Supreme Court because my work had been swinging in the direction of Appellate Court arguments.

As you know, the court has been sitting in numbers of three unless they had a very unusual case. But in quite a few of these I did draw Judge Bell as one member of the court. I never would know until I got ready to argue the case. This was their system.

What impressed me was how fair he was in getting to the heart of a question. He had studied the case in advance. He always asked very penetrating questions, sometimes questions that were a little embarrassing to my side of the case, they were so penetrating.

So I did form a very high regard for him as a judge. There has been no personal relationship in the sense of personal visitation in my home or in clubs together, whether integrated or not. We just did not have that sort of a friendship.

I saw him from time to time. I saw him twice within the last year. Once was at the convention in Atlanta. He participated primarily in putting on this case that was reenacted. It was Rex versus Preston. It arose out of the Boston Massacre. The American Bar put this on. We had an English judge and an English council and so on. I was one of the defense counsels. Judge Bell was chairman of the particular committee that was responsible for that.

The other time I saw him was, very frankly, when I was pushing my book. I was in Atlanta. The owner of a bookstore there—may I add that it does not mean anything to me personally because all of this goes to a charitable foundation.

But I was there. Without my knowing it, the owner of the store had invited for lunch several of the lawyers in Atlanta. He was one of them.

Senator RIEGLE. I think the last time you and I saw one another was on an airplane when you were going somewhere in the process of speaking in behalf of your book.

Let me ask two other things.

Senator BAYH. Excuse me. Would the witness care to mention the name of his book so we could have that in the record at this time?

[Laughter.]

Mr. JAWORSKI. It is "The Right and the Power." It is an interesting name because in one of the letters that I wrote to the White House when I was in a very, very stern exchange with them over my right to sue the President, which I had been promised and on which the White House was reneging, I used that expression. I had the right and the power to take him to court.

The publishers thought that was a good title to use. Readers Digest Press is one of the publishers.

Senator RIEGLE. I think it is an established tradition of the committee that whenever a distinguished author appears here and mentions the book, there is an obligation to send each member of the committee an autographed copy.

Mr. JAWORSKI. I think that can be arranged, as a matter of fact.

[Laughter.]

Senator RIEGLE. There has been some discussion over the last two days about the difference between what is required for someone who would be a good judge in applying the rule of law versus someone who would be in a different kind of job capacity as Attorney General, where there is a whole advocacy kind of responsibility that is quite a different kind of responsibility than one who tries to sit between two competing views.

I wonder, as you had a chance to view Judge Bell, how you think he would handle that kind of a change of role, because it is quite a different job. I think, particularly given your own references even to the sort of tortured history of the Attorney Generalship over the last several years, that there is a clear hope by most Americans that someone will step into that job who will move forward fairly but aggressively.

I am wondering if you think he can make that transfer role, as different as those two things are. What would be your judgment on that?

Mr. JAWORSKI. Senator, had he spent his entire professional career on the bench, I would be less enthusiastic about his appointment for the very reason that you mention. But he practiced law before that time. He was a very successful trial lawyer prior to that time. Prior to the time he went on the bench, he had practiced for fourteen years.

In addition to it, he has returned to a very outstanding group of lawyers. He is a partner in that firm. He has been practicing since he left the bench.

I have seen judges and have argued to judges, and I think you have had the experience where you felt that it would have been very helpful if they had a little bit more experience on the outset and not just sitting on the bench the whole time.

I think it is an important point that you raise.

But he has had the experience on both sides. I think he could approach these matters objectively without letting his judicial experience interfere. It can be a great help, of course, because you learn a lot being a judge that you can apply helpfully and constructively.

Senator RIEGLE. Does that mean that you in your own mind are prepared to take the leap of faith in terms of feeling that this would be an activist, forceful leader as an Attorney General?

Mr. JAWORSKI. I think he would. I think he would do his duty. I do not think that you would ever find him taking a position or doing something just for the sake of making headlines. We have all been through these experiences. I probably could have made one or two that I did not make when I was in the Watergate process.

I do not think he would do that.

Senator RIEGLE. The other thing that is a question that arises in some minds is something that I think you touched on in passing. That is the whole matter of independence.

You said that you felt that this was one individual that would not be subject to pressure and would resist it.

There is a bit of a problem with respect to the history, I think, in the terms of the way this nomination came about. Senator Mathias made some reference to it. The selection process, however it went forward, ended up where someone who had something of an acquaintanceship was picked for this post.

I think we are all especially sensitive to any kind of relationship of that kind in light of recent history. One of the things that I am especially concerned about is this issue of independence and whether we have here someone tough enough who would be entirely willing to draw the line quickly and firmly in each and every case where that needed to be done.

I think if there is even the suggestion that friendship might play any part—connection through the law firm or any of that—and I think that this particular candidate start with that as a burden because of the appearance of the connection. I am sure he feels that. I feel it for him. I feel it for the country.

It seems to me that that carries with it then sort of an added measure of responsibility to be so clearly independent that no question could ever really arise about it

I wonder if you think, based on your experience, that he would meet the kind of test, that kind of exceptionally high standard of independence.

Mr. JAWORSKI. I really think that the judicial experience of which you and I spoke moments ago help give him independence. No man, as all of us know, is more independent than a Federal judge, especially one who sits on the Court of Appeals.

I would be surprised if he did not follow a course of complete independence as Attorney General.

I say this to you, sir, if I may inject a note personally. I would not think of going to this man and asking him for anything that I did not believe was 100 percent just and fair. I can tell you further that, even at that, it would not surprise me if he turned me down.

This is my own appraisal of the situation.

Senator RIEGLE. I appreciate your taking the time to come and to give us your advice and thoughts. I also want to take the occasion again to thank you for your previous service to this country of ours.

Mr. JAWORSKI. Thank you very much.

Senator BAYH (acting chairman). Senator Chafee?

Senator CHAFEE. Mr. Jaworski, I want to join in welcoming you here and thanking you for the wonderful service you gave to our country.

I would like to ask you one question. You reviewed in some detail the Barnett case that you dealt personally with Judge Bell on. Are there any other civil rights cases, particularly dealing with school integration, that you are familiar with that he made decisions on?

Mr. JAWORSKI. Not in the sense that I could discuss them with you now; no, sir. I have not reviewed them. I did not have the time to review them.

I can say this. The many people with whom I have talked about the rulings of the Fifth Circuit Court of Appeals—I know that I have heard no criticism at the time these decisions were rendered by Judge Bell. I have just not heard that. I have heard criticism of other judges who sat on that court.

Senator CHAFEE. I thought one of the points you made was an interesting one. That was the high regard with which the presiding judge of the circuit had for Judge Bell. I guess it was Judge Tuttle who assigned him to work out the procedures in connection with the Barnett case.

That was rather unusual, was it not? Judge Bell had just briefly been associated with the Fifth Circuit at that time.

Mr. JAWORSKI. The other members of the court had a very, very high regard for him. I heard a number of them speak of him from time to time.

If you will notice in Exhibit A, which is the investigation that I made of Judge Bell before he was appointed to the court, I mention in there, not by name, but several of the judges and lawyers who had held positions of one kind or another with whom I talked before I made this report. One of these was Judge Elbert Tuttle, who has one of the finest records of courage of any judge on that court.

Judge Elbert Tuttle I refer to at the top of page two as the Chief Judge of the United States Court of Appeals for the Fifth Circuit. He was among those I consulted in connection with determining Judge Bell's qualification. Judge Tuttle felt very favorably inclined to Judge Bell. Of course, this had a whole lot to do with my determination of the eventual rating that I suggested for him.

Senator RIEGLE. Thank you very much.

Mr. JAWORSKI. You are welcome.

Senator BAYH. Senator Sasser?

Senator SASSER. Mr. Jaworski, I, too, want to join with my colleagues in thanking you for the splendid service that you rendered this country as Special Prosecutor in years past.

I would like to ask you just one or two questions that deal with the qualifications of Judge Bell for the office of Attorney General.

During the course of these hearings, Judge Bell has been asked many, many questions by the members of this committee with regard to what he would do in the event he is confirmed and becomes Attorney General of the United States.

My question to you, sir, is this: Can we rely on the representations that Judge Bell has made here over the last two days as to what his course of conduct would be as Attorney General?

Mr. JAWORSKI. In my opinion you could. I personally would rely on them.

Senator SASSER. I notice in a letter which you have appended to your testimony and marked Exhibit A, dated July 25, 1961, addressed to the American Bar Association——

Mr. JAWORSKI. The Chairman of the Standing Committee on the Federal Judiciary; yes, sir.

Senator SASSER. It dealt with Judge Bell's qualifications to then be named to the Fifth Circuit Court of Appeals.

Mr. JAWORSKI. That is correct, sir.

Senator SASSER. I note you also in this letter analyzed his professional qualifications, and also his personal qualifications. I note on page two you say: "I am assured that he is fair-minded and possesses a temperament exceptionally well-suited to service on the Bench."

Mr. Jaworski, I might ask you how you came to that conclusion that Judge Bell was a fair-minded man.

Mr. JAWORSKI. By talking to these gentlemen, who I do not identify by name but I identify as Chief Judge, United States Court of Appeals—who was Tuttle—and Associate Justice of the Court of Appeals for the Fifth Circuit. I honestly have to say at this late date I do not know who that was.

The United States District Judge who sits in Atlanta was another; and I am not certain that I could identify him by name. I talked to Smythe Gambrell, the former president of the American Bar Association, who is from Georgia.

I talked to a member of the house of delegates to the American Bar Association; I cannot tell you who that is. I talked with three members of the American College of Trial Lawyers, which you know is a group where a man has to practice actively in court for fifteen years before he can be invited. You do not join it; you are invited. They must have handled some of the most important litigation in the state.

A number of these, as I point out, opposed him in litigation. Then I mention one man by name; that is Charlie Bloch, who was my predecessor on this committee and who is really tough. He came from Georgia, also. Charlie Bloch is one of those who gave him a high recommendation.

Of course, not knowing Mr. Bell, I had to rely on what these people told me about him. But the very offices that they hold, I think, is of significance.

Senator SASSER. Mr. Jaworski, there have been no allegations, as I recall the testimony, that Judge Bell was not qualified by way of professional qualification or that he was not qualified by way of integrity.

But there have been some suggestions that he may not have moved as fast as the witnesses would have wished in the field of advancing the civil rights of black Americans in the State of Georgia.

I will ask you, sir, in your investigation in preparation for making this recommendation in 1961, did you find any evidence of racial bias on the part of Judge Bell?

Mr. JAWORSKI. There was none mentioned to me, sir. If there had been, I could not have written this recommendation. I also would have had to disclose it to Attorney General Robert Kennedy and to Deputy Attorney General Nicholas Katzenbach. I knew how they felt about this matter. I would have disclosed it to them if there had been the slightest reference in that respect.

You remember also that the FBI makes its own investigation. It reports to the Attorney General on the man that is to be nominated. I have not seen and no one else on the committee would see that particular report of that investigation.

But remember also, Senator, that everyone who wanted to comment because they felt that Griffin Bell was one to have such a bias was free to report that either to the committee or the Attorney General.

I do not think Griffin Bell would ever have been appointed if it had been reported by reliable sources that he was unfair in the area of racial matters.

Senator SASSER. Mr. Jaworski, this letter was written on July 25, 1961. I assume that it was well-known at this time that the Justice Department under Attorney General Kennedy intended to launch out in the field of civil rights, advancing the rights of black Americans in this country. Is that true?

Mr. JAWORSKI. That is certainly true.

May I add this, too, Senator. I cannot say that it happened in this instance. I do know of another instance in which I made the investigation of a man in the South who was up for appointment as District Judge where Attorney General Kennedy on his own picked up the telephone and made some inquiries to make certain that there were no evidences of racial bias. But whether it was done in this case I do not know.

Senator SASSER. So I think we can conclude from that that certainly then Attorney General Robert Kennedy and the Justice Department were particularly sensitive to any accusations of racial bias that would be leveled against a prospective nominee for the Federal bench.

Mr. JAWORSKI. I do not think that it existed then. Obviously conditions were different. It is very difficult for some people to fully appreciate what the situation was like in 1961.

My close friends would not speak to me for many, many months for taking this assignment. It really was no more than standing up for the rule of law.

It is hard to put it back in the proper perspective.

Senator SASSER. Let me say this, Mr. Jaworski. There has been much talk before this committee about Governor Vandiver in the years in Georgia in the late fifties and early sixties, and you, sir, lived through those years in the South. It might be helpful for us if you could just characterize those years and put them in perspective.

Perhaps we would be in a better position to judge Judge Bell's conduct during those years.

Mr. JAWORSKI. Well, I assume that probably the most reliable testimony I could give along those lines is to allude to some of my own experiences, as embarrassing as it is, and to some of the situations that occurred at that time when I accepted this appointment which I felt I had to do. It was a matter of being a lawyer and one who believed in upholding the law and upholding court decrees.

I found, much to my surprise, that there were not only many laymen but many lawyers who had such strong feelings of racial prejudice that they were absolutely unforgiving about one's actions in doing no more than upholding the law.

There were resolutions introduced in the legislature of my state condemning me for having taken this particular position. It was almost unbelievable. The announcement was made on a Saturday. The Bluebonnet

Bowl game was being played that afternoon. The papers in the morning carried the headline story that I was to serve as Special Prosecutor. That afternoon you would have thought that I had the plague. Nobody would speak to me.

As I say, I would have withdrawn from the law firm if the law firm had found it objectionable; but there were clients who withdrew their business from the firm. There were a number who would not have anything to do with me.

But I must say this. I could go on and describe those conditions; today they seem almost unbelievable. The gratifying phase of it is that after a period of time these people no longer found it to be the terrible act of conduct they thought I was guilty of at the time. They began to change their minds. They saw reason for having done what I undertook to do.

These were difficult days. They were almost unbelievable. Men who are highly regarded today and who are in public office and who serve well in those days were so prejudiced and so determined to be unfair to members of the black race that one almost has to blink his eyes to disbelief that they are the same individuals.

Senator SASSER. And you are describing, Mr. Jaworski, conditions of less than fifteen years ago.

Mr. JAWORSKI. Yes.

I did not say too much about this, but the fact that Griffin Bell, coming from Georgia, was taking actions that the appointee from Alabama would not take and the appointee from Mississippi would not take. I say that is one of the real tributes to be paid to Griffin Bell.

He stuck with this Meredith case from beginning to end and did the thing that was right. Yet he had two colleagues who had the same difficulties that he probably had in his state who did not do so.

Senator SASSER. This was the case of James Meredith in trying to enter the University of Mississippi, the first black man to enter that university.

Mr. JAWORSKI. Correct.

Senator SASSER. Thank you, Mr. Jaworski. I look forward to reading your book.

Mr. JAWORSKI. Thank you, sir.

Senator BAYH. Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman and Mr. Jaworski.

I would like to ask you some questions about your letter of July 25, 1961, the formal report on Griffin Bell. At the end of it you say that "because his practice of law had been confined to fourteen years" you were not sure whether he was entitled to more than a "qualified" rating. Then you say, "After a more extensive investigation," you felt he was "well qualified."

Is it fair to say then that this report represents a tremendous amount of work on your part?

Mr. JAWORSKI. Yes, sir.

May I explain how we go about doing it. Initially, we do not even go into the idea of a formal report if a pulse feeling of a few men in whom we have confidence indicates that the man is probably not going to be considered qualified.

So what we do first is I make a verbal report in which I say, "Well, he is qualified." When I get a green light as a member of the committee, then comes the intense investigation. This means that you call on these individuals, whose names I do not give but I list their titles, and visit with them personally or by telephone. Usually we do it personally.

We assure them that what they say will be kept in confidence except as far as the members of the committee are concerned. Of course, if there are some things said that are of the type that are completely personal, the report would not have been presented to you today. But you see there is nothing along that line in there.

I can only say that my initial investigation, the quick one, which enabled me to talk to only a few, out of an abundance of precaution I was not willing to say that he was well-qualified. I was willing to say he was qualified.

But after going into it—and I might say we spent several days doing this—I was convinced that he was "well qualified."

Senator HEINZ. Did you consult with either the Georgia branch of the N.A.A.C.P. or the national N.A.A.C.P.? I would think that would have been one of the few organizations that might fall into the category of public interest law firms at that time. Or any other public interest type of law firm?

Mr. JAWORSKI. There were almost none at that time.

Senator HEINZ. The N.A.A.C.P. did exist I would think.

Mr. JAWORSKI. I was trying to recall; I did in some instances. I don't recall whether I did in this instance or not. I do know that I raised the question with each one of these people with whom I talked.

Of course, I was particularly impressed with what Judge Tuttle had to say because I knew exactly what his feelings were. He had felt the brunt of criticism for his attitude toward the civil rights of others.

Senator HEINZ. You do mention on page two, and I quote, "he presently holds the position of Chief of Staff to the Governor of Georgia, which is an honorary position usually given to a lawyer who is a close friend of and personal counsel to the Governor."

Did you talk to the governor or any of his people or any people who might be close observors of the Georgia political process about Judge Bell's service in that regard?

Mr. JAWORSKI. I did not regard the Governor as a good source of input as to Judge Bell because they were so close. Here he was the chief of staff. I knew what the governor would say. I did not think the committee would pay very much attention to that.

I was more interested in certain individuals in whom I had full faith of getting a true reading and not one based solely on friendship. I mean, for instance, a man like Smythe Gambrell. He is former president of ABA. He has his own large law firm in Atlanta. One might say a competitor of the firm with which Judge Bell has been associated.

He gave him the highest recommendation. He is a man who is quite critical of individuals. He is a task master and he demands much of his fellow lawyers.

Senator HEINZ. How did you evaluate Judge Bell's service as "Chief of Staff and as a personal counsel to the Governor"?

Mr. JAWORSKI. Well, the only way I could do it is by what people in Atlanta like Smythe Gambrell told me.

Senator HEINZ. Did you talk to them about his service as chief of staff and as personal counsel to the Governor?

Mr. JAWORSKI. Oh, I cannot say definitely, sir, that I did. I would be surprised if I had not. Certainly it would have been one of the matters that I would have inquired about.

Senator HEINZ. It is an important issue obviously of concern to the committee.

Mr. JAWORSKI. It is. It is mentioned specifically for the purpose of pointing out that——

Senator HEINZ. So you are not prepared to say, if I understand you correctly—and I do not intend to put words in your mouth, but what I understand you to say is that you are not prepared to say that you specifically asked anybody to evaluate his service to the governor as his chief of staff. You may have, but you are not prepared to say that you did.

Mr. JAWORSKI. That is correct. I will add, however, if you will permit me, that I feel that I did do so. My best judgment is that I did.

Senator HEINZ. It would be very hard, Mr. Jaworski, to challenge your integrity.

Mr. JAWORSKI. Thank you, sir.

I do not want to enlarge upon what I specifically remember. I certainly do not want to enlarge upon what I put in this report.

Senator HEINZ. Let me ask you a different kind of question. Probably more than any American, maybe living or dead, that I am aware of, you certainly understand the potential for tragedy that exists if a Justice Department is not fearlessly and faithfully independent.

One sort of independence that was can, and I think we should, demand from the Justice Department and the Attorney General is political independence. I think you personally know what the experience of the eight years has meant to this country as well or better than anybody else.

Yesterday I asked Judge Bell whether he thought this committee should hold a negative presumption against any nominee for the post of Attorney General who worked in the campaign of the President he will serve.

I would like to ask you that same question. Should this committee, as a matter of principle, demand that the President send us a nominee who has worked in politics and who has worked in his own campaign? Or should we set a higher standard?

I am reminded of two things. The present Attorney General, Mr. Levi, when questioned in the hearing record, apparently had a fairly nonpolitical history. Indeed, it could not be demonstrated that he had voted in the primary of either the Republican or Democratic party since World War II.

You have indicated that there very well may be people as well or better qualified than Judge Bell for the post of Attorney General. Should this committee seek someone who has not had a personal political relationship with the new President?

What is your feeling about that very sensitive question? It involves setting a standard, of course.

Mr. JAWORSKI. I had thought about this subject some because, as you may recall, there had been an espousal of the elimination of the campaign manager, for instance, from consideration for the post of Attorney General. That has been a matter that has been mentioned and has been fostered by some groups.

I did not join in doing that.

I have to tell you very frankly that, if I were the President of the United States of America, I would want as my Attorney General someone in whom I had complete faith and trust and not a stranger. That just happens to be my own reaction to it.

Senator HEINZ. Is the only way you can achieve complete faith and trust to have them work in a political campaign?

Mr. JAWORSKI. No; but that is the best way. You know the man.

I am not saying it was necessary for him to work in the campaign. I am saying that I would want a man whom I know personally, whose habits I knew, whose thinking, and whose character I knew something about. This is what I would want if I were President of the United States.

Senator HEINZ. Thank you, Mr. Jaworski.

Senator MATHIAS. Mr. Chairman, I have just one follow-up question.

Mr. Jaworski, in responding to Senator Heinz and I believe earlier to either Senator Sasser or Senator Riegle, you mentioned the name Charlie Bloch. Is that Mr. Charles Bloch of Macon, Georgia?

Mr. JAWORSKI. I believe it is; I believe you are right, sir. He was my predecessor on this committee serving the Fifth Circuit.

Senator MATHIAS. In your discussions with Mr. Bloch—I know of no way you could have known this if he did not tell you. Did he ever tell you that he and Griffin Bell had been members together on the committee of four lawyers who were appointed by Governor Vandiver to travel—well, the headline here in the Atlanta Constitution for November 18,

1958 says, "Legal aides scan Dixie for ideas," looking for ways to implement the policy which in those days was called massive resistance.

Mr. JAWORSKI. He never did mention it, nor did I ask any questions about it. I did not know Charlie Bloch that well.

The reason that I talked to Charlie Bloch is because he was my predecessor on this committee.

Senator MATHIAS. As I say, there is no way you would have known it if he did not tell you.

But I think it is perhaps pertinent to the inquiry of this committee that some of your information reflected in your letter of July 25, 1961 did derive from the source Charles Bloch.

Thank you very much, sir.

Mr. JAWORSKI. Thank you, sir.

Senator BAYH. Are there further questions? Senator Thurmond?

Senator THURMOND. We have several committees going on which I had to divide my time to.

We are delighted to have you here. I have not had a chance to hear your statement.

Is it your opinion that Judge Bell is qualified to be Attorney General of the United States?

Mr. JAWORSKI. It is, Senator Thurmond.

Senator THURMOND. Do you feel he is able, a man of capacity?

Mr. JAWORSKI. I do, sir, and have so testified.

Senator THURMOND. Do you feel that he is a man of character and integrity?

Mr. JAWORSKI. Yes, sir.

Senator THURMOND. Do you feel that he is a man who would be fair and not permit discrimination?

Mr. JAWORSKI. I do feel so. I have put into the RECORD a statement here, Senator, that deals with that. I point to his conduct during the days of the Meredith admission and all the controversy in Mississippi and his conduct on the bench and his rulings and the opinions he wrote, all of which show he was completely objective and fair-minded in that situation.

Senator THURMOND. Do you recommend his approval by this committee to be Attorney General?

Mr. JAWORSKI. I would, if the committee asks for my opinion. I have certainly in all of my testimony indicated that I thought he was qualified and that he would make a good Attorney General.

Senator THURMOND. Do you know anything against him as to why he should not be confirmed for Attorney General?

Mr. JAWORSKI. About the only thing I know, Senator, is something I alluded to earlier. I think he decided one case against me, if I recall correctly. I have not quite forgiven him for that yet. [Laughter.]

But I must say we like to talk about the cases that we have won, as you know. We seldom mention those that we lost.

Senator THURMOND. Do you feel he made a good record as a Circuit Court of Appeals judge?

Mr. JAWORSKI. I do.

Senator THURMOND. Do you feel his decisions were fair and just to litigants?

Mr. JAWORSKI. I am not familiar with all of his decisions. Those that I am familiar with, I do think that he was fair. I had a very high regard for his demeanor on the bench. He always was well prepared. He was very thorough and very searching in his questions.

I never saw him in any way show some of the arrogance and some of the attitudes that some Federal judges show.

Senator THURMOND. Could you tell us his reputation while he was a Circuit Court of Appeals judge?

Mr. JAWORSKI. He was highly regarded by his colleagues. I have mentioned this. He also was very highly regarded by the bar, those that I heard express themselves. I never heard anything that was derogatory of him.

Senator THURMOND. So far as you know, he is a man of unblemished character and capacity, and you feel he would make a good Attorney General.

Mr. JAWORSKI. I do feel that; yes, sir.

Senator THURMOND. That is all. Thank you very much.

Mr. JAWORSKI. You are welcome, Senator.

Senator HEINZ. Mr. Chairman, might I be recognized?

Mr. BAYH. Yes.

Senator HEINZ. Mr. Jaworski, I have one last question.

Although I was not a member of the Senate and therefore not of this committee at the time, I guess this committee confirmed for the post of Attorney General two people who turned out to be something of a national disappointment as well as to me.

Is there anything we should do as a committee, are there any unusual tests we should apply to make sure that we do not have another John Mitchell kind of situation; or, for that matter, some of the similar situations that we had?

I appreciate what you have said, that a President should have someone in the post of Attorney General in whom he has full faith and trust. We did have such faith and trust in President Nixon and his two Attorneys General.

Did we make a mistake somewhere as a Judiciary Committee? Is there anything we can do to prevent such mistakes, or are there certain limitations that ultimately result in the final responsibility being placed with the President who makes the nominations to us?

Mr. JAWORSKI. In the first place, I think that this committee is to be highly commended for the manner in which it has conducted this examination and these hearings. I have followed it in the newspapers for the last few days. It has been very thorough and it is still going on. Apparently you are very thorough before reaching your final determination.

I do not know how you can do more than that. You are calling whatever witnesses seem to have some input on this matter. In the final analysis you sit as fact finder. You have to make up your mind yourself as to how you regard the testimony of some of these witnesses.

I do not know what else you can do. You can conduct these hearings for months, and you are still not going to be able to dig up everything about a man who may be considered for appointment. If you look far enough, you would find some things that you would not be very happy over that I had done in my life.

So you come finally to exercising your judgment based upon the best evidence that you can accumulate. That is exactly what you are doing now.

Senator HEINZ. Thank you.

Senator BAYH. Are there any more questions?

Mr. JAWORSKI. I want to thank all of you for your courtesies and for the kind and generous statements that you have made.

Mr. DOLE. Will the Senator from South Carolina yield for a question?

Mr. THURMOND. I shall be very pleased to yield.

Mr. DOLE. The Senator from Kansas is interested in section 203 of the Crime Control Act of 1976, which provides a fixed term for the FBI Director. Clarence Kelley still has several years on that term. My question of the Senator from South Carolina is, Do you agree or do you believe that he has a right to serve out that term, or can he be removed by the President, before that term expires?

Mr. THURMOND. Mr. President, in reply to the able and distinguished Senator from Kansas, I say that I think the distinguished Senator from Missouri answered that question just before lunch, when he stated that he had contacted Mr. Kelley. Mr. Kelley stated that his resignation was entirely voluntary, that he did not care to serve any longer.

Senator DANFORTH brought this point out just before lunch. I think that answers the question.

Mr. DOLE. If the Senator will yield further, let us just assume that the Director might change his mind. He has written a letter saying that he would like to leave in January of 1978. But assume in the interim that the Director, Mr. Kelley, should have a change of heart and he decides to stay on. Would the Senator agree he would have a right to stay on unless there is cause he should be dismissed?

Mr. THURMOND. As I understand it, that is the law and I feel Judge Bell would follow the law.

Mr. DOLE. I thank the distinguished Senator.

Mr. SCOTT. Will the Senator yield 10 minutes?

Mr. BAYH. I yield 10 minutes.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. SCOTT. Mr. President, I appreciate the courtesy of my colleague from Indiana.

I wish to speak very briefly in favor of Griffin Bell to be Attorney General.

I had not met Judge Bell until he came by the office on a courtesy call, as he did on all members of the Judiciary Committee. But having worked with the Department of Justice for a little more than 21 years, I am familiar with the operation of the Department.

Therefore, I did question Judge Bell at some length about his views as to the Department, and found him to be a very affable individual, someone who was quite frank in stating his opinions on the matters discussed. He did not appear to cover up his opinions or to shade them so as to be acceptable to my point of view.

Later one of my staff members checked his background and found that he had been in private practice for a number of years, that he had been rated by Martindale, a publishing house that rates members of the legal profession. They rely on the opinions of the leading lawyers in the area. He had been an AV lawyer before he was elevated to the bench and then served more than 14 years as a member of the Circuit Court of Appeals for the Fifth Circuit, the court next in rank to the Supreme Court of the United States. Judge Bell resigned voluntarily from the Bench to return to private practice.

I believe he indicated in testimony before the committee that he became a little tired of sitting on the Bench and wanted to go back into private practice, and at the present time, or until his nomination to be Attorney General, he remained in the private practice of law.

Among other things, I questioned him as to who his principal assistants would be. He indicated that he had only spoken to one and that was his choice to be Solicitor General of the United States

I believe if we reflect a moment we will know that this is a very important post. The Attorney General does not represent the Government in cases before Federal courts as a general matter, he does not make the decision as to what cases shall be appealed and what cases shall not be appealed. It is my understanding that by statute this is a matter determined by the Solicitor General.

He has chosen as Solicitor General another circuit court judge, a gentleman from the Sixth Judicial Circuit Court of Appeals, Judge Wade H. McCree, Jr. This is referred to in the editorial that the Senator from South Carolina referred to that is in the Washington Post.

There have been charges that he might have some racial leanings. Yet, he has selected a black man to be Solicitor General of the United States, to handle law suits and to make the important decisions as to whether an appeal shall be taken or not be taken from trial courts and whether or not certiorari should be requested to the Supreme Court of the United States.

I say that some believe that the chief law officer of the United States is the Solicitor General, that the Attorney General's post is, in part, administrative. He is the chief executive as far as the Department of Justice is concerned, but he is not the chief lawyer for the United States.

I believe that this is a matter that could well be considered by the Senate when we are determining whether or not we should advise and consent to the nomination of the President. I am of the opinion that the President has a right as a general matter to choose his own Cabinet.

I say this with the knowledge that tomorrow I am going to vote against another nominee of the President. I am going to do it because I feel that I have sufficient reason to do so. But I urge that each Senator check into the background, look at this transcript of the testimony that came before the committee.

I am satisfied that Griffin Bell is as good a selection as President Carter could make to serve as Attorney General of the United States. He has had broad trial experience in private practice. He has had broad experience as a member of the circuit court of appeals. I believe he has all of the qualifications.

I share with others the last portion only of the Washington Post editorial. It concludes by saying:

> Moreover, he is a man of substantial intelligence and staunch personal integrity. The nomination should be confirmed.

Oftentimes, I do not find myself in agreement with editorials in the Washington Post. But this is the newspaper that was very much involved in the Watergate situation that some Senators have referred to. Yet the editorial says that this is a man of integrity, that he should be confirmed, and if the Washington Post makes a statement like this about the gentleman, a judge from Georgia, I consider that is considerable praise.

I join with the newspaper at this time and urge that my colleagues vote in favor of confirmation of Judge Bell. I believe that we will be pleased with his performance in office.

Mr. MATHIAS. Mr. President, I express my appreciation to the distinguished Senator from South Carolina for having put all of the Jaworski testimony into the RECORD. I hope Senators will particularly look at those portions which indicate that Mr. Jaworski, as he told us very frankly, had obtained most of his information about Judge Bell, in his original recommendation of him for the circuit court, from a man identified as Charlie Block. Charlie Block was, of course, one of the same group of lawyers who were described in the press at that time—in the Atlanta Constitution and other papers—as segregationist lawyers who had been asked by Governor Vandiver to help mount the massive resistance campaign there. All that now is in the RECORD, and I am grateful for the Senator having put it there.

I now yield 10 minutes to the Senator from New York.

Mr. THURMOND. Mr. President, will the Senator yield me 5 seconds?

Mr. JAVITS. I yield.

Mr. THURMOND. Mr. President, I ask unanimous consent that Eric Hoffman and Mary Stedman, of the Committee on the Judiciary, have the privilege of the floor during the consideration of this nomination.

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

Mr. BAYH addressed the Chair.

Mr. JAVITS. Mr. President, I have the floor.

I ask unanimous consent that Chuck Warren have the privilege of the floor during this debate.

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

Mr. JAVITS. Mr. President, this is a close one, and it has caused me a great deal of pain and consideration. I should like to go with the President, if I could, but I cannot.

My reason is that this is an appointment different from that of other Cabinet appointees. I have been an attorney general myself, and I know the power that resides in this office. A prosecutor—and that is what he is; that is what I was, and others like me who were attorneys general—is between a political Cabinet officer and a judge. Whatever the law may say about the fact that there is no presumption of guilt by indictment, the fact is that an indictment or even an investigation in the Federal Establishment can have the same damaging effect on a career or on a life or on an opportunity granted to all of us under the Constitution as a conviction itself. Conversely, failure to indict or to investigate also can have the same effect on justice and on the individual.

I have looked very carefully at Judge Griffin Bell's record over the last two decades, and serious questions have been raised in my mind as to a continuity of legal philosophy which troubles me greatly.

We understand where he started. He started back in 1950 with Governor Vandiver, of Georgia, admitting that he was extensively involved at that time in the preparation of laws which amounted to massive resistance to the desegregation that had started in the Brown decision in 1954.

So it seems to me that the burden is on him to show that that basic philosophy, that basic approach to life and society, no longer exists in his mind, and I do not think that burden has been borne. Fortunately for us, his basic philosophy is spelled out in a whole series of cases in the 15 years in which he was on the bench. A study of those cases, in my opinion, leads me to this conclusion.

In a close and in a difficult question on individual human rights or civil rights, where the whole record of a public man is so vital, I cannot in all conscience be sure about the nominee's decisions. I cannot be sure, notwithstanding that I believe that Judge Bell means to honor the promises and the commitments he has made to the Committee on the Judiciary and the President and the country. Because of these reservations, Mr. President, I cannot in good conscience defy them; hence, I must vote "no."

The nomination of Judge Bell doubtless will be confirmed; that seems very clear. I can only hope that his tenure will be constant and overwhelming disproof of my own reservation.

Finally, Mr. President, I know very well that President Carter is very desirous of having Griffin Bell as his Attorney General, and he undoubtedly will have that even without my vote. But that is why we are sent here. We are sent here to speak our consciences, so that even if we stand alone, that judgment may be recorded for two purposes; one to indicate the individual disapproval of the individual Senator; but, even more important, to indicate that we are vigilant and on guard, that we take nothing for granted, that it is a fact that a President shoud have the Cabinet he wants, subject to the duty of the Senate to examine his nominees, to determine that they are in the best interests of the country.

A nominee of the President was just withdrawn—Mr. Sorenson. I happened to be very much for him, and my views are recorded in writing before the appropriate committee. The President will have an opportunity to send us the name of someone else. He exercised his privilege to withdraw when it was clear that he could not win there. Other Members will vote against other Cabinet appointees.

The essentiality of the process is that the country should know when we have doubts and that the country should share those doubts with us.

In so critical a function as this one, involving individual lives and fortunes and constitutional rights, I cannot vote with reservations, not even to obligate President.

So far as the President is concerned, I want very much, in every way, to cooperate with him, and I have done so. So far, we have had nine Cabinet-level officials before us. I voted for all of them. We are going to have more, and I am going to vote for them. So I hope the President of the United States will realize that over .900 is a pretty good batting average for supporting him. I hope that

he makes it, but I cannot go with him on this one.

Mr. BAYH. Mr. President, a moment ago, I just wanted to correct the record.

I am sure the Senator from Maryland would not intentionally misspeak. However, if we look at the Jaworski testimony, we will find, first of all, that Mr. Jaworski was serving as the chairman of the screening committee for the American Bar Association in the fifth circuit. In that capacity, he talked to a number of people in the fifth circuit, one of whom was Mr. Block. Mr. Block had been his immediate predecessor in the same capacity, and it was for that reason that Mr. Jaworski had talked to Mr. Block.

If one examines the hearings, he will find the names of several other individuals who also were consulted by Mr. Jaworski.

Mr. MATHIAS. Mr. President, does the Senator from Indiana wish to go forward with any other speakers? We have had several on this side.

Mr. NELSON addressed the Chair.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the Senator from Wisconsin.

Mr. NELSON. Mr. President, I will cast a negative vote on the confirmation of the nomination of Mr. Bell because of my concern about where he will come down on certain vital decisions that he will have to make as Attorney General.

My reservations about this appointment are prompted by decisions made and positions taken by Mr. Bell in the past on important constitutional questions. Involved were major questions of civil rights, free speech, and rights of privacy. These issues run to the very heart of what this country and its Constitution are all about.

I have no doubts about Mr. Bell's integrity, intelligence, or dedication to public service. My objections are not personal. They are philosophical. Some of the same issues touching the same constitutional questions that were before Mr. Bell as Federal judge will be before him again in his capacity as Attorney General.

It is my hope that President Carter's judgment will be rewarded and all my doubts happily resolved when Mr. Bell deals with these issues in the future.

I am not unmindful that, particularly in the realm of politics, it is not possible to predict with any certainty from history how an individual in a different era, in different circumstances, with different responsibilities, will in fact perform in the future.

It is probably unnecessary for me to say that if this were a Republican Presidential appointment I would vote against it as I did on two previous occasions involving two of the same issues at stake as in this appointment. Obviously, I cannot properly defend two standards for Presidential appointments, one for Democrats and another for Republicans. I voted against a Republican nominee for Attorney General because of my reservations about his position on civil rights questions and against a Republican nominee for Secretary of State because of my concern about his lack of understanding of constitutional rights in the area of wiretapping.

In fairness it must be said that in his 14½ years on the bench, Judge Bell wrote many opinions protective of constitutional rights. In many of the cases however, the record and the applicable law was clear. It is the difficult cases presenting novel or unresolved questions of law, which may best convey a sense of Bell's thinking and an indication of outlook he would bring to the Attorney General's office. I find two such difficult cases—Bond against Floyd and Brown against United States—to be particularly troubling.

In *Bond* v. *Floyd*, 251 F. Supp. 333 (1965), Bell wrote the opinion for the majority of the three-judge court, upholding the right of the Georgia House of Representatives to exclude Julian Bond because of his endorsement of a strong statement by SNCC criticising U.S. policy in Vietnam and the American treatment of minorities at home and abroad. The Georgia House excluded Bond on the ground that the principles of the SNCC statement which he endorsed indicated that he could not sincerely take the oath of loyalty to the Constitution which the Georgia House required. Bell recognized that Bond's first amendment rights were involved, but he concluded that the right of the Georgia House to pass on the qualifications of its members overrode Bond's constitutional rights:

> We hold that the free speech issues should be resolved in the context of giving effect to the separation of powers principle, and our system of federalism the extent that it permits self-government to the states under the supremacy of the federal Constitution . . . .

Based on the content of the SNCC statement, Judge Bell found the Georgia House had a rational basis for its decision and that was all it needed. He also concluded that a legislator had less right to free speech than a private citizen noting that—

> Mr. Bond's right to speak and to dissent as a private citizen is subject to the limitation that he sought to assume membership in the House.

The Supreme Court reversed, 9 to 0, 385 U.S. 116 (1966). The Court pointed out that Bond was willing to take the loyalty oath; that the State admitted that his expression of admiration for those who opposed the war and resisted the draft would not have violated the selective service laws. The Court went on:

> The requirement (of an oath) does not authorize the majority of state legislators to test the sincerity with which another duly elected legislator can swear to uphold the Constitution. Such a power could be utilized to restrict the right of legislators to dissent from national or state policy to that of a majority of their colleagues under the guise of judging their loyalty to the Constitution.

The Court flatly rejected the notion that the State could grant its legislators less freedom than other citizens. Those seeking or holding office needed freedom to express themselves about important issues of Government policy; otherwise the representative would be effectively chilled from meeting his responsibilities.

In his apparent desire to uphold the State legislature's action, Bell designed a novel doctrine of first amendment law. No case before Bond, or since, has ever held that the State government can proscribe or limit speech under the justification of separation of powers. The argument is indefensible on its face. The first amendment protects freedom of speech against infringements by the Government. This protection applies as much to the action of the State legislature when it tries to exclude a member as it would when the State legislature passes a law. The first amendment certainly prohibits the legislature from punishing a person from exercising his first amendment rights. In general, regulation touching on first amendment rights must serve a compelling interest and be as carefully drawn as possible so as to leave the breathing room needed for first amendment rights to flourish. Bell certainly knew these general principles of the first amendment, and has written many opinions upholding first amendment rights.

It is hard to avoid concluding that Bell allowed his personal distaste for Bond's opinions to color his judicial judgment. After balancing Bond's first amendment rights against the State legislature's prerogatives, Bell proceeds to write a statement that is nothing short of astonishing:

> The SNCC statement is at war with the national policy of this country: To make certain that every citizen stands equal before the law; to make certain that every citizen has a fair chance to benefit in the freedom and opportunities and bounties of this country; to export these same principles of democracy to the balance of the world wherever and whenever possible, even to the extent of lending military assistance where self-determination is denied in order that those denied may choose freedom if they so desire.
>
> But the statement does not stop with this. It is a call to action based on race; a call alien to the concept of the pluralistic society which makes this nation. It aligns the organization with "* * * colored people in such other countries as the Dominican Republic, the Congo, South Africa, Rhodesia * * * It refers to its involvement in the black people's struggle for liberation and self-determination * * *". It states that "Vietnamese are murdered because the United States is pursuing an aggressive policy in violation of international law." It alleges that Negroes, referring to American servicemen, are called on to stifle the liberation of Viet Nam.

We all hope that the Carter years will be a period of domestic tranquillity. However, in assessing the qualifications of the chief law enforcement person in the United States, we must allow for the likelihood of future unrest and pay close attention to the attitudes of that person toward peaceful dissent. We must also recognize that first amendment rights of speech and assembly are implicated in many of the major tasks facing the Attorney General, such as the enactment of legislative controls on the FBI's gathering of domestic intelligence and the recodification of the criminal code. On this score, the Bond opinion is not reassuring.

In *United States* v. *Brown*, 484 F. 2d 418 (5th Cir. 1973), in the course of reviewing a criminal conviction, Judge Bell encountered the claim that the President had "inherent" authority to authorize

warrantless wiretaps against American citizens for foreign intelligence purposes. The fifth circuit had faced the question once before, in the case of *United States* v. *Clay*, 430 F. 2d 165 (5th Cir. 1970), and had withheld the President's right to authorize warrantless surveillance based on his status as Commander in Chief. In the interim, however, the Supreme Court had decided *United States* v. *United States District Court*, the Keith case, 407 U.S. 297 (1972), holding that the President had no inherent power to disregard the fourth amendment and authorize warrantless electronic surveillance in cases involving internal security. Despite the Keith case, Judge Bell upheld the doctrine of "inherent" Presidential power without the slightest consideration of the countervailing fourth amendment rights.

It is extraordinary that Judge Bell could fail completely to consider the analysis of the Supreme Court in Keith. Although the Keith case dealt only with internal security, the Court's balancing of fourth amendment rights against the reasons asserted by the Government for warrantless surveillance was clearly relevant to the issue of foreign intelligence taps.

In Keith the Justice Department advanced three reasons why a warrant should not be required in an intelligence tap: First, the purpose of the surveillance was to gather intelligence, not evidence for prosecution; second, the judicial expertise at evaluating threats to the security of the Nation was inadequate; and third, there was a danger of security leaks if this information had to be disclosed in Court. The Court rejected each of these, singly and collectively, as insufficient to justify overriding the target's fourth amendment rights. In reaching its conclusion, the unanimous Court made a number of statements suggesting that the fourth amendment rights of Americans could not be disregarded simply because the President invoked the justification of "national security:"

> If the legitimate need of Government to safeguard domestic security requires the use of electronic surveillance, the question is whether the needs of citizens for privacy and free expression may not be better protected by requiring a warrant before such surveillance is undertaken. We must also ask whether a warrant requirement would unduly frustrate the efforts of Government to protect itself from acts of subversion and overthrow directed against it.
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> National security cases . . . often reflect a convergence of First and Fourth Amendment values not present in cases of "ordinary" crime. Though the investigative duty of the executive may be stronger in such cases, so also is there greater jeopardy to constitutionally protected speech . . . History documents the tendency of Government—however benevolent its motives—to view with suspicion those who most fervently dispute its policies.
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> * * * * *
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> These Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility are to enforce the laws, to investigate and to prosecute. But those charged with this investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. Mr. President, will the Senator yield 2 or 3 additional minutes?

Mr. MATHIAS. I yield the Senator 3 additional minutes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. NELSON. In sharp contrast to Judge Bell's treatment of the issue, when the Court of Appeals for the District of Columbia faced the question of whether warrantless electronic surveillance in foreign intelligence cases could be squared with the fourth amendment, it carefuly considered the reasoning and effect of Keith and held that a warrant was required for a foreign intelligence tap against an American citizen, at least when there was no collaboration with a foreign power. *Zweibon* v. *Mitchell*, 516 F. 2d 594 (D.C. Cir. 1975).

I recognize that the Supreme Court has not yet ruled on the constitutionality of warrantless foreign intelligence wiretaps against American citizens. If Judge Bell had carefully analyzed the impact of Keith and concluded that foreign intelligence taps were different enough from domestic security taps to justify dispensing with a warrant, the opinion would have had some plausibility—although I would not have agreed. Handled as it was, however, Brown demonstrated a disturbing willingness to accede to the claim of Presidential power without careful analysis.

Judge Bell's statements about the issue of inherent Presidential power at his hearings before the Judiciary Committee were more encouraging. While he refrained from judging whether the constitutional power existed, he expressed support for legislation to establish a warrant procedure for all electronic surveillance in the United States to gather foreign intelligence. He also said that he would counsel President Carter not to assert any claim to inherent Presidential authority.

The PRESIDING OFFICER. The Senator's additional time has expired.

Mr. NELSON. Mr. President, will the Senator yield 2 additional minutes?

Mr. MATHIAS. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator is yielded 2 additional minutes, and he may proceed.

Mr. NELSON. Nevertheless, the Brown and Bond cases cannot be overlooked. They did not involve petty, peripheral or minor matters. Mr. Bell did not address these issues in some casual, informal environment. These cases were tried in formal judicial proceedings with arguments made and briefs filed. These decisions represented a carefully considered judgment of the merits. Fundamental first principles were at stake. Of all the rights shielded by the Constitution none are at parity with the rights of privacy under the fourth amendment or the right of free speech.

The question, in my mind, still remains—How, in the future, will Mr. Bell construe and interpret these constitutional rights when the occasion arises? Though I am encouraged by Mr. Bell's testimony before the Judiciary Committee, my reservations impel me to vote in the negative.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield 10 minutes to the distinguished Senator from New Mexico (Mr. SCHMITT).

Mr. SCHMITT. Mr. President, I came to this Chamber this morning undecided as to the question of the nomination of Griffin Bell to be Attorney General. I have been listening to the arguments for and against with considerable interest, I think with the net result that I have been educated greatly by the distinguished Senators on both sides of the aisle and both sides of the issue.

I find, however, that the arguments for the nomination of Mr. Bell have, in my judgment, come out circuitous and seem to be an attempt to rationalize in not very convincing ways certain problems in the record that Mr. Bell has presented to us.

On the other hand, the arguments against the nomination, as much as I hate to be against things—I would much rather be positive in my actions as a Senator—nevertheless, the arguments against the nomination seem to be based solidly in fact, and seem to create a fairly consistent pattern of activity by Mr. Bell that mitigates against his future performance as Attorney General.

I emphasize that they seem to represent a pattern rather than isolated instances or isolated problems which can be rationalized away.

So, Mr. President, reluctantly I will not vote to confirm Mr. Griffin Bell as Attorney General, not because I do not want the President of the United States to have Cabinet members in whom he has complete personal confidence, but because I believe Mr. Bell's record does not demonstrate the required impartiality and adherence to ethical standards. I hope that we will all consider his record with the same nonpartisan wisdom that eventually came to bear on events surrounding the Watergate affair.

I am particularly concerned by first, his failure to disqualify himself as a judge in the school desegration case of Calhoun against Latimer in which he had originally been "of counsel" to the Governor of Georgia; second, his failure to disqualify himself as a judge in a test case involving the exclusion of certain ethnic groups from a private club while at the same time being a member of such clubs; third, his admitted error in judgment in the case of seating Julian Bond in the Georgia State Legislature; fourth his failure to report certain gifts as required by the Judicial Conference of the United States; and fifth, his general attitude toward ethical conduct, as reported in the record of the Senate Judiciary Committee, is not the attitude this

country needs in its highest law enforcement officer.

However, Mr. President, my greatest concern about Mr. Bell's nomination is that it contributes to the appearance of a pattern of appointments which are contrary to President Carter's public statements. He has stated publicly that Cabinet appointments will be removed from politics and independent of the White House in the performance of their statutory duties. Also, they represent a pattern that is disturbingly reminiscent of portions of a recent Cabinet and White House staff which, by a lack of impartiality and ethics, put this great Nation through one of the most traumatic periods of our history.

The new President has selected a White House staff composed largely of close associates from his home State and his recent political campaign. He has asked that in several key Cabinet positions we in the Senate confirm men who are close personal and political friends.

Although I voted to confirm Mr. Bert Lance, another close associate and friend of Mr. Carter, as Director of the Office of Management and Budget, I expressed great reservations about his experience to carry out his duties and responsibilities. My reservations about Mr. Bell are much deeper and I cannot support his nomination.

Mr. President, if this nomination is not confirmed, although I believe it will be, I hope the President of the United States will live by his own words and submit to us a truly qualified and impartial nominee for Attorney General.

I thank the Senator from Maryland very much, and I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Does the Senator from Indiana wish to advance a speaker? The last few speakers have all been in opposition, Mr. President. We do not wish to monopolize the debate. If the Senator from Indiana has a speaker prepared, we will be glad to have them go forward at this time.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I make the point of order that a quorum is not present, and ask unanimous consent that the time for the quorum call be taken out of neither side.

The PRESIDING OFFICER. Neither side? Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. BAYH. Mr. President, I yield myself such time as I may consume.

Earlier in the day, the distinguished Senator from Massachusetts asked a series of questions——

Mr. MATHIAS. Mr. President, will the distinguished Senator from Indiana use his microphone?

Mr. BAYH. The Senator from Indiana is flattered that the Senator from Maryland, at this stage of the afternoon, cares to hear what he has to say.

The Senator from Massachusetts asked a number of questions that he felt very strongly about. The discussion was rather heated at that time, and the Senator from Indiana attempted to answer the question, but it seemed that before he could get it answered, the Senator from Massachusetts wanted to proceed elsewhere, and I told him that after he got through with his speech I would then try to go through the questions and at least advise the Senate what I thought the right answers should be, realizing full well that the Senator from Massachusetts, feeling as strongly as he does and as sincerely as he does, would not necessarily agree.

The major thrust of the questions was that the committee hearings had not been complete and that a number of other witnesses should have been called.

As I pointed out to my friend from Massachusetts, the Senators from Maryland and Michigan, both of whom are opposing this nominee, mentioned that we have had very extensive hearings.

The people the Senator from Massachusetts suggested be called—a fellow by the name of Nathan Perry, Richard Ashworth, Governor Vandiver—would have been credible witnesses.

I do not think the hearing was improperly short because those witnesses were not called. To my knowledge everybody who wanted witnesses called had a chance to have those witnesses heard. We even had an extra day of hearings in which we opened the remarks up again and let others be heard.

It seems to me that the question is not whether we could have stayed there for another couple of weeks and listened to witnesses, but whether or not we received a true picture on both sides.

Frankly, in those areas I found perplexing, what added to the confusion was that we had witnesses of equal credibility on both sides.

Inasmuch as there has been a great deal made of the witnesses who were not called, I would just like to mention something else for the record, for those who might be reading, to show who was called.

A young man by the name of Billy McKinney, as I recall, a State legislator, a bright young black man, argued very persuasively about the positive qualities of Judge Bell. He seemed to speak with authority as a citizen of Atlanta. Mr. McKinney was not only a State legislator, he was the first black policeman in the city of Atlanta. In trying to judge how to value people's opinions on Judge Bell, I give a guy like State Representative Bill McKinney pretty high marks.

He pointed out, as has been pointed out previously, I believe, by our distinguished colleague from Georgia (Mr. NUNN), that last year Judge Bell was honored by Morris Brown College, a black college over 100 years old.

I just do not believe that the good folks of Morris Brown pass out honorary degrees to someone who has been a racist or who has been timid in the battle against racism. Certainly, the people who made that decision knew something about Judge Bell's background.

Mr. McKinney went on and said Judge Bell was honored for his role in establishing the Sibley Commission. "That is just how important black people in Georgia figure the Sibley Commission was and the significant role that it played," said Mr. McKinney.

He went on and said quite a bit. I refer Senators to the record if they wish to read it.

I was particularly impressed with the fact that here was a guy who had a good idea of what Griffin Bell had to go through, experiences I never had to go through. I stand up here and vote 100 percent for civil rights. I have to confess that I was living in a township where, when I went to high school, we did not have a black family on the west side of the river. I really did not have a feel for these issues when I was growing up.

Here again, as I said earlier, the last thing I am going to do is stand up here and say what the perfect standard was in Atlanta 20 years ago. But then Mr. McKinney says something like, "Do you know that white rednecks in Georgia ride with pickup trucks and carry shotguns as an intimidation to black people? You would have to have been down there to see what it was to live in the South at that time. So when you say moderation you are talking about something that we thought was excellent, and Judge Bell was moderate. Judge Bell was a man who was working behind the scenes trying to take care of some business for black people. Not only did he do it then; he has been doing it down through the years."

Maybe by our standard that was not enough. Maybe it would not be enough in Terre Haute, Ind. But here was a man, Mr. McKinney, appointed as the first black policeman in the city of Atlanta who, when all that was going on, thought Judge Bell's conduct deserved high marks.

We had another witness there by the name of Warren Cochran. Cochran was equally complimentary of the role that the judge played in Atlanta.

Here was a fellow by the name of Cochran who ran a YMCA down there, and was active in the Voters' League, who was involved in the citizens group, who had continuous discussion with Judge Bell. He said specifically that Judge Bell was working, trying to improve the position of blacks, doing everything that was possible, and keeping the black citizens informed.

Here, again, was a black who came up here from Atlanta, who paid his own way, and said:

I think this man ought to be the Attorney General.

Lonnie Cain, who was the head of the NAACP at the time of the school case, which has been the source of some controversy here, spoke eloquently of his judgment in favor of Judge Bell.

Mayor A. J. Cooper, of the Southern Black Mayors Conference, spoke.

I was really torn on this nomination. When one has to weigh off credibility of

witnesses, it seems to me in a case like this one does not go to the personal integrity and the credibility of the witnesses involved, because I gave them all due credit. There were people like Clarence Mitchell. I do not know if he is still in the gallery or not, but he was earlier. I do not know of anyone who is more credible than Mr. Mitchell.

We are talking about people who were on the streets and in the jails of Atlanta working for civil rights, who had a basis for knowing Judge Bell, and who testified that the nominee was honestly concerned with civil rights.

Also, I would like to reemphasize a matter that has already been put into the record. I do not think I need to tell this Senate who Eugene Patterson is, the former editor of the Atlanta Constitution. He was there during this difficult time.

Why would Eugene Patterson come out with an unqualified endorsement of Judge Griffin Bell? He has been one of those people who has stood up and taken the brickbats down there. The column by Mr. Patterson that is now in the record, which some Senators may have read in the Post, I thought was eloquent. Frankly, I think it is more credible, because a man like Mr. Patterson can look back and see what was going on in 1959 and 1960 and say here in 1977 what it was like.

I have here, Mr. President, and I would like to ask unanimous consent to have it printed in the RECORD, an editorial dated May 2, 1960, in the Atlanta Constitution, edited by Ralph McGill stressing the importance of the Sibley Commission.

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

CLOSING THE SCHOOLS PROTECTS NO RIGHTS

Citizens should not lose sight of the basic aspect of the Sibley Commission's majority report in the flow of words which are bound to come during the coming weeks. Briefly it is this:

Whether one likes it or not, state laws in conflict with federal laws are unenforceable. And while the commission, including its chairman, John A. Sibley, questions the wisdom of the 1954 Supreme Court decision, they accept it as a fact which cannot be evaded and to which adjustment must be made if we are to continue public education.

In telling the people that Supreme Court decisions are the law of the land, the commission thus performed an educational service of great value. Politicians who have misled them on this point have been guilty of a cruel deception. The commission, in setting the record straight, has performed a service for them, too.

We can deplore the decision and the Supreme Court itself but the decision stands. "The Constitution of the United States," says the majority report, "as interpreted by the Supreme Court, is controlling and binding upon the courts and the people."

Two weeks ago the executive committee of the Atlanta Bar Assn. said the same thing in declaring that current decisions of the Supreme Court are controlling on this issue. It added that "unless some plan is accepted in accordance with orders of the federal courts, all public schools of the state will be closed."

So the commission tells us to face facts and offers a way to adjust to them. Mr. Sibley himself gave the best advice in declaring citizens of the state should not exhaust themselves in futile defense of laws already declared illegal when to do so may cost them the public schools they have. He phrased this clearly:

"I think the better policy is to protect, preserve and reserve the rights the people now have under the law rather than to take the risk of losing those laws by asserting rights under laws that have been declared unconstitutional by the Supreme Court. . . . You might dwell on whether it is wise to claim rights that do not exist and thereby risk rights which you do possess."

This is straight thinking and leadership of the higher order.

The majority report provides a way to "protect, preserve and reserve the rights the people now have." It offers a means of keeping the schools open with safeguards that will "protect the right of free choice of both the parents of the child and of the local community and that will guarantee that no child in Georgia will be compelled to go to a mixed school against the wishes of his parent or guardian."

Even should the courts grant further time, the decision ahead is inevitable. Focal point of the commission's reasoning—that state laws in conflict with federal laws are unenforceable—still will apply, this month, next month or next year. We must find a way to adjust to this fact or prepare to end public education.

Mr. BAYH. The Atlanta Constitution stressed the importance of what the Sibley Commission really did, in relation to the times. As we look back on it 17 years later comparing it to things that were done elsewhere, we could use a different standard.

Mr. President, I have already spoken too long today. I only rise to point out that some of the witnesses we did hear did make a good case. I think both sides were well represented.

Just to reiterate what I said, it seems to me the question is not whether Griffin Bell is perfect, because he is not. Perhaps the only person who can judge the nominee by that standard is one who meets the identical standard himself. That means there are going to be very few Members who can decide for or against the nominee on the floor of the Senate.

I do not think we are looking for a man of perfection. Nor are we looking for a man who used a perfect standard for performing certain duties as we now assess those duties.

I intend to support Griffin Bell for Attorney General for one basic reason: I think the man is going to be a good Attorney General. In talking to him I believe he is honest; I believe he is sincere. Contrary to some of the other judges that the Senator from Wisconsin and I were deeply concerned about, one thing Griffin Bell was willing to do, was to say "I made a mistake," and not make something bad look like something good. I wonder, in the light of the tremendous changes that have taken place over the past 17 years, if this does not perhaps recommend the man very highly. I think he is made out of the stuff, personally, and has the kind of integrity that will serve this country—not just the President—and will serve the country well.

That is the standard I am going to use in voting, just as one Senator, not sit up here in the Nation's Capital representing the great State of Indiana and try to apply a test in 1977 which may or may not have been applicable in Atlanta, Ga., back at the turn of the fifties and sixties.

I appreciate the courtesy of the Senator.

Mr. RIEGLE. Will the Senator yield to me?

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. I would appreciate it if the Senator would yield me some time so I may engage in debate for a few seconds.

Mr. BAYH. Yes. I am happy to yield some time.

Mr. RIEGLE. Let me say I have great regard for the Senator from Indiana and I respect his view in this matter, though I hold a different point of view. As I listened to some of the points he made just now, there were two or three things I wanted to comment on.

One was with respect to the honorary degree that he pointed out was conferred on Griffin Bell by one of the black colleges in the South. I do not know that this relates directly to that instance, but it may, and therefore I think it is an important point. If I am not mistaken, I heard somebody today point out that the Kirbo law firm has for some years represented black colleges and universities in the South, has been the legal counsel, I gather, for some number of them—perhaps this one, perhaps not. The point is that there obviously has been some relationship established along those lines which may or may not bear on why he would have been cited and given an honorary degree.

Mr. BAYH. Does the Senator from Michigan feel that is the reason a judge of 14 years—that is a pretty serious charge. Fourteen years ago, he was in that law firm.

Mr. RIEGLE. But he is back in it now.

Mr. BAYH. He served 14 years as a judge. To suggest that a black college such as Morris College is up for hire or buying—I do not think the Senator from Michigan wants to suggest that.

Mr. RIEGLE. I am not suggesting that. What I am saying here is that I am not sure that we have the kind of separation and independence of relationships that could endow that act with the kind of meaning that I think the Senator was suggesting earlier. Perhaps that is all there is to it.

What I am saying is that in light of the fact that the law firm was involved in that fashion, it would make me want to inquire further before I necessarily drew the conclusion that this is a significant sort of civil rights approval of Griffin Bell. It may or may not be. I am just saying that the question arises in my mind.

Mr BAYH. Did the Senator from Michigan say that he had heard others remark here that the Kirbo law firm represented black colleges or that it did in fact represent Morris?

Mr. RIEGLE. No; I do not know with respect to this particular institution. I only raise the question with the Senator, and if the Senator can answer it for me, that will put it to rest. I suspect neither of us can answer it.

The second point I wanted to make is this: With that whole list of witnesses that came before us, I was wracking my

brain to think if we had one national civil rights figure of consequence, outside of the immediate area of either Atlanta or other parts of Georgia, who came forward to speak in Griffin Bell's behalf.

Mr. BAYH. Yes, there were a number of people who, because of duty—I have a list of those here—could not be with us at the particular time. The first one that comes to mind is Andy Young, and Vernon Jordan.

Mr. RIEGLE. Let me just inquire. Andy Young, I guess, would meet the test—he is a great friend of yours and mine—of being from the Atlanta community. I am wondering if there was anybody from outside that area.

Mr. BAYH. Let me just suggest——

Mr. RIEGLE. If the Senator will pardon me, I do not know that Vernon Jordan, though, has recommended or conveyed any letter or statement to the committee indicating that he or the Urban League were supporting this nomination.

Mr. BAYH. Yes, Vernon Jordan has a statement in the record that he submitted, being unable to be there. It is in the record.

Mr. RIEGLE. I thank the Senator for enlightening me as to that fact. I was not aware of that.

I am wondering if there are any other national civil rights figures of consequence who have likewise come forward to endorse this nomination?

Mr. BAYH. Yes, Mr. Morgan, Charles Morgan, who is one of the real gutsy guys from the standpoint of the civil rights movement. He has some eloquent testimony, also submitted, in the record supporting the nominee.

Mr. RIEGLE. Can the Senator tell me what position he holds?

Mr. BAYH. He has been actively involved. I have that here, if the Senator will just permit me to look. I thought I had it at my fingertips, but I have had some things.

Charlie Morgan has been one of the real tigers of the civil rights movement down there when they were facing police dogs and jail cells and all that that involved.

Mr. RIEGLE. While the Senator looks for that, let me raise one other issue, not to needlessly prolong the debate at this time. That is this: I had the clear sense, I say to the Senator from Indiana, as I listened to the witnesses who came, that those black witnesses from the Atlanta area and civil rights people from the Atlanta area had quite a different perspective, not just for the reasons of proximity to Griffin Bell over the years and the issues that took place that have been described here, but also because they very much have a piece of the action in this administration, and they have had a piece of the action in terms of the political arrangements in that area for some time.

I recall specifically when Mr. Cochran, whom you cited earlier, appeared before us as a witness. He was later identified by another black witness who came from Georgia as the person who, over the years past, was a sort of black political boss of the city of Atlanta and was the person that those people in the white power structure at that time would deal with as the sort of figure to deal with in behalf of the black community. I recall different points he made with respect to positions that were taken in meetings with Judge Bell and so forth.

The long and short of it is this: It seems to me that to invoke some special weight and meaning to their testimony—separate and apart from the very substantial apprehensions that were expressed by other black national leaders who have been in the forefront of the civil rights movement—does not seem to me to be worth equal weight. It seems to me that there is a kind of tie-in there that really causes me to discount, at least slightly, some of the observations that were made because of the fact that those particular individuals were very much at the center of the new power relationships that exist.

The Senator from Indiana may not see it that way and that is certainly his right to see it however he does. But that is the thing that concerned me as I listened carefully to those witnesses testifying.

I appreciate the Senator yielding me the time so I might make those points.

Mr. BAYH. Certainly, I respect the opinion of the distinguished Senator from Michigan. He listened very carefully and, of course, came to his own conclusions. I have to be a bit disturbed by at least some of the inferences he made here—first of all, that a black college which may or may not have been represented by the law firm of the judge is going to hire out an honorary degree. I do not know how any black college board can live with that. They have a constituency. I do not really think that is a fair assessment. But, of course, we are all free to make that judgment.

Vernon Jordan of the Urban League, is one of the most articulate spokesmen for equality in America, I know. I do not know whether the Senator knows him but I have known him for some time. I would stake my life on that man.

Mr. RIEGLE. I know him well. I have great respect for him.

Mr. BAYH. Mr. Cochran I do not know very well. Chuck Morgan I know very well. Chuck has gone to jail for a lot of people.

To suggest that the only people who can speak with authority about what Griffin Bell did have to be black civil rights leaders who came from Atlanta is going to narrow the field significantly. I have the greatest respect for those who have been out there in the trenches from all over this country, regardless of their color, in the civil rights movement.

It seems to me that the question I am asking myself, and everybody has to ask this question or a different set of questions of himself, is: I want to know what this man is made out of. I want to know how far he is going to go to protect the rights that the Senator from Michigan and I have fought for. I do not think you can really get a sense of that from San Francisco or Washington. Somebody who is right down there in the community, somebody who was appointed as the first black policeman in Atlanta, has a lot more credibility to me to tell me what Griffin Bell is made out of than someone who is recognized all over the world as an international or national civil rights leader.

Mr. MATHIAS. Will the Senator yield on that point?

Mr. BAYH. Yes.

Mr. MATHIAS. Mr. President, I yield myself 3 minutes so that I do not use the Senator's time.

The Senator placed a great deal of emphasis on people who were there on the spot. I think that is an accurate judgment. Among those people there on the spot, in the trenches, and deeply involved, were Julian Bond. He came up and testified very eloquently against this nomination. Another was Aaron Henry, for 15 years the president of the NAACP of Mississippi, who said they never went into the fifth circuit with a feeling other than Judge Bell's vote would be cast against them. In fact, that is the way the cases turned out.

Mr. BAYH. Also the people who were active in desegregating the Atlanta schools and who testified for Judge Bell had solid civil rights experience.

Mr. MATHIAS. Those are the people who testified.

The Senator in his remarks, which were very forceful, was really an echo of some years ago, a great Presidential campaign, when he was making a virtue of moderation.

Mr. BAYH. Who was making a virtue of moderation?

Mr. MATHIAS. The Senator said that Judge Bell had been a moderate in these matters.

Mr. BAYH. Now, let us not get involved in another Charlie Block interpretation.

I was interpreting State Representative McKinney. What he said was that during those times, a moderate in Atlanta, with a white face was a rare breed.

Mr. MATHIAS. That is good, fine. We are settled on that. Now, what does it mean to be a moderate in Atlanta? Jesse Jackson said that moderation of southern justice is what we had to struggle against in order to have a measure of freedom in the South.

So to make moderation a virtue in this particular situation, I think, is a great mistake.

Mr. BROOKE. Will the Senator yield on that point?

Mr. MATHIAS. Yes, I yield.

Mr. BROOKE. The Senator from Indiana talked about State Representative McKinney. I never had the pleasure of meeting him, but I do know Julian Bond.

I refer again to the record of the Senate Judiciary Committee, and I quote from Julian Bond when he said:

> In deciding this issue I hope you will remember that there were whites in the South during the difficult years we have been discussing who stood up and openly urged that Georgia obey the law: integrate the schools thoroughly, promptly, and without waiting for the Federal Courts to order it.
>
> Griffin Bell may have been one of those who did. He may have courageously told Governor Vandiver to do what Governor McKeldin had done several years earlier: to obey the law without delay. Whether Judge Bell did that is for you to decide. But we would dishonor the memory of those who

bravely fought for what was right, some of whom paid for their valor with their lives, if we were to pretend that there was no choice in Georgia in 1960 but silence, segregation, and subversion of the law.

I think that is the pertinent point, the point that illustrates that there was a choice in Georgia in 1960, and that we have no evidence in this record to indicate that Griffin Bell advocated pursuing that choice, the right choice, the legal choice.

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

Mr. BAYH. I will be glad to yield, if we have time. I do not want to shut off debate.

I would be honored if the Senator from Maryland and the Senator from Michigan would put me in their category as being equally concerned about the kind of sensitivity the Attorney General is going to have.

Mr. MATHIAS. We would not only put the Senator in that category, we would welcome the Senator from Indiana into this side of the issue and be as concerned as we are.

Mr. BAYH. I think I am equally concerned. I know I am; although I am looking at a different part of the elephant, or the donkey, as the case may be, and thusly coming to a different conclusion.

I say in answer to the suggestion made by the Senator from Michigan that in one instance some time ago, the King firm, which is a bond specialist, did represent the college on one bond issue. The firm of Kennedy and Rubin is the normal counsel.

Mr. RIEGLE. I think the Senator misunderstood what I was saying. My understanding was that the Kirbo office, the law firm which Mr. Bell was——

Mr. BAYH. That is the King law firm.

Mr. RIEGLE. I see.

Mr. BAYH. I do not think Kirbo's name is in the title. King and Spaulding.

Mr. RIEGLE. I see.

Mr. BAYH. King and Spaulding is not traditional counsel for the college. It is Kennedy and Rubin.

In one instance—that firm apparently is a topflight bond counsel in the Southeast—they did a bond issue for them.

I wanted to lay that at rest.

Mr. RIEGLE. While the Senator and I were engaged with one another, I was told there is not a letter in the record, but rather, a press account, and that no effort was made insofar as I have been able to establish for Vernon Jordan to convey it.

Mr. BAYH. Vernon Jordan, as was said publicly, is for Judge Bell.

I read in the paper what I knew was in the record, of his own personal feelings.

Mr. HUMPHREY. Will the Senator yield?

Mr. BAYH. Yes.

Mr. HUMPHREY. I had a visit with Vernon Jordan about a month or 3 weeks ago. He told me he was for Judge Bell. I asked him his view because of my very great respect for this distinguished citizen.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield 10 minutes to the distinguished Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. McGOVERN. Mr. President, this is a very difficult decision for all of us. I personally have come down on the side of voting against this nomination. But I certainly do not do it with any sense of condescension toward those Senators who have reached a different conclusion, some of whom have been in the civil rights movement longer than I have and who deserve our respect.

But 7 years ago, meeting in this Chamber, we undertook the never happy task of critically appraising, and ultimately rejecting, two nominations for high office which had been sent to us by the President of the United States. Reluctantly and painfully we delineated the required standards of probity, sensitivity, and commitment to social justice. We then measured against them the records of Clement Haynsworth and G. Harrold Carswell, and found both men wanting. Those of us who were then in the opposition party were not unconcerned about the price we might pay for voting against those nominees, but we thought the matter of such consequence as to warrant an appeal across the aisle to those for whom such a vote was even more perilous.

Those unfortunate nominations could not have been defeated without the votes of those members of the other party with the special valor required to stand against the wishes of their nominal leader. And the senior Senator from Indiana, who had led the fights against confirmation with such skill and tenacity, spoke for all of us when he looked across the aisle and praised the junior Senator from Massachusetts, saying "I salute the Senator from Massachusetts for the determination and raw courage he has evidenced. I would suppose—not having been in his position, I would have to suppose—it would be much more difficult to oppose a nomination from a President of his own party."

We need no longer suppose how difficult it must be to contemplate opposing the nomination of a President of our own party, for that is the position those of us on this side of the aisle are in today, and I can attest to the fact that it is an uncomfortable position to be in.

Although some facts regarding the nomination of Judge Bell are in dispute, enough is already clear to cause me to vote with regret against his confirmation.

My regret is deepened by the fact that while I did not sit in on the hearings during this confirmation, I did watch a substantial portion of them on public television and I was impressed with the gracious personal demeanor of Judge Bell.

I feel sure that I would enjoy his company as a man, but personal liking is not the issue. We know that Judge Bell accepted gift memberships in two discriminatory clubs, with a cumulative value over the years in excess of the sum paid to Justice Fortas, and that he failed to report those gifts as required by law. We know that Judge Bell sat on a case in which he had, only 4 years earlier, provided legal advice to one of the litigants, and that he cast the deciding vote in favor of his former client. We know that he has exhibited a lack of sensitivity to the appearance of propriety fully as serious as that of which Judge Haynsworth was accused. We know that Judge Bell helped to write laws intended to prevent, delay, or minimize the integration of the Georgia public schools. We know that those laws did far more effectively to obstruct the law of the land than did the racist remark made by Judge Carswell 12 years ago.

Mr. President, there is another matter which concerns me deeply and which, even after all these years, I simply cannot abide. In 1966, a young, articulate black man, Julian Bond, was elected to the Georgia House of Representatives. But he was refused his seat because he had endorsed a statement criticizing the war in Vietnam and expressing sympathy for people who resisted the draft which would have sent them to fight in that conflict. Julian Bond filed suit to claim the seat to which he had been elected.

In a decision which was subsequently overturned by the U.S. Supreme Court, the Federal district judge—Judge Griffin Bell—held that it was entirely proper for that legislature to exclude Mr. Bond, solely because he held and expressed what was then an unpopular view. Others may disagree, but I regard the first amendment as so vital, and and so central to our democratic system, that I cannot fathom such a decision, even in the less tolerant atmosphere of 10 years ago.

We can forgive the mistake, but we do not need to elevate the perpetrator to the highest law enforcement office in the land.

The position to be filled by the present nomination is no less trying, no less vital to public confidence in our Government, than the position to which Judges Haynsworth and Carswell aspired. The Attorney General of the United States is naturally the focal point of public concern with the integrity of our legal system. The Attorney General faces every day opportunities to tilt decisions in favor of partisan or personal interests of himself or his party, a chance which only infrequently presents itself to a member of the Supreme Court. The Attorney General, serving at the pleasure of the President, must constantly resist the inevitable inclination to put the well-being of the Chief Executive ahead of the well being of the country.

The Attorney General must be a person of unique probity and independence, for that person must resist temptations unknown on the bench, and must do so without the natural constraints of precedent and eight coequal colleagues.

These points refute the suggestion that the Attorney General is the "President's lawyer" and therefore should be someone close to the President, someone he can trust. The Attorney General is the Government's lawyer—and his job is not to

defend the President but to keep him, too, within the bounds of the law.

The question posed by this nomination is simple, yet one which will recur in varying forms over the years ahead—whether the standards, independence and stature which Congress has labored to acquire over the last difficult decade—and which the senior Senator from Indiana has done much to advance—are now to be abandoned merely because we now have a President who belongs to the majority party in Congress. The similarity of this nominee to those whom we have rejected in the past casts that question in the starkest possible light.

What happened on January 20 to so drastically alter our principles and procedures? Does not the Constitution still require our advice and consent to this nomination? Are not the canons of judicial ethics still the standard by which we assess the conduct of a Federal judge? Does not public confidence in our legal system still require an Attorney General whose conduct and demeanor are beyond reproach? Are not millions of black Americans still poor, still undereducated, still struggling to overcome the obstacles and effects of discrimination, and still entitled to an Attorney General whose personal commitment to the cause of equality is beyond dispute?

It is too soon to forget the lessons of the last decade. It is too soon to place in the highest councils of government a man who does not understand that a member of the Federal judiciary should not belong to a club which judges Americans by the color of their skin or the way in which they worship. It is too soon to grow indifferent to the widespread doubts that our laws are enforced in a fair and evenhanded manner. It is too soon to forget the courage of men like Charles Goodell, who stood with us against an errant President of his own party and forfeited his political career in that cause.

However much I might wish to accommodate the President, I cannot support this nomination without applying a double standard, lowering the requirements set in the past merely because this is a Democratic nominee selected by a Democratic Chief Executive. There can be but one standard for a man who files inaccurate financial disclosures omitting thousands of dollars in gift memberships. There can be but one standard for a judge who sits on cases where the canons of judicial ethics and the laws of the United States demand he step aside. There can be but one standard for a lawyer who has used his skills to obstruct the command of the Supreme Court that black children no longer be relegated to separate schools because of their race.

Much has been said, and more has been thought, about the deference that may be due the wishes of the new administration. But what we owe the President is not our loyalty—but our judgment—seasoned, critical, concerned above all with the well-being of the Nation. In the long run, I am convinced that we will do the President the greatest service when we give him the benefit of our most critical judgment, not when we go along to serve our convenience or his.

Our duty in a case such as this is to search out facts, possibly unknown to the President when he made his initial decision, and cast our votes as those facts require. We have an obligation to the President and to the American people to maintain the vigor and independence of the Congress so that the natural competition and disagreements between ourselves and the executive branch will increase the ingenuity and thoroughness of all concerned. We must help the President restore and renew public confidence in our system of government, and we will not set the new moral tone to which he aspires if we begin by abandoning the standards we fought to establish 7 years ago.

My sense of responsibility to the President, no less than to the millions of men and women whose lives and liberties will be affected by the next Attorney General of the United States, compel me to vote against the confirmation of the nomination of Griffin Bell.

Mr. President, I ask unanimous consent that an article by Mr. Anthony Lewis appearing in the New York Times of December 30, 1976, be printed at this point in the RECORD.

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

[From the New York Times, Dec. 30, 1976]

GRIFFIN BELL'S RECORD

(By Anthony Lewis)

BOSTON, Dec. 29.—In 1966 the Georgia House of Representatives refused to seat Julian Bond, a newly elected black member. The reason was his endorsement of a statement by the Student Non-violent Coordinating Committee criticizing the war in Vietnam and sympathizing with men who resisted the draft for service there.

Mr. Bond sued, claiming a violation of his right to free expression under the First Amendment. He lost in the Federal District Court. An opinion coauthored by Judge Griffin Bell said: "The S.N.C.C. statement is at war with the national policy of this country . . . We are committed in Vietnam."

A legislator has less right to free speech than a private citizen, the opinion reasoned, because he takes an oath to support the Constitution. The court said the Georgia House could properly find Mr. Bond's endorsement of the S.N.C.C. statement inconsistent with the oath, and could exclude him.

That decision was quickly and unanimously reversed by the Supreme Court. Read today, just 10 years later, it seems like something from the dark ages of judicial jingoism during World War I. No one would bother to read such an anachronistic, discredited opinion now—except that it so recently was the considered judgment of the man named to be the next Attorney General of the United States.

Mr. Carter says that Griffin Bell is superbly qualified. With most nominees, such a claim would be hard to test. But a man who sits on the bench for fifteen years, as Mr. Bell did, leaves a record—his opinions in the law reports. I have read a very small part of Judge Bell's large output, but I think enough for a fair impression of his work.

The Bell opinions I have read are singularly opaque. They show none of the intellectual command, the marshaling of language that mark a great appellate judge. They ring of no passion for justice. They are unanalytical, almost inarticulate. So far as one can tell, the quality of mind behind them is second rate.

Mr. Carter, in addition to praising Judge Bell's intellectual qualifications, has implied that he was a judicial leader in bringing the South into a new age on race relations. The record is otherwise.

The United States Court of Appeals for the Fifth Circuit, on which Judge Bell sat, was at the center of the struggle over segregation in the South. But other judges led the fight for compliance with the Constitution. They are among our great contemporary judicial heroes, and their names are no secret: among them Richard T. Rives, Elbert P. Tuttle and John Minor Wisdom.

Judge Bell often disagreed with Judges Rives, Tuttle and Wisdom on racial questions. As the Supreme Court spelled out the law, closing more and more loopholes, Judge Bell wrote opinions complying in narrow terms. He by no means defied the law in the name of segregation, but it is a travesty to class him with his legendary colleagues on the Fifth Circuit.

Those impressions of Griffin Bell as a judge were checked with people who know the man and his work intimately. The unhappy but unavoidable conclusion is that he is an undistinguished legal thinker, a conservative in instinct, with no demonstrated breadth of moral or philosophical outlook.

Much of the criticism has focused mistakenly on Griffin Bell's personal friendship with Jimmy Carter. A President must have confidence in his Attorney General, and friendship need not be disabling. The real question is whether the friend has the needed qualities of mind and heart. Herbert Brownell Jr. had the credentials on paper when President Eisenhower named him, but he turned out to be an opportunist. Robert Kennedy had few on paper, but he had an open mind and compassion that made him a humane influence on his brother.

Griffin Bell has a reputation as a skilled negotiator. The chances are that he will be a better Attorney General than some. He is not likely to sink to the corrupt level of say, Richard Kleindienst or John Mitchell. But will he have the independence and the moral conviction and the intellectual self-confidence to resist pressure from the intelligence agencies as Edward Levi has? Will he give the President imaginative and courageous advice on the judicial appointments that are so important in our system? The record is not encouraging.

An Attorney General of unassailable quality is more central in this country now than in the past. After Watergate, we need a reaffirmation of law—law in its moral and human dimensions, not as a mere instrument of power. And Jimmy Carter promised just that.

Asked about the criticism of Griffin Bell, Mr. Carter said the other day that it seemed to come from disappointed backers of other possible nominees. That nasty crack reflects only on the President-elect. There are dozens of lawyers in this country better qualified to be Attorney General than Griffin Bell—and better for the real interest of Jimmy Carter.

Mr. McGOVERN. Mr. President, I thank the Senator from Maryland for yielding to me.

Mr. MATHIAS. I thank the distinguished Senator for his very thoughtful statement.

At this time, I yield 10 minutes to the distinguished Senator from Kansas (Mr. DOLE).

Mr. DOLE. Mr. President, a member of the party in power has a special responsibility and right to see to it that the President keeps the promises he made to the electorate. A member of the party in power has a special interest in the fitness and presentability of cabinet members,

since he will be held accountable for the mistakes of the administration and its officials. And a member of the party in power enjoys a special relationship to the national leader of that party, entitling him to be consulted in advance about Presidential decisions which may imperil his political life.

But, as chance, and a small majority of the electoral college, would have it, I find that the heavy burdens of membership in the President's Party, which I bore as best I could as recently as last week, have suddenly been lifted from my back. Carried by the zephyrs of change to this new situation, I find myself forced to reassess my previous positions and attitudes.

I take consolation, however, in the fact that many of my colleagues have also been compelled by circumstances to reassess these positions. Members of this body who recently shrunk with horror from the smallest transgression of legal ethics have suddenly acquired a wonderfully fresh and more realistic perspective. Colleagues who once could not bring themselves to forget a 22-year-old campaign speech by Judge Carswell have converted to a marvelous belief in forgiveness and redemption. Men long addicted to a prideful independence of the executive branch have at last discovered the virtues of humility and cooperation. It is all a happy sight, and one which comes none too soon for Griffin Bell, though a trifle late for one member of the fourth circuit court of appeals.

Mr. President, as I indicated this morning, there are three areas that trouble this Senator. One has been discussed in great detail—the civil rights record of Judge Bell. Another that has not been discussed and somehow ignored in most of the debate is that of cronyism. Is there this tie between President Carter and Griffiin Bell that somehow might cast a cloud on his ability to serve as an independent Attorney General.

I recall the debate in 1969 with reference to Judge Haynsworth. I recall statements made by many colleagues at that time, and suggest that now, in the year 1977, there is even a higher degree of accountability.

And I was surprised to read this morning in the Washington Post "The Case for Griffin Bell" because of this higher accountability, this higher duty, this higher responsibility. And I commend the reading of that editorial to Senators, not so much for what it says, but for what it does not say.

It may not come as a surprise, but it indicates again that, perhaps, we have overlooked one very important matter, and that is the political relationship: a man who made campaign contributions, a man who raised money, a man who wrote speeches, a man who helped in the selection process of a Vice President. The Senator from Kansas believes that is a fairly close political tie. Having been on the campaign trail day after day, and having heard the now Vice President and the now President of the United States criticize the past it comes as somewhat of a disappointment, because they talked and discussed with the American people the idea of an independent Attorney General insulated from improper political pressures.

I could quote the statement of President Carter. But it seems to me that after the campaign—and again with nothing but the highest regard for the honesty and integrity of Mr. Bell—he is a friend of the President, he may be a buddy. We heard many comments about the buddy system in Washington. Some may think that buddy poppies originated in the Senate Chamber. We heard so much discussion about congressional buddies in last year's campaign.

And, finally, a matter of great concern to many in this Chamber and many on this side of the aisle is the future of Clarence Kelley. We were concerned about the independence of the Federal Bureau of Investigation. We passed an act in this Congress to make it a 10-year term. That act said the Director shall serve for 10 years. Now we are told that Director Kelley has written a letter saying he wishes to retire in January.

Well, I will only say that this letter was written following testimony of Judge Bell wherein Mr. Bell said he would remove Clarence Kelley. I am not really certain what options Mr. Kelley had.

But it seems to this Senator, who voted for that act, that we meant what we said. We were concerned about the independence of the Federal Bureau of Investigation. We wanted no tampering by the President of the United States, be he a Democrat or a Republican.

We were concerned about the integrity of that great agency. So we believed, although the legislative history is not clear, that the Director could not be removed without cause.

I am pleased that the distinguished senior Senator from Indiana, in response to a question posed this morning, said that should Director Kelley change his mind, it was his view that he could stay until his 10-year term expired. I am not certain that that is the opinion of Griffin Bell. This Senator is not certain that that is the opinion of the President of the United States.

It seems what has been suggested is the politicizing of the FBI. It does no good now to cite some letter written by the Director of the Federal Bureau of Investigation after it has been stated publicly, that he was going to be removed.

So for these reasons it seems to this Senator we should vote for the motion to be offered by the distinguished Senator from Massachusetts (Mr. BROOKE) to recommit this nomination and go into the matter of the Director of the Federal Bureau of Investigation and, perhaps, have more testimony on the relationship between the President and the nominee for Attorney General as well as other areas still in doubt.

I yield back the remainder of my time.

Mr. MATHIAS. Mr. President, the Senator from Kansas has pointed out a certain change in attitude which seems to have overtaken both the press and the Senate.

I am happy this debate today has evolved in a way which would lead us to believe that this is not a purely partisan kind of change because there have been some distinguished Senators on the Democratic side who have risen to express the doubts that lay upon their consciences.

In an effort to try to understand what is really happening in the mood of the country, I recall an article which appeared in last Sunday's New York Times by the distinguished former Secretary of Commerce, Mr. Elliott L. Richardson, entitled "The Sexless Orgies of Mortality."

In that article Mr. Richardson says that as a result of Watergate, Vietnam and other problems we have had in the last 10 years we have gotten into an area of reaction in which we questioned perhaps too much.

I think what we are seeing here today is, perhaps, a reaction to the reaction. People are saying "Well, let us just slide over this. We do not want to have any more trouble. We have had a lot of trouble over the past few years, so let us just pass everything over lightly."

Well, I wish it were possible to pass things over lightly. But if the Members of the Senate had been with those of us who serve on the Judiciary Committee and had seen some of the plaintiffs in these cases, plaintiffs who came from Atlanta, from Corpus Christi to tell us about what it was like in the South in those days—because that is the kind of standard we have been asked to apply, not the standards of Washington, D.C., 1977, but what it was like in the South in those days—these were little people who came to Washington to tell the committee what it was like, people whose children never did get the advantage of an integrated education, although the Supreme Court had said in 1954 that that was the law of the land; people who had taken to the courts to secure their rights and who had suffered threats of bodily injury, who had been the subject of attempted bribes, people whose lives had been made miserable simply because they wanted to avail themselves of the equal protection of the laws, little people, not civil rights leaders, not national political leaders, but the people about whom this is—the important people about whom this is—really all concerning, the people whose rights are at stake, these were the people really who were the most compelling witnesses before the Judiciary Committee. They were there, they were there during the pertinent years, they were there on the spot that mattered.

I am not going to review all of the evidence that has been before us and all the arguments that have been made here today.

I will say there is a very deep vein of opposition to this nomination. It is not blind, stubborn opposition. It is opposition based on concern. It is opposition based on the fact that people are worried. I hope those worries are unfounded. I hope if the Senate should confirm this nomination that Griffin Bell becomes a very great Attorney General. But that is a question only the future can determine, and we here have to take account of the very serious doubts that are raised by the record.

I think President Carter should have all the support all of us can give him in

restoring the unity of the country, in increasing confidence in government. But I am not prepared to say this afternoon that this appointment will further those ends.

Therefore, I yield 10 minutes to the distinguished Senator from Massachusetts.

Mr. BROOKE. I thank our colleague.

Mr. President, the Office of the Attorney General of the United States is a high and sensitive post. The Attorney General is the chief law enforcement officer of our Nation. He is the people's advocate, the people's lawyer.

No other position in our Federal Government is closer to the Supreme Court of the United States, the final arbiter of our legal rights and responsibilities.

And so it is an office which is of great concern to all American citizens. We who have the responsibility of rendering "advice and consent" have a duty to see that every "i" is dotted and every "t" is crossed in investigating and in questioning those who would fulfill this high office.

Mr. President, this morning I asked many questions of the distinguished members of the Committee on the Judiciary. I asked them specifically to those who were in the majority and who voted out the name of Griffin Bell for us to consider in this Chamber.

I reluctantly said that I could not immediately vote to confirm Mr. Bell, for after reading the record I found that there were great gaps, many unanswered questions, and many essential witnesses who had not been called.

Mr. President, after putting those questions to the majority of the Committee on the Judiciary, I received no answers or unsatisfactory answers. And I would suggest that I received these responses because there are no answers. The job simply was not done.

There is no excuse for having failed to call former Governor Vandiver. He was by all objective analyses an essential witness in the hearings on Griffin Bell. There were other witnesses who were not called and other conflicts of interest or potential conflicts of interest, let me say, that were passed by lightly.

I frankly do not know whether Griffin Bell is capable of serving as the Attorney General of this great Nation. And, I certainly would not know it if I were to read the report of the Committee on Judiciary because it is confusing and in many instances showed an inability or an unconcern on the part of some members of that committee to actually ascertain all of the facts.

I did refer to partisanship, something I do not like to refer to on the floor of this Chamber. In fact, I do not believe in the 10 years in which I have served that I have referred to partisan politics on the floor.

But I would be remiss if I sat by quietly and did not point out to our colleagues that there does appear to be a double standard in the confirmation proceedings on Griffin Bell. I get a sense that he is being rushed through the Senate, rushed because there were serious allegations made without an opportunity to check and to find out whether these allegations were weighty, meritorious, or factual.

The double standard to which I referred reluctantly is even more pertinent because I remember very vividly the expanded hearings and debates which took place on the nominations of Haynsworth and Carswell for the Supreme Court. Some of the very so-called liberal Senators who in this Chamber today showed such a minimum concern for some of the same type problems alleged against Griffin Bell were so vociferous in their condemnation of the nominees Haynsworth and Carswell.

Mr. President, if the law applies to one, it must apply to all. If we are going to have standards and guidelines by which we govern ourselves, they must apply to all. Whether we sit in judgment on the merits of Griffin Bell or Haynsworth and Carswell, we must still use the same standards.

I suggest most respectfully that equivalent standards have not been used in this case. So I think we perform a great service not only to our Nation and to the high office of Attorney General, but also to Mr. Griffin Bell himself by asking for a fuller exposition of the issues. Maybe he has the answers to some of the questions I have raised. Maybe if Governor Vandiver had been called, he would have supported and strengthened the case of Griffin Bell. Maybe Mr. Ashworth would have strengthened the case of Griffin Bell. But who knows, if they were not called?

So, I must reluctantly conclude that there is indeed a double standard. I must point out that this is a bad precedent for the Senate, a precedent with which I would not think we really want to live.

My friend, the Senator from Indiana, said that a black college, Morris Brown, had given Mr. Bell an honorary degree. He named some other blacks who support Griffin Bell. And he said that that indicated that Griffin Bell was not a racist. That is not the issue. I do not know anyone who stood on this floor who has alleged that Griffin Bell is a racist. That is not the question here before us. The question before us is: Is Griffin Bell qualified to be the Attorney General of the United States of America?

Because of serious allegations made against him, the questions are: Was he guilty of a conflict of interest? Should he have disqualified himself in several cases? Did he give counsel to the Governor of the State of Georgia in developing massive resistance? There are these, and other collateral questions which are pertinent to his ability to serve as our Attorney General.

Mr. President, I could go on, but I shall not. The questions have not been answered. I said earlier today, if the questions were not answered I would feel compelled to make a motion to resubmit this nomination to the Judiciary Committee for further consideration.

It is because these questions have not been answered and it is because I feel so strongly that we in the Senate at this time do not have sufficient facts and sufficient evidence upon which to make that judgment that, Mr. President, I now move to recommit.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BROOKE. I yield to the majority leader without losing my right to the floor.

Mr. ROBERT C. BYRD. May I say to the distinguished Senator that his motion to recommit will not be in order until all time has expired or been yielded back.

Mr. BROOKE. Mr. President, I yield back the remainder of my time.

Mr. SASSER. Mr. President, we yield back the remainder of our time.

Mr. BROOKE. Mr. President, all time having been yielded back I move to recommit the nomination of Griffin Bell to the Committee on the Judiciary for further consideration, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. 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.

The question is on agreeing to the motion to recommit the nomination to the Committee on the Judiciary. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Maine (Mr. HATHAWAY), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BARTLETT) is absent due to illness.

The result was announced—yeas 24, nays 71, as follows:

[Rollcall Vote No. 9 Ex.]

YEAS—24

Bellmon	Hatch	Nelson
Brooke	Hayakawa	Packwood
Case	Heinz	Percy
Chafee	Javits	Proxmire
Culver	Lugar	Riegle
Dole	Mathias	Schmitt
Domenici	McClure	Wallop
Hansen	McGovern	Weicker

NAYS—71

Allen	Ford	McClellan
Anderson	Garn	Melcher
Baker	Glenn	Metzenbaum
Bayh	Goldwater	Morgan
Bentsen	Gravel	Moynihan
Biden	Griffin	Muskie
Bumpers	Hart	Nunn
Burdick	Haskell	Pearson
Byrd, Harry F., Jr.	Hatfield	Pell
	Helms	Randolph
Byrd, Robert C.	Hollings	Ribicoff
Cannon	Huddleston	Roth
Chiles	Humphrey	Sarbanes
Church	Inouye	Sasser
Clark	Jackson	Schweiker
Cranston	Johnston	Scott
Curtis	Kennedy	Sparkman
Danforth	Laxalt	Stafford
DeConcini	Leahy	Stennis
Durkin	Long	Stevens
Eagleton	Magnuson	Stevenson
Eastland	Matsunaga	Stone

Talmadge	Tower	Young
Thurmond	Williams	Zorinsky

NOT VOTING—5

Abourezk	Hathaway	Metcalf
Bartlett	McIntyre	

So the motion to recommit was rejected.

(Subsequently the following occurred:)

Mr. BIDEN. Mr. President, I ask unanimous consent that my vote on the last vote be changed from "aye" to "no."

The PRESIDING OFFICER (Mr. MORGAN). Is there objection?

Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, I ask unanimous consent to change my vote from "aye" to "nay." I thought I was voting on confirmation, rather than recommittal.

The PRESIDING OFFICER. Is there objection? Without objection, the vote will be so changed.

(The foregoing tally reflects the above changes.)

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Griffin B. Bell?

Mr. CHURCH. Mr. President, I should like to put some questions to the Senator from Indiana, on the assumption that those questions might follow this vote.

Mr. ROBERT C. BYRD. Mr. President, all time has expired. I wonder if, in view of the fact that the Senator from Idaho wants to ask a few questions, we could get just a little time by unanimous consent?

How much time does the Senator need?

Mr. CHURCH. I should think that these questions and the answers could be accommodated in 10 minutes, 15 at the most.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. BAYH may have an additional 10 minutes—that there be not to exceed 15 minutes, to be equally divided between Mr. BAYH and Mr. MATHIAS.

Mr. BUMPERS. Is it anticipated there will be a rollcall vote?

Mr. ROBERT C. BYRD. Oh, yes, there will be rollcall votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Who yields time?

Mr. HATFIELD. Will the Senator yield for a unanimous-consent request?

Mr. BAYH. I yield.

Mr. ROBERT C. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. Let us have order in the Senate.

Mr. BAYH. Mr. President, I ask unanimous consent that Mr. Ken Feinberg of Senator KENNEDY's staff be permitted the privilege of the floor during the remainder of this matter?

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

Who yields time?

Mr. BAYH. I yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, I have read the excellent brief prepared in support of the nomination of Judge Bell. I call the attention of the Senator from Indiana to that portion which deals with intelligence operations, accountability and control, beginning on page 1 and extending through page 2 and parts of page 3. I read from the brief:

> Judge Bell pledges to control intelligence operations under his authority in a manner which would protect the rights of American citizens while, at the same time, being careful to protect the security of the Nation.

Of course, that statement is so general that it needs further amplification.

On page 2, the subject of wiretapping legislation and warrant procedures is discussed. The brief reads:

> Judge Bell said that he believed that electronic surveillance could be conducted under some restraints where you would safeguard the rights of American citizens. As a general opinion, he opposes warrantless wiretapping of American citizens.

Under the criminal law, as I understand it, it is not possible to lawfully wiretap an American citizen without a warrant issued by a court, upon a finding that probable cause exists to believe that a crime has been committed or is about to be committed. In the course of our investigation of the intelligence agencies, we found widespread abuse in the electronic surveillance of young student groups who were not suspected of crime, but who were protesting against the war, which the Constitution entitled them to do. We found months of harassment conducted against Martin Luther King, Jr., not because he was suspected of crime, but for political reasons. We found other minority groups harassed unlawfully, not because crimes were being committed, but because they sought recognition of their rights under the law. All these improper activities were conducted under the guise of national security.

My first question is what the testimony showed with respect to Judge Bell's feeling about establishing a sufficient court test in this broad national security field that would adequately safeguard the liberties of the American people?

Mr. BAYH. First, let me say that I would like to speak from the standpoint of a personal conversation I had with Judge Bell, as well as the matter that is in the record. As the Senator knows, I happen to be one of the Senators who has been chosen to serve on the Select Committee on Intelligence with the distinguished Senator from Hawaii, our chairman. In that capacity, I was called on, as chairman of the Subcommittee on the Rights of Americans to give study to a wiretap bill that was reported out of the Committee on the Judiciary. We worked with the Senator from Massachusetts and several other colleagues and, I think, did a very credible job of strengthening the provisions of that bill. Because of this experience, I was concerned with Judge Bell's background.

His decision in the Brown case caused me concern. As the Senator knows, the law is unclear regarding warrant requirements for electronic surveillance in national security cases. There is the Zweibon rule, which I am more comfortable with, and I think the Senator from Idaho is more comfortable with, and the Brown rule, which Judge Bell wrote. In the conversation I had with him, I expressed concern over his unwillingness in the Brown case to provide the kind of protections that I thought were necessary. He was quick to point out that if he had to write that Brown decision today in light of everything that had happened, he would not provide for broad power to the Government as he did.

As I recall, we had no problem with Judge Bell's attitude as far as domestic cases are concerned. He recognized what the law is there—you need a warrant.

The only issue in question is in the international field, the national security field. The judge said that he would urge the President to work with Congress to provide proper safeguards by law against the kind of abuse that we have seen.

He went further, in response to my questions regarding surreptitious entry, mail opening, and other violations of the right to privacy. He stated that they should all be covered by the same warrant procedures.

Mr. CHURCH. The critical question, as the Senator knows, is not obtaining a warrant, but what standard the court will apply in granting a warrant. If it is simply an affidavit that the case falls within the broad purview of national security, the court's act is then purely ministerial, it means nothing. We must find a suitable standard. I recognize that the Senator from Indiana has been seeking such a standard. In my opinion, he greatly improved the original bill which came out of the Judiciary Committee last year by attempting to define a very narrow class of cases where electronic surveillance might be authorized without need of showing probable cause. I wonder if the Senator will tell me his general impression of Judge Bell's view, with respect to the need to write that kind of narrow standard into the law.

Mr. BAYH. I asked him specifically whether he thought the provisions of the bill to which I alluded, which was a product of the work of our subcommittee, assisted by the Senator from Massachusetts and the Committee on the Judiciary, was the kind of safeguard that he was talking about, and he said "Yes."

Now, generally, as I think the Senator from Idaho knows, I would feel much more comfortable, if we applied a standard of probable cause of crime across the board to electronic surveillance. I have to say, however, that, from a very practical standpoint, there is a narrow area regarding foreign intelligence, where it is difficult to apply that severe a standard. So in that bill, we required the same standard for foreign intelligence gathering as for domestic intelligence gathering, except where it could be proved that a person was an agent, of a foreign power, transmitting information in a clandestine manner to the detriment of this Nation's security. That person would be a spy. When you can prove somebody is a spy, even if he is an American citizen, if you can prove he is on the payroll of another government as part of their intelligence network, transmitting material and operating secretively,

then I am prepared to establish a different standard.

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

Mr. MATHIAS. Do the Senators require more time?

Mr. CHURCH. Just 1 minute, if the Senator will allow me, to conclude this colloquy.

Mr. MATHIAS. I yield that time.

Mr. CHURCH. I take it, from what the Senator has said, that in his judgment Judge Bell, as Attorney General, will cooperate with the committees of the Senate in attempting to work out a standard of the kind the Senator has described, and that he will also work with the new Intelligence Committee for the purpose of writing basic charters which define the jurisdiction of the FBI, the CIA, and the NSA, which will take into consideration the recommendations of the select committee I chaired?

Mr. BAYH. Yes. In fact, I have to say that was one of the first questions I asked about, even before the hearings started.

I was concerned about the Brown decision and our job of drafting legislation.

If I were not convinced in my own mind that Judge Bell would establish that high standard and urge the President to follow his lead, I would not be standing here supporting his nomination.

Mr. CHURCH. I thank the Senator very much for his responses to these questions.

I conclude by saying, Mr. President, that I have reviewed carefully the objections raised by the distinguished Senator from Maryland. I believe that if this nomination were for the Supreme Court of the United States, I would have to cast my vote against it, mainly on the basis of the Bond decision. But since it is for the Office of Attorney General, and since the Attorney General functions at the pleasure of the President and under his general direction, I have concluded that my doubts should be resolved in favor of the President.

On that basis, I will vote for the nomination of Judge Bell.

ADDITIONAL STATEMENTS SUBMITTED ON BELL NOMINATION

Mr. TALMADGE. Mr. President, I received today a letter from Mr. Hal Suit of Atlanta with respect to the nomination of Griffin Bell to be Attorney General of the United States.

Mr. Suit, as he points out in his letter, was a journalist in Atlanta during the difficult years in Georgia and the South in which Judge Bell occupied a role of leadership and moderation. Mr. Suit describes Judge Bell as a "dedicated servant" who had the "moral courage to stand up and be counted among those who sought reasonable, practical and peaceful means of complying with Federal court decisions." Mr. Suit urged Senate approval of Judge Bell as Attorney General. I bring his letter to the attention of the Senate and I ask unanimous consent that it be printed in the RECORD.

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

JANUARY 19, 1977.

HON. HERMAN E. TALMADGE,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR TALMADGE: It appears from press reports that the Senate Judiciary Committee is going to recommend to the full Senate that Griffin Bell become the Attorney General of the United States. When Griffin Bell's nomination reaches the Senate, would you please enter the following statement on my behalf in the official Senate record:

As the Republican candidate for Governor of Georgia in 1970, I was defeated in the General Election by the man who is now the President of the United States.

While there may still be many areas of political disagreement between myself and President Carter, I do not disagree with his nomination of Judge Griffin Bell to serve as the Attorney General of the United States. Prior to entering the political arena in Georgia in 1970, I worked as a journalist in the state for more than 16 years and became familiar with and I believe knowledgeable about Griffin Bell's honorable service in former Governor Ernest Vandiver's administration and later as a distinguished member of the Court of Appeals.

I sincerely believe Mr. Bell contributed substantially toward helping resolve many of the difficult problems faced by the citizens of Georgia during the initial desegregation of the state's public school system.

During a time when it was politically expedient to keep quiet about one's views regarding the integration of Georgia's schools or to play the role of a segregationist demagogue, Griffin Bell had the moral courage to stand up and be counted among those who sought reasonable, practical, and peaceful means of complying with Federal Court decisions.

It would be dishonest to pretend I agreed with every decision rendered by the Appeals Court during Griffin Bell's service on that judicial body; it would be more than dishonest to pretend that intelligent and sincere men and women do not find themselves in honest disagreement on many controversial matters.

I respectfully urge the members of the United States Senate to unanimously approve Griffin Bell as the Attorney General of the United States because I believe he will conscientiously carry out the duties of that office as a fair, impartial, and dedicated public servant.

Sincerely,

HAL C. SUIT.

Mr. EASTLAND, Mr. President, I would like to say a few words on behalf of Judge Griffin Bell. The Committee on the Judiciary held full and complete hearings on this nomination, and the members interrogated Judge Bell in depth. In addition, the committee heard 37 witnesses both pro and con. We scheduled an extra day of hearings in order to hear some opposition witnesses who had not been scheduled. The committee voted to recommend that Judge Bell be confirmed as Attorney General.

I am not going into any detail on Judge Bell's background, as that is set out in the committee's report. I will say that the nominee served for 14½ years on the U.S. Court of Appeals for the Fifth Circuit.

Several areas were raised by some opposition witnesses which I shall touch on briefly.

First, was Judge Bell's civil rights record, and particularly the area of desegregation of schools. I will point out here that Judge Bell came before the committee with one attribute which no other nominee for this office has had in this area, a public record. Judge Bell's years on the bench have resulted in a full and complete record of opinions on this and other subjects.

Second, the opposition centered on certain opinions of Judge Bell, and witnesses included plaintiffs in some of the school cases. In rebuttal to these witnesses other black leaders testified on behalf of the nominee and recommended him highly. They included participants in the law suits and observers on the scene at the time.

Lonnie King, former president of the Atlanta chapter of the NAACP, contradicted the conclusions of opposition witnesses. A J. Cooper, mayor of Pritchard, Ala., also chairman of the Southern Black Mayors Conference, testified on behalf of Judge Bell. Mayor Cooper had been counsel in several lawsuits, including school cases, before Judge Bell, and described him as fair, willing to listen and change his views when given a solid legal peg on which to proceed. Mayor Cooper testified that Judge Bell was forceful in insisting that defendants comply with the law.

Other opposition centered around Judge Bell's service as a lawyer for Governor Vandiver from 1959 to 1961. Bell was appointed along with other lawyers to advise the Governor on the question of school desegregation. Judge Bell advised the Governor on how to keep the schools open and remain within the law. He was instrumental in establishing the Sibley Commission, led by a distinguished citizen of Atlanta, which met with black and white groups throughout the State and allowed the views of the people to be heard. The schools remained open. Bell testified that he was a moderating influence in this time and that he was proud of his accomplishment. This view was supported by Warren Cochrane, a black leader in Atlanta, who pointed out that Judge Bell had continually met with black groups, the first time such a thing had happened. He felt that Judge Bell, by his actions, furthered the cause of education, helped prevent violence, and began the movement to compliance with the law.

I feel that it is impossible to judge these actions without reference to the political tenor of the times. The testimony was persuasive on that issue. I feel that in a situation of great social tension, Judge Bell was a moderating influence on those who might have violated the law, and that he was attempting to change the prevailing attitude in Georgia because he was committed to the observance of the law.

Questions were raised during the hearing concerning Judge Bell's majority opinion for a three-judge court which upheld the right of the Georgia Legislature to deny Julian Bond his seat in that body. The question in the case was the power of the legislature to pass on the qualifications of its own members. Citing precedents involving the U.S. Senate, the court upheld the legislature.

The Supreme Court reversed the decision on the basis of balancing legislative power against first amendment rights. First amendment rights prevailed. Judge Bell testified that since that time many decisions have strengthened the first amendment. He stated that it was quite obvious he had been wrong and that the Supreme Court was correct.

Finally, Justin A. Stanley, president, American Bar Association, testified that Judge Bell was progressive and open-minded, a person of outstanding capacity, of unquestioned integrity, and of complete fairness.

Leon Jaworski of Houston, Tex., former president of the American Bar Association and practicing attorney in the U.S. Court of Appeals for the Fifth Circuit, testified that he had never known Judge Bell in the performance of his duties to follow any course other than the rule of law. He said that he believes Judge Bell is fair-minded, possesses no racial prejudices and has the personal traits necessary to avoid the potential for political abuses in the Department of Justice. I agree with these views.

At several points during his testimony Judge Bell addressed the need for an independent Justice Department wholly divorced from political activity. Judge Bell related that the Department would function as an independent legal counselor rather than as an organization prepared automatically to do the Executive's bidding. He also said that he would not participate in the 1978 or 1980 elections, and that he would be prepared to resign rather than carry out a Presidential directive that he considered improper.

I believe that Judge Bell will pursue an independent course of action as Attorney General and would not yield to pressure from the White House.

One witness suggested that Judge Bell's membership in Atlanta private clubs raised a question of impropriety or appearance of impropriety concerning his participation in the Biscayne Bay case, which involved a private club. Judge Bell pointed out: First, that the Biscayne Bay case involved only the question of whether the Biscayne Bay club lost its private status by building a boat dock in public waters, whereas none of the Atlanta clubs used public facilities; and second, that all but one or two judges of his court were members of private clubs, and therefore would have been barred if disqualification had been required.

I feel that it is important to note that Judge Bell remained in the hearing room throughout the proceedings with the exception of the last day, which had been unscheduled. He thus heard the testimony and the doubts and fears expressed by some witnesses. In this light his promise to conduct an open Justice Department and his assurance that he would be ready and willing to listen to all groups are reinforced. I have seen him listen and I believe he will continue to do so.

I recommend that the Senate confirm Griffin Bell as Attorney General of the United States.

Mr. BELLMON. Mr. President, I have studied the proceedings relating to the appointment and confirmation of Judge Griffin Bell as Attorney General with great interest and concern. The office of Attorney General is clearly one of the most important positions in Government. It is greatly in the national interest to have this position filled by a person of the highest ability and integrity. In addition, it is essential that American citizens look upon our Attorney General with confidence and that they place in him the highest possible degree of public trust.

So far as I can find, everything in Mr. Bell's background indicates that he possesses the intelligence, the legal training, and the experience required for the office of Attorney General. However, the fact that in the past he has been closely identified with efforts to frustrate and immobilize progress toward racial equality causes me great concern.

As a citizen and former Governor of a Southern State, I fully appreciate the pressures which Mr. Bell must have felt during the difficult days of the 1960's. Those same pressures were felt by countless public officials and community leaders in every part of the South. However, there are scores of cases where government officials, as well as community leaders, took courageous positions in support of the laws. The evasive course chosen by Judge Bell is hardly a recommendation to the highest law enforcement office in the land.

As Attorney General, Mr. Bell would face an impossible situation. Should he strive for evenhanded administration of the civil rights laws, his past record would subject him to severe criticism by the more activist civil rights elements in our society. This would create excessive controversy and slow down the desired progress toward eliminating the remaining vestiges of segregation and inequality.

An equal danger is that, in order to escape criticism, Judge Bell might choose to overcompensate for his past record of passive resistance. To prove his new found commitment toward ending inequality, he might become far more vigorous as Attorney General than prudence dictates. Neither course of action is in the national interest. The Nation needs an Attorney General who will be guided by law and not by the device to prove or disapprove his critic's contentions. The Nation needs an Attorney General who has no reason to compensate for past indiscretions with the law.

It is for these reasons and not because of any questions as to Judge Bell's professional qualifications that I cast my vote against his confirmation.

Mr. HATFIELD. Mr. President, in reviewing Cabinet appointments, whether or not they are before a Senate committee where I serve, I try to follow a certain philosophy. Basically, I think any President is entitled to have as Cabinet members the men and women he chooses to assist him in carrying out his policies. It is the President, and not the Cabinet member, whose policies are implemented, discussed, or criticized. The President deserves his team. Thus, over the years, I have supported Cabinet nominees several times with whom I have disagreed philosophically. Although they would not have been my choices for the positions involved, they were the President's choices. As a result, I examine the integrity and background—as well as the basic competence — of the nominees closely. I review the person's record in detail when their nomination comes before a committee on which I serve. I have followed this same approach with the current Carter nominations, as I have over the past 10 years.

I would draw the distinction again between what I see to be the role of the Senate on Supreme Court appointments, as contrasted with Cabinet appointments. With men and women nominees to the Supreme Court, we are discussing a lifetime appointment to a coequal branch of our Government. That certainly is not the same as a Cabinet appointment. With such Supreme Court nominations, the Senate has a particular responsibility to the country that differs from that concerning Cabinet officers.

Even with this philosophical attitude toward all Cabinet nominations, I recognize a special circumstance surrounds nominations for Attorney General. They are more than just another Cabinet member, for they represent the chief law enforcement official in the country. As such, they occupy a unique position.

It is not the Senate alone, however, which must recognize this. I believe President Carter considered carefully this unique aspect of the role of the Attorney General. Again, if as Attorney General, Griffin Bell acts or does not act in a particular manner, it is the President who must accept the consequences. Griffin Bell would not have been my choice as Attorney General, but he was the President's choice.

The public debate surrounding this nomination will help insure that Mr. Bell acts as Attorney General in a manner befitting his office.

In closing, I state that I will vote for confirmation of Griffin Bell, although it is with some reservations. My reservations I hope will be erased by his record of service in this post. If he does not live up to the hopes of his supporters, including the President, I trust he will not continue.

Mr. PELL. Mr. President, today I cast my vote for the confirmation of Griffin Bell of Georgia, to be Attorney General of the United States.

The opposition to Judge Bell centers around several issues: His role as legal counsel to Governor Vandiver of Georgia in the late 1950's; his opinions on civil rights and civil liberties delivered while a member of the Fifth Circuit Court of Appeals; his cosigning of a letter of support for Judge G. Harrold Carswell to be an Associate Justice of the U.S. Supreme Court; alleged instances of conflicts of interest while on the bench; his testimony on removal of Clarence Kelley as FBI Director; and allegations of "cronyism" with President Carter and associates. He has been questioned extensively on these and other issues by the Senate Judiciary Committee.

The accumulation of evidence presented 6 days of hearings is most significant. I would briefly like to discuss the issues raised as I see them and present the reasons why I believe Judge Bell is qualified to be Attorney General.

Although we do not want to make too much of ancient history, I believe a person's past conduct is very reflective on what he might do in the future. From the testimony presented it seems clear to me that Judge Bell was serving in the role of a lawyer in advising Governor Vandiver of ways to keep the Georgia public schools open. As he explained to the committee, his job was to assist the Governor in complying with the fast-changing law of that time. The fact that the Georgia Legislature enacted some laws that, with hindsight, were obstructive to the cause of desegregation, cannot be directly attributable to Judge Bell. As Eugene Patterson stated in the editorial quoted from at length by various witnesses:

> But the pace of the march was less important than the direction few leaders took in that time when too many politicians and judges were clinging to the safe popularity of the past. To go back from the present and glean isolated errors from the past of such men is to lose sight of their true measure the sustained thrust of their courage and commitment in a time when it took courage to have courage. Bell qualified.

The proof of the worth of Judge Bell's actions is that the Georgia public schools remained open. Today, Georgia schools are integrated as much or more than anywhere in the Nation. That is a record of accomplishment, and Judge Bell can take part of the credit for getting his State and its people through those early, tumultuous days. I believe Senator TALMADGE's statement on this point is very pertinent:

> He acted as a moderating force at a time when moderation was sorely needed.

Although some groups have testified against Judge Bell on the basis of his civil rights opinions while he served on the fifth circuit, by no means is that view unanimous. Other blacks have come forth and spoken on behalf of Judge Bell for his efforts toward progress in civil rights. Nor are his civil liberties opinions slanted in any one direction. In the American Civil Liberties Union's excellent analysis of Judge Bell's fifth circuit opinions, there are numerous examples of Judge Bell's moderation. He is accurately portrayed as one of the centrists on the fifth circuit during some very turbulent years. It seems to me that, rather than being a disqualification for the office of Attorney General, a nonideological identification is an asset, so long as one is committed, as Judge Bell is, to strong enforcement of the law and protection of indiivdual rights.

On the Carswell matter, I believe Judge Bell explained very well his participation in cosigning a letter on behalf of his fellow fifth circuit judge. I opposed the nomination of Judge Carswell, but I believe this was a proper thing for him to do.

Also, I believe that the controversy over alleged judicial conflicts of interest while Judge Bell served on the fifth circuit has been quelled by his testimony. We now view such matters in a more glaring light than before, and I believe we have all learned from past experiences. Certainly President Carter's disclosure and conflict-of-interest requirements for himself and the members of his administration have set a high standard in this regard. In his testimony, Judge Bell set out quite clearly the guidelines he will institute as Attorney General to prevent conflicts of interest personally and for his staff. I commend him for these actions.

I know there are some who are upset by Judge Bell's desire to relieve FBI Director Kelley of his responsibilities. Although I believe Mr. Kelley has done a commendable job of trying to restore the Bureau's credibility and respect after its recent turbulent past, we must nevertheless remember that the decision on Mr. Kelley's part to retire was entirely his, and the President has the power to appoint someone he thinks is best qualified for the job, subject to Senate confirmation. I think that Judge Bell's assurances about the type of person he wants to run the FBI are encouraging.

Another charge against Judge Bell has been "cronyism." There is really no way to guard against this possibility given present law on the subject. Judge Bell promised to keep all transactions between the Department of Justice and the White House recorded and above board. This is one way of guarding against Oval Office abuse. The ultimate safeguard, however, is the integrity of the person occupying the office of Attorney General. To my mind, Judge Bell possesses the requisite character and integrity to keep the Nation's law enforcement apparatus free from political interference.

I do have very real concerns about some areas of Judge Bell's record in the most important and sensitive field of civil rights. We have come too far in this Nation in assuring equal opportunity for all citizens to fall back now. I am confident Judge Bell is sensitive to this fundamental goal of our society. I know the President is.

The proof of Judge Bell's philosophy can be found in numerous passages in the record of his confirmation hearings. I find these statements heartening. He considers the Department of Justice as the people's law department, an open place where the people and groups would be welcome. In response to a question about where his interests would lie, given a choice between the people and the President, he stated:

> I would be with the people, because I believe in the Bill of Rights. I think the essence of our constitutional system is to protect the individual.

Many of us who struggled with a President of our own party over Vietnam can appreciate the difficulty of making such an assertion, and carrying it out.

In another instance, responding to a question on individual rights versus Government intrusion, Judge Bell stated:

> I would be on the side of those who would be trying to maintain our rights of privacy and all of our rights under the Bill of Rights.

I was glad to read his ideas on professionalizing and depoliticizing the Department of Justice; on allowing the National Bar Association, composed primarily of black lawyers, to participate along with the American Bar Association, in the screening process for Federal judges; on having the screening commissions he proposes for circuit appointments to be composed of lawyers and nonlawyers alike.

Another area of great importance in these days of pending Government reorganization and efficiencies is the applicant's qualifications as an administrator. Judge Bell's record is undisputed on this point. His experience and understanding of this important area show he will be an excellent administrator.

We also must keep in mind that we are voting on his confirmation as Attorney General, not a judicial position. He has pledged to serve all the people, including the poor, the minorities, those outside of the system who rarely have a voice in governmental matters. I believe him. Although he may not have been another President's choice for this high office, he is President Carter's, and I believe that, given the high standards the Senate has set in the confirmation process, Judge Bell has passed the tests very well. In short, Mr. President, Judge Griffin Bell has testified exhaustively on all topics on which concern has been expressed. He has responded fully, patiently, and I think, most adequately. I believe he should be confirmed.

STRONG SUPPORT FOR GRIFFIN BELL

Mr. TALMADGE. Mr. President, Georgia State Representative Billy McKinney, one of our State's several black members of the general assembly, testified Tuesday, January 11, before the Senate Judiciary Committee in strong support of former Federal Judge Griffin Bell for Attorney General of the United States.

In my own statement before the committee, and in that of Senator NUNN, and others testifying in behalf of Judge Bell, he was described as a moderating force in Georgia and the South during some of our Nation's most difficult years. Representative McKinney was there and he recounts in his committee statement how he worked with Judge Bell in working out the model Atlanta compromise plan. He told the committee that "Griffin Bell's level-headed, moderate voice working behind the scenes has played a major role" in Atlanta's success story.

I bring Representative McKinney's very forceful and very telling statement to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

STATEMENT OF REPRESENTATIVE BILLY MCKINNEY

During the latter part of 1972 the City of Atlanta was faced with a crisis that nobody knew how to remedy. The Courts had in its bosom the Atlanta School suit which had been pending for a long time. At the direction of the court, a Florida college professor named Stollee had devised a plan calling for the mass busing of 35,000 students and the closing of West Fulton, Douglass and Price High Schools. Throughout the desegre-

gation era blacks had witnessed the closing of black schools with the loss of principals' and teachers' jobs and black children bussed to white schools in the quest for quality education. Although blacks resented this, they did not know how to resist it because it was national policy and ordered by the courts.

Black parents called me to lead the fight against the closing of the high schools and the busing of their children. A main concern was the loss of the school basketball, football and track teams and the school tradition. As momentum gained I called press conferences in all sections of the city and held mass rallies at all of the schools. Although we wanted to preserve our schools, we wanted to obey the law, yet avoid the violence and chaos that had been experienced in other parts of the country.

Judge Griffin Bell, who had no official status in the suit, but who had strong influence at that time, put together a bi-racial group of black and white leaders to hammer out a compromise. This group was sanctioned by the court and had official powers. The national NAACP attempted to take charge of the suit. Black groups from all over America converged on the city and filed briefs to enter the suit. The local branch resisted the national and was expelled. All officers were thrown out of office.

Atlantans reached what is known as the Compromise Plan. It called for minimum busing, volunteer transfers, and black control of the school system. It called for a black Superintendent, equal black and white assistants. It called for blacks to deliver quality education to a predominantly black school system. Today we have a black President of the School Board, five blacks on a nine member board, and above all, peace and tranquility.

The Atlanta story must be told to all of America. It could be a pattern for other localities. Atlanta is the mecca of the South and is not dying like other cities. We are attracting people in droves. It is the usual success story.

Griffin Bell's level headed, moderate voice working behind the scenes has played a major role in this story. He is supported by all of black Atlanta's leadership. Any objection to his nomination should come from the South. We are the people most affected by his decisions. One thing we proved in Atlanta is that national policy cannot be imposed on us, when black and white citizens work together for a common goal and when the federal judge is not a wild eyed liberal whose decisions do not reflect the conscience of the community.

Griffin Bell should be commended and his nomination confirmed.

RESIGNATION OF ATTORNEY GENERAL EDWARD H. LEVI

Mr. KENNEDY. Mr. President, we would be remiss to continue the debate over the appointment of a new Attorney General without first commenting on the recent retirement of Edward H. Levi as Attorney General of the United States. Attorney General Levi entered office under the most difficult and trying circumstances, yet he leaves a Department once again characterized by integrity, intellectual honesty, and commitment to equal justice. He has served his country with great distinction and will be sorely missed.

I was most fortunate to work with Attorney General Levi on various matters—the Argentine parole program, release of the Selective Service violators lists, handgun control—and found him to be most cooperative and understanding. I came to know him best when we worked hand-in-hand to introduce the Foreign Intelligence Surveillance Act of 1976. This legislation, which would for the first time place meaningful statutory restrictions on the power of the Executive to engage in electronic surveillance for purposes of obtaining foreign intelligence information, was introduced over the strenuous objections of various members of the intelligence community. That the bill received bipartisan endorsement and strong backing from the administration was due in no small measure to the dedicated efforts of the Attorney General.

Two qualities of Attorney General Levi stand out above the rest—a rigorous intellectual honesty and an unrelenting commitment to the rule of law. I did not always agree with the Attorney General, but on every issue which concerned us it was the merits of the argument that mattered. This is not surprising; for a distinguished law professor and president of a great university it could hardly be otherwise. Coming to Washington changed the man's role; but it did not change the man.

I wish Attorney General Levi good health and happiness in all future endeavors. I am sure that, whatever the tasks he assumes in the years ahead, he will bring to them those same characteristics of integrity and dedication which have highlighted his years in Government.

More than 60 years ago Louis D. Brandeis said:

> If we desire respect for the law we must first make the law respectable.

Edward H. Levi has restored respect to the office of the Attorney General, the chief law enforcement officer of our land. And that is a fitting legacy.

Mr. BROOKE. Mr. President, I regret that the Senate did not vote to recommit the nomination of Judge Griffin Bell. I sincerely believe that the Senate acted precipitously in this matter. Sufficient questions and contradictions, coupled with a lack of corroboration by witnesses and concrete evidence, and a record replete with evasion mandated a fuller hearing by the committee and a more thorough analysis of the record by my colleagues. I do not believe that partisan considerations should force us to abrogate our Constitution and senatorial responsibility in this regard, and I am disappointed that our deliberations assumed a partisan cast.

Judge Bell has now been confirmed as Attorney General. It is a difficult job, requiring great sensitivity, courage, discretion, and integrity. I am certain that we all wish him well, regardless of our position on his confirmation.

But I am equally confident that Judge Bell has promises to keep. He has pledged the Justice Department's vigorous advocacy for civil rights, for a judiciary and an FBI with integrity, vigor and authority. He has promised that he will avoid politicization of his high and important office. He has promised to avoid conflicts of interest, and to enforce this precept throughout the Department of Justice.

These glowing promises are part of the record. You can be sure that this part of the record will be vigilantly and consistently monitored by all of us who believe that the Attorney General, as the highest legal officer in the land, must restore the confidence of the American people in our legal institutions, must be above reproach and must be dedicated to many of the principles which Judge Bell himself now espouses.

Mr. GRIFFIN. Mr. President, I have carefully studied the committee's report including objections raised in the separate views filed by several of our colleagues.

There are matters in the record that disturb me, including the failure of Judge Bell to recuse himself from participation in the decision of *Calhoun* v. *Latimer*.

However, on the whole, I am impressed by the record and performance of Mr. Bell as a judge. For example, in a voting rights case, entitled *Toney* v. *White*, 488 F2 310 (1973), Judge Bell wrote an opinion which is worthy of attention by those who seek to evaluate his attitudes and judgment in the civil rights area.

The opinion held that where there was preelection activity having the effect of disqualifying a disproportionate number of black citizens, even though such activity was unintentional, it was a violation of the Voting Rights Act (42 U.S.C. 1973 et seq.)

The remedy applied in that case was unusual and extreme: an election for mayor, alderman, and members of the Democratic Executive Committee was voided, and a new election was ordered.

In my view, the opinion in this case tends to reflect a judge who is fully aware of the fundamental rights of each citizen, and who is willing to insist upon the protection of those rights. In the case Judge Bell pointed out:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. p. 314.

While the Toney decision is only one example, I find it quite typical of the record of Griffin Bell as a judge. If he can be criticized because of earlier activities as a lawyer, his subsequent record as a judge has generally demonstrated an admirable sensitivity to the rights of black citizens.

I ask unanimous consent that the text of the opinion of the Court of Appeals for the Fifth Circuit in the Toney case, written by Judge Bell, be printed in the RECORD.

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

[No. 72-3307]

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, DECEMBER 3, 1973

Albert C. Toney et al., Plaintiffs-Appellees, v. N. A. White et al., Defendants-Appellants.

United States of America, Plaintiff-Appellee, v. Myrtis Bishop et al., Defendants-Appellants.

Consolidated actions by private plaintiffs under Voting Rights Act for declaratory and injunctive relief. The United States District Court for the Western District of Louisiana, Benjamin C. Dawkins, Jr., Chief Judge, 348 F. Supp. 188, set aside the election and a

panel of the Court of Appeals, 476 F.2d 203, affirmed in part and reversed in part. On rehearing en banc, the Court of Appeals, Bell, Circuit Judge, held that where action of registrar of voters in purging the voter rules for failure to vote and for failure to report changes of address had discriminatory effect against Negro voters and suit of private plaintiffs was filed promptly after the election as was the suit of the Justice Department, each suit was filed with diligence and there was no deliberate bypass of preelection judicial relief, and it was not error to set aside the primary election.

Modified and affirmed.

Coleman and Gee, Circuit Judges, concurred in the result and filed opinions.

Clark, Circuit Judge with whom Simpson, Circuit Judge, joined, filed dissenting opinion.

John T. Seale, Asst. Dist. Atty., Tallulah, La., for defendants-appellants.

George M. Strickler, Jr., Asst. Atty. Gen., New Orleans, La., for Toney and others.

J. Stanley Pottinger, Civil Rights Div., Dept. of Justice, David L. Norman, Asst. Atty. Gen., Civil Rights Div., Dept. of Justice, M. Karl Shurtliff, Gerald W. Jones, Attys., Civil Rights Div., Dept. of Justice, Washington, D.C., Donald E. Walter, U.S. Atty., Shreveport, La., for U.S.

Lloyd N. Cutler, David S. Tatel, Washington, D.C., Herman Wilson, Jackson, Miss., for amicus curiae—Lawyers Committee for Civil Rights, etc.

Before Brown, Chief Judge, and Wisdom, Gewin, Bell, Thornberry, Coleman, Goldberg, Ainsworth, Godbold, Dyer, Simpson, Morgan, Clark, Roney and Gee, Circuit Judges.

Bell, Circuit Judge:

This appeal arises out of suits filed to set aside the results of a Democratic primary election on the basis of discriminatory conduct against black voters by the Voter Registrar.[1] The primary was conducted on April 4, 1970 in Tallulah, Louisiana, for Mayor, Town Marshall, Members of the Board of Aldermen, and Members of the Democratic Executive Committee. The black candidate for the office of Town Marshall was successful, as was one of the black candidates for the three positions on the Democratic Executive Committee. All other races were won by whites with margins ranging from 24 to 140 votes.

The discrimination occurred within a thirty day period immediately prior to the election. On September 13, 1972, the district court enjoined defendants from engaging in further discriminatory practices, voided the primary election results, except as to the office of Town Marshall, and ordered that a new primary election be held with the voters limited to those persons eligible to vote in the 1970 primary. Toney v. White, W.D.La., 1972, 348 F.Supp. 188.

A panel of this court affirmed on March 19, 1973 as to the prospective injunctive relief but reversed that portion of the judgment which voided the election and ordered the primary races to be rerun. Toney v. White, 5 Cir., 1973, 476 F.2d 203. On June 1, 1973 the court, on motion of plaintiffs, determined to rehear the matter en banc. It was heard on October 17, 1973, and, after due consideration, we vacate that portion of the panel decision which reversed the district court. The result is that the district court judgment voiding the primary election as to certain races and ordering those primary races to be rerun is reinstated but with the modification, due to the passage of time, that the next regular primary election, which under the Louisiana statutes will be held in March 1974, be substituted for the special election ordered by the district court.

The panel decision rests on the two-pronged approach that (1) the discrimination in question was not "gross, spectacular [and] completely indefensible", and (2) that it did not appear that no effective judicial remedy was available to plaintiffs prior to the holding of the election, 476 F.2d at 209, citing Bell v. Southwell, 5 Cir., 1967, 376 F.2d 659, 664.

Reference is made to the prior opinions, 348 F.Supp. 188, and 476 F.2d 203, for a full statement of the facts. It is sufficient for our purposes to set out the operative facts. The facial discrimination in issue consisted of the Registrar purging the voter rolls in a manner directed at black voters but not at white voters. This discrimination was compounded by the use of purging procedures which were not consistent with Louisiana law from the standpoint of notice and opportunity of the registrant to be reinstated. In addition, the list of those voting by absentee ballot, mainly white voters, was not purged as required by Louisiana Law. In connection with this later fact, the district court made the well supported finding that the results of the election could well have depended on the absentee vote and thus on the failure to purge this list.

The pertinent findings and conclusions of the district court are as follows:

(Findings of Fact)

"2. We find that the record does not reveal that the acts of commission and omission of the Registrar were conducted for the specific purpose of diminishing the number and efficacy of black votes and inflating the number of white votes."

(Conclusions of Law)

"8. Notwithstanding the fact that the record does not reveal any calculated racially motivated purpose for the acts and omissions of the Registrar, the acts and practices of this defendant constitute an unlawful deprivation of the right of qualified Negro voters to vote regardless of race or color as provided by the Fifteenth Amendment and the Voting Rights Act of 1965, especially in light of the State Attorney General's opinion as to the timing of these acts and practices."

"10. Where, as here, there has been a history of racial discrimination in the voting process, and a public official applies or neglects to apply the laws pertaining to the purging of voter rolls contrary to the spirit of Louisiana law, the result of which is that a substantial number of Negroes are purged and few whites are purged, when by proper application of the law fewer Negroes would have been purged and more whites would have been purged, we conclude here that Negroes have been discriminated against in the administration of the voting process in violation of the Fifteenth Amendment and of Sections 2 and 11(a) of the Voting Rights Act of 1965 and 42 U.S.C. § 1971(a)."

It was the view of the district court that the remedy of voiding an election was appropriate regardless of the good faith intention of the election officials once discrimination in fact was proven in the administration of the election process. The election was thereupon voided except as to the office of Town Marshall.

There are three approaches which would lead to affirming the district court's action in voiding the election. One would be to approve the view of the court that a new election was required, *ipso facto*, regardless of good faith on the part of the Voter Registrar, once the proof established, as it did, that the voting process was infected with racial discrimination. We pretermit examining this broad rule which does not appear to have a nexus to the substantiality of the discrimination or its effect on the results of the election.

Another would be to examine the finding and conclusion of the district court that the acts of commission and omission of the Voter Registrar were not racially motivated.[2] Finding of Fact 22 and Conclusion of Law 8, *supra*. Such an examination would be for the purpose of determining the validity of the first premise of the panel decision, that there was no gross discrimination. We also pretermit this approach, given our view, hereinafter set out, that the second premise of the panel decision, i.e., that plaintiffs were not diligent in seeking available pre-election judicial relief, is without adequate foundation. We thus proceed to an examination of this premise of the panel decision.

We reach our decision in the frame of reference of the decided cases involving the question whether to void an election in the face of a finding of racial discrimination in the voting and election process. The first category of cases is represented by Hamer v. Campbell, 5 Cir., 1966, 358 F.2d 215, where pre-election injunctive relief was sought and post-election relief in the form of voiding the election was ordered on the basis that pre-election relief should have been granted. The court said:

"This action does not mean that we necessarily would set aside every election in which a substantial number of citizens have been denied the right to vote. This is not a case where an election is challenged for the first time after it is held. Here appellants attempted to enjoin the election, and failing where they should have succeeded, they were diligent in seeking to have this failure rectified by our reversal prior to the election." 358 F.2d at 22.

A new election was also ordered in Hadnott v. Amos, 1969, 394 U.S. 358, 89 S.Ct. 1101, 22 L.Ed.2d 336, where pre-election relief was sought and the Supreme Court reversed the decision of the district court which had denied pre-election relief. Hadnott v. Amos, M.D.Ala., 1968, 295 F.Supp. 1003.

Hadnott v. Amos involved the right of black citizens to be candidates. *Hamer* involved the right of black citizens to become voters and to be candidates. The facts demonstate in each case that the discrimination could have affected the results of the elections. There is no finding in either case of an intent to discriminate or of gross or spectacular discrimination. They simply turn on affording post-election relief in the form of a new election where error was found in the denial of pre-election relief sought.

Bell v. Southwell, 5 Cir., 1967, 376 F.2d 659, is a case of a wholly different type. There the racial discrimination occurred on election day and in the method of holding the election. There was no opportunity to seek pre-election relief, and it was likely that the result of the election would have been the same notwithstanding the discrimination. The court fashioned a new rule in these circumstances: A new election if the racial discrimination was gross, spectacular and wholly indefensible. 376 F.2d at 664.

The holding of Bell v. Southwell is to be compared with Hamer v. Ely, 5 Cir., 1969, 410 F. 2d 152, where we affirmed the refusal of the district court to set aside an election. We agreed that the discrimination did not reach the level of those serious violations of voting rights where a state election should be voided, citing Bell v. Southwell, 410 F. 2d at 156.

The principle of requiring diligence is seen in McGill v. Ryals, M.D. Ala., 1966, 253 F. Supp. 374, appeal dism'd, 385 U.S. 19, 87 S. Ct. 212, 17 L. Ed. 2d 17, in which a new election was denied where no particular election was attacked, where the complaints of racial discrimination were of long standing and where judicial relief had not been sought prior to the election.

The requirement of diligence was also in issue in Smith v. Paris, M.D. Ala., 1966, 257 F. Supp. 901, where the district court found racial discrimination in an election but refused to set aside the election because plaintiffs had known of the discrimination for six or seven weeks. They had waited until the election was in progress before seeking judi-

Footnotes at end of article.

cial relief. Hamer v. Campbell, *supra*, was cited as the basis for requiring diligence. On appeal, however, this court modified the district court order to restrict the terms of office involved to two rather than four years by requiring new elections at the next regular elections which were to be held in 1968. Smith v. Paris, 5 Cir., 1967, 386 F. 2d 979. The 1968 elections were thereafter set aside on a petition of the United States filed five days before the election. The district court found that the United States was diligent when the question was considered in light of the defendant's failure to have corrected the system after the district court's 1966 finding of unconstitutionality. United States v. Democratic Executive Committee, M.D. Ala., 1968, 288 F. Supp. 943.

The instant case does not fit the mold of any one of these cases. It does not fit Bell v. Southwell because of the findings of the district court of no racial motive, a finding which we, as stated, need not consider.[3]

It does not fit within the teaching of Hadnott v. Amos, and Hamer v. Campbell because of the missing element of failure to seek pre-election judicial relief. It clearly contains the other element of those cases: racial discrimination which might have affected the election results.

[1] This leaves then the question of what diligence in seeking pre-election judicial relief was required of plaintiffs under the circumstances. Upon reflection, we conclude that the panel requirement unduly freighted the Fifteenth Amendment right to equal treatment in the election process. As the Supreme Court said in Hadnott v. Amos in the Fifteenth Amendment context of disparate treatment on the grounds of race: "Unequal application of the same law to different racial groups has an especially invidious connotation." 394 U.S. at 364, 89 S.Ct. at 1104, 22 L.Ed.2d at 341.

[2] The right to vote on an equal basis with other citizens is a fundamental right in a free society; indeed, in any viable form of representative government. It is preservative of all governmental rights. Yick Wo v. Hopkins, 1886, 118 U.S. 356, 370, S.Ct. 1064, 30 L.Ed. 220, 226. "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." Harman v. Forssenius, 1965, 380 U.S. 528, 537, 85 S.Ct. 1177, 1183, 14 L.Ed.2d 50, 57 (poll tax).

[3] We agree with the panel that the law imposes the duty on parties having grievances based on discriminating practices to bring the grievances forward for pre-election adjudication. We also agree that the failure to require prompt pre-election action in such circumstances as a prerequisite to post-election relief may permit, if not encourage, parties who could raise a claim "to lay by and gamble upon receiving a favorable decision of the electorate" and then, upon losing, seek to undo the ballot results in a court action. 476 F.2d at 209.

This reasoning is sound in the abstract but it must be applied to the facts and circumstances obtaining in the particular case. Here we have a gray area where the discrimination, even if known before the election, was discovered at a late hour.

The district court made no finding on the availability of pre-election judicial relief. The failure of plaintiffs to seek such relief was not asserted as a defense—it was raised for the first time in this court. Ordinarily we would remand for findings of fact but the record here makes it plain that there is no merit in this defense and remand is not warranted. The burden to establish such a defense would be on the Voter Registrar and we turn to the undisputed facts to test the merit of this belated defense.

Footnotes at end of article.

[4] It was the Registrar who was charged by law, state and federal, with administering the voted registration process. It was the Registrar's duty to discharge her official duties for the benefit of the electorate and in a lawful manner. Any error of commission or omission on the part of the Registrar giving rise to racial discrimination would result in the loss of constitutional rights to the black voters wholly through the acts of fault of the Registrar. To excuse such conduct on the part of a public official would tend to exalt misfeasance or nonfeasance. On the other hand, citizens having grievances may not lay by to see how the election will turn out before complaining. Given these alternatives, we hold that there is a heavy burden on the Voter Registrar to show that there was a deliberate bypass of pre-election judicial relief.

[5] The facts here make it appear as a matter of law that there was no such bypass. The racially discriminatory purge, for failure to vote and for failure to report changes of address, began only thirty days before the election. While the notice procedures were inadequate, they nonetheless extended for several days the time required to complete the process. Further, the record does not show that the other discrimination, the failure to purge the absentee voter roll, was known at all to plaintiffs prior to the election. Indeed, the position of the Voter Registrar was that she did not know that she was required by law to purge this list.

We must have in mind that it would have been necessary for the private plaintiffs to obtain counsel or the assistance of the Department of Justice and, in either event, it would have been necessary for counsel to investigate the facts before filing suit. Here an investigation would have entailed a study of all records having to do with purging, or the absence of purging, for failure to vote or to report changes in address. An investigation would have required a study of absentee voting records for recent elections to determine whether the rolls were purged, under Louisiana law, of those who had voted only by absentee ballot and had failed to show good cause for such continued absentee voting. La.R.S. 18: § 1080. It would have been exceedingly difficult for counsel to have had sufficient facts in hand prior to the election to warrant signature of counsel certifying, under Rule 11, F.R.Civ.P., that there was good ground to support claims made in the complaint.

The suit of private plaintiffs was filed promptly after the election, as was the suit of the Department of Justice. Given the facts, we think that each suit was filed with diligence.

[6] We must take care not to hamstring the administration of the Voting Rights Act or to deny rights under the Fifteenth Amendment on a standard less stringent than that of requiring public officials in charge of voting registration and the conduct of elections to show by clear and convincing proof that there was in fact a deliberate bypass of a pre-election judicial remedy. The record precludes such a showing on the part of the Voter Registrar in this case. This leaves a case of discrimination based on race and of such a substantial nature as possibly to have affected the outcome of the election. Thus the district court did not err in setting aside the primary election.

[7] We are advised that the next regular election in Tallulah begins with a primary on March 23, 1974. There has been a lapse of more than one year since the district court entered its order, and only five months remain before the next primary election. In these circumstances, given both the expense of holding a special election and the short terms of office which would remain between the special election and the normal expiration of the present terms of office in July, 1974, we conclude that it is appropriate to modify the order of the district court to permit the 1974 regular elections, primary and otherwise, to be substituted for the special elections required under that order.[4]

As modified, the judgment of the district court is

Affirmed.

Coleman, Circuit Judge (concurring in the result):

Even for an election controversy, this is an unusual case. The District Court held the municipal primary election in Tallulah, Louisiana, to have been a lawful one as to the nominee for Town Marshal but void as to all nominees for other offices. This on its face is a *non sequitur*. I assume the *en banc* Court did not mean to affirm that aspect of the judgment below.

Leaving that aside, I do not see that the *en banc* opinion does any harm to basic legal principles. Most assuredly it reaches a *harmless result*, so I concur in the result.

The opinion scrupulously avoids any appearance of denigrating the unassailable principle that pre-election grievances allegedly fatal to the validity of an entire election must promptly be asserted if they are to furnish the catalyst by which that election is to be set aside. Any other rule would make a shambles of the highly esteemed right of franchise and would consequently reduce the lofty language of Yick Wo v. Hopkins to a cynicism. So, I heartly agree with the declaration of the *en banc* opinion that "citizens having grievances may not lay by to see how the election will turn out before complaining". At least, it is fortunate that this principle is not to be sacrificed upon the altar of political dissensions existing in one small city in a six state Circuit.

It appears that the sole precedential impact of the decision is to be found in its elaboration upon where the burden of proof lies in cases involving a "lay by". I doubt that the record appropriately raises this question for our review. If it does, then I would hold that a "lay by" clearly appears from the evidence. It was an undisputable fact that the Registrar pursued a purge not permitted by Louisiana law. Notice appeared in the public press. No more than minimal diligence could have been required to obtain an order in either the state or the federal courts nullifying a purge which was per se illegal. It is equally clear that the objectors waited until they could see how the election came out. Losing by a very narrow margin, they then rushed, as usual, to the federal courthouse. Such maneuvers ought to be discouraged.

In any event, the en banc opinion concludes with the only sensible solution reasonably available at the eleventh hour and fifty-ninth minute—a solution which inevitably would have occurred by operation of law if this case had never been docketed.

Therefore, I concur in the result.

Gee, Circuit Judge (concurring in the result):

I concur in the result reached by the Court but would go by another way. To me, the record presents overwhelming evidence of a selective application of state law, done out of time and when relief could not be had, to deprive sufficient Negro voters of their franchises to have affected the election results. I find this gross, spectacular and completely indefensible and would proceed upon that established ground.[5] I also agree that, the next regular election impending so nearly, a special election should not now be called in this troubled parish to fill terms which could not exceed a few months.

The majority opinion is cogent and persuasive, yet it seems to me necessarily to rest upon reasoning that, though no intent to discriminate existed, and although the state laws applied are color-blind and valid, yet where their application produces an unequal disenfranchisement between the races, the Constitution is offended. It is true, as the

opinion notes, that the purge of voter lists was carried out at an illegal time, but I do not read this as significant to the rationale of the majority opinion.

In such a context as this, we are on sound footing when we admit extreme statistics as evidence of intent to discriminate. But where, as here, we leave undisturbed a specific finding of want of discriminatory intent and proceed on the effect *alone* of what was done, I fear we are planting dragon's teeth. For the most punctiliously even-handed and color-blind culling of voter lists may—indeed very nearly must—have a disproportionate effect on one segment or another of the electorate. I can find no footing on this logical precipice except at the top or at the bottom; either a discriminatory intent was present or it was not. If it was not, as the majority says is the case here, I am unable to grasp the constitutional offense. It is well to say, and noble, too, that thoughtlessness can be as disastrous to private rights as willful schemes. But the Constitution does not adopt all noble thoughts, and I am not persuaded that it has adopted the concept that unintentional "discrimination" is offensive. Discrimination—in the sense of disproportionate effect—there will be. What we seek is that, when it occurs, it will be just that: unintentional.

Clark, Circuit Judge, with whom Simpson, Circuit Judge, joins, dissenting:

The en banc opinion "voids" this election under a novel and, I submit, unsound rule. The court holds that in a post-election suit involving *unintentional* pre-ballot activity which has a disappropriate racial effect,[4] the election may be set aside unless the defendant Voter Registrar meets "a heavy burden" of showing that plaintiff knowingly, deliberately by-passed pre-election judicial relief. I continue to opt for the more restrictive rule applied by the panel—where a party challenges the pre-election activity of registration personnel, the plaintiff must show that such practices were not known to him, or discoverable with reasonable diligence, in time to have sought relief before the vote was taken.

In addition to placing the burden of proof on the party who possesses the facts, the panel rule reinforces the solemnity of the electoral process by cutting off ex post facto attacks from those chargeable with constructive knowledge of inadvertences or errors. As the concluding paragraph of Judge Gee's concurrence aptly demonstrates, application of the anomalous principle of "unintentional discrimination" is particularly paradoxical in election cases. Certainly its use to require elections to be rerun should be restricted to the smallest ambit practicable.

Furthermore, I cannot concur in the en banc opinion on the facts either. The record in this case simply will not support any other determination than that the plaintiffs well knew the essential facts which formed the basis for their belated complaint long enough before election was held to have permitted recourse to the courts without waiting to see if the returns from the polls were to plaintiffs' liking. The district court and panel opinions make it abundantly plain that everything done by the Registrar, Mrs. Bishop, was suspect by both white and black citizens of Tallulah because of the town's long history of racial controversy concerning voting. Her publication of the purge notice containing the names of 130 blacks and 11 whites was an immediately recognized red flag which plaintiffs sought to investigate. Indeed, the notice was improper on its face under Louisiana law. Her office was open for reinstatement on only four of the ten days required. Counsel for private plaintiffs advised this court on oral argument that when he attempted to view the registration books he was physically ejected from Mrs. Bishop's office. Taken together, these facts, which were known to the plaintiffs more than three weeks before the election, certainly formed a sufficient predicate for legal action. That still other improprieties regarding absentee balloting were later discovered is cumulative and in nowise detract from a determination that judicial assistance could have been invoked before the voting took place.

With regard that the court cannot discern the hazard to the practical functioning of the political process created by the sweeping rule it has adopted, I respectfully dissent.

FOOTNOTES

[1] The complaint of private plaintiffs was filed on May 4, 1970. The complaint of the United States was filed on June 8, 1970 pursuant to the Voting Rights Act of 1965. See 42 USCA, §§ 1971 (a) and (c), 1973 and 1973j(d).

[2] The panel decision points out that there was no appeal by plaintiffs from the finding of the district court that the record did not establish racial motivation on the part of the Voter Registrar.

[3] The Voter Registrar here was under a permanent and specific injunction not to discriminate against voters on the basis of race, which injunction was entered at the specific direction of this court. United States v. Ward, W.D.La., 1963, 222 F.Supp. 617, rev'd, 349 F.2d 795 (5 Cir. 1965) modified on reh., 352 F.2d 329 (5 Cir. 1965).

[4] In view of this modification we do not find it necessary to consider the action of the district court in bifurcating the primary election by holding it null and void as to all offices save that of Town Marshall, which was won by a black. Cf. Perkins v. Matthews, S.D.Miss., 1971. 336 F.Supp. 6. The inexplicability of this holding is that a black also won one of the other races.

[5] See the discussion of Hadnott v. Amos, 394 U.S. 358, 89 S.Ct. 1101, 22 L.Ed.2d 336 (1969) and United States v. The Democratic Executive Committee of Barbour County, 288 F. Supp. 943 (M.D.Ala.1968), in the panel opinion herein. 476 F.2d, at 210–211.

[6] All but one member of this court affirm the trial judge's determination that intentional or gross discrimination is not involved here; neither is this case concerned with incidents occurring during the voting process. We are well committed to the proposition that wrongs of both these sorts may be attacked after an election is held without regard to any bypass or election of remedies rule.

The PRESIDING OFFICER (Mr. MORGAN). Does the Senator from Maryland yield back his time?

Mr. MATHIAS. Mr. President, I yield back all time.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Griffin B. Bell, of Georgia, to be Attorney General of the United States? On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I simply wish to announce there will probably be other rollcall votes following this one.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota, (Mr. ABOUREZK), the Senator from Maine (Mr. HATHAWAY), and the Senator from New Hampshire (Mr. MCINTYRE), are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE) would vote "yea".

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BARTLETT) is absent due to illness.

The result was announced—yeas 75, nays 21, as follows:

[Rollcall Vote No. 10 Ex.]

YEAS—75

Allen	Goldwater	Moynihan
Anderson	Gravel	Muskie
Baker	Griffin	Nunn
Bayh	Hart	Pearson
Bentsen	Haskell	Pell
Biden	Hatch	Randolph
Bumpers	Hatfield	Ribicoff
Burdick	Helms	Roth
Byrd, Harry F., Jr.	Hollings	Sarbanes
Byrd, Robert C.	Huddleston	Sasser
Cannon	Humphrey	Schweiker
Chiles	Inouye	Scott
Church	Jackson	Sparkman
Clark	Johnston	Stafford
Cranston	Kennedy	Stennis
Curtis	Laxalt	Stevens
Danforth	Leahy	Stevenson
DeConcini	Long	Stone
Domenici	Magnuson	Talmadge
Durkin	Matsunaga	Thurmond
Eagleton	McClellan	Tower
Eastland	McClure	Williams
Ford	Melcher	Young
Garn	Metcalf	Zorinsky
Glenn	Metzenbaum	
	Morgan	

NAYS—21

Bellmon	Hayakawa	Packwood
Brooke	Heinz	Percy
Case	Javits	Proxmire
Chafee	Lugar	Riegle
Culver	Mathias	Schmitt
Dole	McGovern	Wallop
Hansen	Nelson	Weicker

NOT VOTING—4

Abourezk	Hathaway	McIntyre
Bartlett		

So the nomination was confirmed.

(Later in the day the following occurred:)

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination of Mr. Bell.

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

Mr. EASTLAND. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

THE RELEASE OF ABU DAOUD

Mr. CASE. Mr. President, I wonder whether the majority leader will tell what his intention is with respect to the resolution concerning the release of the prisoner by the French?

Mr. ROBERT C. BYRD. I have not had an opportunity to talk with the chair-

man of the Committee on Foreign Relations. At this point I will be unable to respond to the Senator.

Mr. CASE. With all deference and friendliness I call the attention of the majority leader to the fact that this was up a couple of times before and it was understood we were going to have another meeting on a certain date. We did not meet, and so forth. So will it be possible to get an answer to that before the Senator is finished?

Mr. ROBERT C. BYRD. Let me see if I can get an answer.

Mr. CASE. Very well.

PARDON OF VIETNAM ERA DRAFT EVADERS

The PRESIDING OFFICER. (Mr. MORGAN). The pending business is Senate Resolution 18, and the pending question is the motion to refer it to committee.

Mr. ROBERT C. BYRD. Mr. President, it is my intention to move to table the resolution that has been offered by the distinguished Senator from Alabama (Mr. ALLEN).

May I say, in prefacing my motion, I was opposed to the action taken by President Carter. I so informed him prior to his inauguration. Yet, he had the constitutional power to do what he did. He exercised his authority under the Constitution. There is nothing we can do about it now. Therefore, I would hope we could table the resolution and get on with the Senate's business.

If we fail to table the resolution, I am quite sure there will be another cloture motion entered. This will mean that we will have to vote again the day after tomorrow on such cloture motion.

I am sorry to have to do this but, in the interest of expediting the Senate's business, I feel it my duty to move to table the resolution. The President did what he said he would do during the campaign.

I am 100 percent in disagreement with the President's action, but there is not a thing I can do about it. He has taken the action, as I say, and the matter is now moot.

I yield to the distinguished Senator from Louisiana (Mr. LONG).

Mr. LONG. Mr. President, I will vote for the Senator's motion. I voted for cloture and I favored the Allen resolution. I am still very hopeful the President will not pardon deserters because this is an entirely different issue. It has to do with one who made a contract to serve his country in time of war and then refused to abide by his contract, and it could have very serious repercussions far beyond what the President has done here.

But I really think there is nothing more to be accomplished by dragging this thing along, and we really ought to be getting on with something that might be productive and achieve something.

So having voted for the cloture motion, and making, I hope by now, it clear that if it came to vote I would vote for the Allen proposal, I think if we are not going to devote any time to it soon, I hope we can get on and do the Senate's business.

Mr. ROBERT C. BYRD. I thank the Senator.

I yield to Mr. ALLEN and then to Mr. DURKIN.

Mr. ALLEN. I understood there was to be a division of time before the Senator made the motion.

Mr. ROBERT C. BYRD. Yes. I do not intend to make the motion until I ask for a division of time.

Mr. ALLEN. I have nothing to say at this time in view of that.

TIME-LIMITATION AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be not to exceed 40 minutes—I have discussed this with Mr. ALLEN and I believe 40 minutes would be agreeable to him—I ask unanimous consent that there be a time limit of not to exceed 40 minutes on the resolution, and that I then be recognized to move to table, and that if there is a motion to reconsider following that vote that there be no time on the motion to reconsider but that the matter be disposed of—if my motion to table carries that the matter be disposed of—following that without any further debate.

The PRESIDING OFFICER (Mr. MORGAN). Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask that Mr. ALLEN have charge of half of the time and that I control the other half.

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

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays now on my motion to table when it is made.

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

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, this resolution, even though this Congress has been in session only 3 weeks, has had a long legislative history. The distinguished majority leader requested Senators not to introduce measures or resolutions during the first week we were in session.

On the 11th of January I made a speech here in the Senate and attached to my speech a copy of the resolution which I proposed to introduce at the first opportunity the majority leader gave us.

On the 11th I introduced the resolution, and on Friday the 14th the resolution came over under the rule.

There have been 10 votes in the Senate during this session. Two of them had to do with sending the Sergeant at Arms after absent Senators; two had to do with Mr. Bell, Judge Bell; one had to do with Mr. Califano. Five rollcall votes here in the Senate had to do with this resolution. There have been dilatory tactics adopted throughout.

But, Mr. President, the votes on these various motions that were made, were made on a motion to table the McGovern motion to commit, a motion to table a motion to proceed, a motion to table a motion to proceed then the motion to proceed carried, and then the cloture vote. The vote has been consistently on the rise in favor of the position of the resolution, starting off with 37 votes; the next vote was 40 votes in favor, the next vote was 45, the next vote was 50, and the next vote was 53. So some of the Senators apparently have been hearing from home in this matter.

Mr. President, yes, the President had unquestionably the constitutional right to take this action. But Senators have some responsibility in this connection also. We know that whatever action the Government takes up here, whether it be by the Federal bureaucracy, by the executive branch, by the judicial branch, by the other House of Congress, by the Senate, whatever is done, if the public disagrees with it, it is laid at our door, and they ask us what have we done to rectify the situation, what have we done to counteract these things that are taking place here in Washington.

So I feel, Mr. President, the Senate had and has the responsibility of giving its advice in this most important matter which, I believe, is ill-advised action that the President has taken. The action which he is considering taking, I feel, would be against the national interest. I feel it would be an affront to the 3 million men and women who served in Vietnam, to the 300,000 who were wounded, to the memories of the families of the 50,000 who were killed in Vietnam.

Now the distinguished majority leader, and also the distinguished Senator from Louisiana (Mr. LONG), says that action has already been taken, but yet the Senator from Louisiana says that he hopes that he does not pardon the deserters.

That is a very important part of this resolution. The President has not acted in the whole area that he has contemplated acting in because this sense-of-the-Senate resolution also urges him not to give blanket amnesty, not only to draft evaders, but also to deserters. So he has this matter under consideration. I think it would be well for the Senate to give its view in this matter.

Newspaper accounts indicate that the President was advised to act quickly in this matter before the Senate could express its will.

What sort of procedure is that for the Senate to be considering a resolution that is being delayed here in the Senate by the leadership and then for the President to be advised to hurry up and take this action before the Senate acts, undercutting the action of the Senate itself? What sort of procedure is that, Mr. President?

Why has not the Senate allowed to express its will on this important issue? Why has this matter been delayed from the very day that we entered upon the 95th Congress? Why have we been prevented from coming to a vote on this most important issue? Even now we are not offered an up-and-down vote. It is going to be a motion to table, and I know the leadership has been calling upon Members to stand by the leadership in this matter.

Let me tell you something, Mr. President: The leadership might protect the individual Senator here in this Chamber but the leadership is not going to do any good for Senators when they are back home among the people. The leadership cannot protect Senators there. The leadership cannot protect Senators from an overwhelming public opinion against this action, and Senators, according to my conception of our responsibility, are supposed to represent the Nation. They are supposed to represent the people of this country, and they are not supposed to represent the will of the leadership. The will of the people, yes; the will of the leadership, no.

This resolution states the view of the Senate with regard to the granting of blanket amnesty. It says that these matters ought to be decided on an individual basis. It does not say do not take any action at all, but decide these matters on an individual basis; and it definitely has advice, the opinion of the Senate, with regard to taking action with respect to deserters. That is something that the President has under consideration at this time. This resolution is not moot. The matters expressed in the resolution have not already taken place.

Several other phases of amnesty and pardon have not been touched upon. The matter of the upgrading of discharges has not been acted upon, nor the matter of deserters.

So what we have here is a motion to table coming on that would prevent the Senate from reshaping this resolution to suit the existing facts, to redraft the resolution in the light of the President's action to date.

But the motion to table would cut off any right of the Senate to express itself, and if the resolution is tabled it would give cause to say: "The Senate did not even want to express itself on deserters. They tabled the motion expressing the will of the Senate or the sense of the Senate on deserters. Therefore, with impunity and with the passive consent of the Senate we can go ahead and pardon them, too."

So, Mr. President, a motion to table cuts off all rights that will exist to Senators in this Congress to express their opposition to the granting of blanket amnesty for evaders and for deserters.

Never again in this Congress are we going to have an opportunity to vote on an issue of this sort. This is it. If we vote to table this resolution we are saying that the Senate does not want to give any advice on deserters; it has not got a position; it has no position about blanket amnesty for draft evaders; it has no position on action to be taken with regard to deserters; it is without an opinion; the Senate has no opinion on this important subject. That is what a motion to table would say.

I hope the Senate will not table the resolution. I hope that it will defeat the motion to table and that if the resolution needs reshaping or redrafting let Senators, exercising their best judgment, offer appropriate amendments. But do not say that the Senate shall not have the power to express itself on this most important issue. This resolution is not moot. It is very much alive. And Senators are going to find out how much alive it is if they cut off the right of the Senate to express itself on these important issues.

I reserve the remainder of my time.

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

Mr. ALLEN. I yield.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, as cosponsor of this resolution, I certainly concur in the statement of the Senator from Alabama that this question is not by any means moot. It may be moot among those who are most concerned about the politics of the Senate. But if Senators will go out in this country—as sooner or later they must—and if they will consult the American people concerning the action by the President, then you will find that this matter is anything but moot. Senators will at their own peril will misjudge the mood of the people. I hope Senators will bear in mind that they will become a part of what they condone and they will be condoning the action of the President of the United States if they vote to table this resolution.

Mr. President, yesterday in this Chamber I read into the RECORD a telegram sent to the President of the United States by a distinguished North Carolinian, Col. Raymond C. Schrump. It appears on pages 1934 and 1935.

I think it is the last paragraph that Colonel Schrump's telegram to the President sums it up.

He began by saying:

My family is the only thing that has more value to me than the decorations that I have received during my military career. . . .

He was referring to numerous decorations that he received as a prisoner of war in Vietnam for 5 years.

Colonel Schrump continued in his wire to the President:

I respectfully request an appointment with you at the earliest possible date so that I might return them, this is a very painful and emotional thing for me to do but I know of no other way for me to show my opposition to your pardon of the draft evaders.

And then he said:

I could take them to the White House and throw them over the fence but I would never lower myself to the actions of those you pardoned. I would like to have the opportunity to return them with the same dignity with which they were presented.

Mr. President, Colonel Schrump speaks the attitude of countless thousands of Americans who served in Vietnam. He speaks the attitude of countless thousands of other Americans—the mothers, fathers, wives, brothers, and sisters of men who served there. I say again that Senators who vote to lay on the table the resolution of the Senator from Alabama will be voting to condone the action taken by the President of the United States. I join the Senator from Alabama in expressing the hope that this resolution will not be tabled.

I thank the Senator from Alabama.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I am prepared to yield back the remainder of my time.

Mr. ALLEN. Mr. President, I yield myself 15 seconds for the purpose of asking unanimous consent that a chart that I have written out here as to the legislative history of this resolution be printed in the RECORD.

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

LEGISLATIVE HISTORY—S. RES. 18

Friday, January 14:

Anti-amnesty resolution comes over under the rule and is before Senate.

Move to commit to Judiciary by McGovern.

Motion to table McGovern motion to commit (failed), *37 to 41.

Motion to proceed made.

Motion to table motion to proceed (failed), 37 to *40.

Motion died with adjournment.

Motion to proceed made before 2:00 nondebatable.

Wednesday, January 19:

Motion to table motion to proceed, 42 to *45.

Motion to proceed, *50 to 41.

Cloture filed.

Monday, January 24:

Cloture vote, *53 to 43.

Mr. RANDOLPH. Mr. President, it is with real reluctance that I shall cast my vote to table the resolution of the able Senator from Alabama (Mr. ALLEN). I earnestly commend him for focusing attention on the ill-timed and unjustified decision by President Carter to grant a pardon to Vietnam-era draft evaders. On five prior votes, I supported Senator ALLEN.

However, I now feel that we are moving toward a situation in which the Senate could become ensnarled in this issue. We must recognize also that the President in accordance with his authority has acted on this matter.

It is my hope, however, that the appropriate legislative committee will undertake a review of this issue, particularly in view of the many facets of the problem of pardons that were not resolved by the President's directive and are now being studied by the administration.

Mr. President, I ask unanimous consent that my statement on Mr. Carter's decision be printed in the RECORD.

There being no objection, the statement is ordered to be printed in the RECORD:

JANUARY 21, 1977.

WASHINGTON.—"I do not believe that President Carter's decision to grant full, complete and unconditional pardons for tens of thousands of Vietnam-era draft evaders will bring the Nation together. Rather, I fear it will have a divisive effect among our citizenry.

"I have been and continue to be opposed to amnesty. In my opinion, the granting of amnesty to draft evaders and deserters cannot be justified when thousands of other Americans have served in military duty, in many cases at great sacrifice, great suffering and all too often with the loss of life.

"I believe the President's action to be ill-time and unjustified."

The PRESIDING OFFICER. Is all remaining time yielded back?

*Anti-amnesty vote.

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. I yield back the remainder of my time.

Mr. President, I move that the resolution be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Maine (Mr. HATHAWAY), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Colorado (Mr. HASKELL) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE) would vote "nay."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

I further announce that the Senator from Oklahoma (Mr. BARTLETT) is absent due to illness.

The result was announced—yeas 48, nays 46, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—48

Anderson	Hart	Metzenbaum
Bayh	Hatfield	Moynihan
Brooke	Heinz	Muskie
Burdick	Huddleston	Nelson
Byrd, Robert C.	Humphrey	Pearson
Case	Inouye	Pell
Chafee	Javits	Percy
Church	Johnston	Proxmire
Clark	Kennedy	Randolph
Cranston	Leahy	Ribicoff
Culver	Long	Riegle
Danforth	Mathias	Sasser
DeConcini	Matsunaga	Sparkman
Eagleton	McGovern	Stevenson
Glenn	Melcher	Talmadge
Gravel	Metcalf	Williams

NAYS—46

Allen	Garn	Roth
Baker	Griffin	Sarbanes
Bellmon	Hansen	Schmitt
Bentsen	Hatch	Schweiker
Biden	Hayakawa	Scott
Bumpers	Helms	Stafford
Byrd, Harry F., Jr.	Hollings	Stennis
Cannon	Jackson	Stevens
Chiles	Laxalt	Stone
Curtis	Lugar	Thurmond
Dole	Magnuson	Tower
Domenici	McClellan	Wallop
Durkin	McClure	Weicker
Eastland	Morgan	Young
Ford	Nunn	Zorinsky
	Packwood	

NOT VOTING—6

Abourezk	Goldwater	Hathaway
Bartlett	Haskell	McIntyre

So the motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CANNON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

The following routine morning business was transacted by the Senate today:

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDING OFFICER laid before the Senate the following communications which were referred as indicated:

EC–498. A letter from the Acting Secretary of Agriculture transmitting, pursuant to law, the fourth annual report on rural development progress (with an accompanying report); to the Committee on Agriculture and Forestry.

EC–499. A letter from the Acting Secretary of Agriculture transmitting a draft of proposed legislation to remove the requirement that 20 percent of the funding increase must be for marketing research (with accompanying papers); to the Committee on Agriculture and Forestry.

EC–500. A letter from the Acting Secretary of Agriculture transmitting a draft of proposed legislation to authorize the Department of Agriculture to award research grant funds to Federal agencies (with accompanying papers); to the Committee on Agriculture and Forestry.

EC–501. A letter from the Acting Secretary of Agriculture transmitting a draft of proposed legislation to consolidate Federal financial assistance to States for child nutrition programs, to focus such assistance on children most in need and to simplify the administration of such assistance (with accompanying papers); to the Committee on Agriculture and Forestry.

EC–502. A letter from the Chairman of the Nuclear Regulatory Commission transmitting, pursuant to law, proposed legislation to authorize appropriations for fiscal year 1978 and fiscal year 1979 for the Nuclear Regulatory Commission (with accompanying papers); to the Joint Committee on Atomic Energy.

EC–503. A letter from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, a copy of an act adopted by the Council on October 12, 1976, and signed by the Mayor on November 8, 1976 (with accompanying papers); to the Committee on the District of Columbia.

EC–504. A letter from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, a copy of an act adopted by the Council on October 12, 1976 and signed by the Mayor on November 8, 1976 (with accompanying papers); to the Committee on the District of Columbia.

EC–505. A letter from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, a copy of an act adopted by the Council on October 12, 1976, and signed by the Mayor on November 9, 1976 (with accompanying papers); to the Committee on the District of Columbia.

EC–506. A letter from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, a copy of an act adopted by the Council on September 15, 1976, and signed by the Mayor on October 18, 1976 (with accompanying papers); to the Committee on the District of Columbia.

EC–507. A letter from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, a copy of an act adopted by the Council on September 15, 1976, and signed by the Mayor on October 20, 1976 (with accompanying papers); to the Committee on the District of Columbia.

EC–508. A letter from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, a copy of an act adopted by the Council on October 12, 1976, and signed by the Mayor on November 12, 1976 (with accompanying papers); to the Committee on the District of Columbia.

EC–509. A letter from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, a copy of an act adopted by the Council on October 12, 1976, and returned by the Mayor without signature of approval or disapproval on November 18, 1976 (with accompanying papers); to the Committee on the District of Columbia.

EC–510. A communication from an Assistant to the President transmitting, pursuant to law, arms control impact analyses on fiscal year 1978 Defense and ERDA programs (with an accompanying report); to the Committee on Foreign Relations.

EC–511. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Financial Status of Major Acquisitions, June 30, 1976" (with an accompanying report); to the Committee on Government Operations.

EC–512. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "The U.S. Fishing Industry—Present Conditions and Future of Marine Fisheries" with an accompanying report); to the Committee on Government Operations.

EC–513. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Safeguarding Taxpayer Information—An Evaluation of the Proposed Computerized Tax Administration System" (with an accompanying report); to the Committee on Government Operations.

EC–514. A letter from the Joint Committee on Congressional Operations transmitting, pursuant to law, a report identifying Court proceedings and actions of vital interest to the Congress, Final Report for the 94th Congress (with an accompanying report); to the Committee on Government Operations.

EC–515. A letter from the President of the Legal Services Corporation transmitting, pursuant to law, the Corporation's Budget request for fiscal year 1978 (with an accompanying report); to the Committee on Labor and Public Welfare.

EC–516. A letter from the Acting Director of the Office of Management and Budget transmitting a draft of proposed legislation to amend the Act of August 25, 1958, as amended (the Former Presidents Act of 1958, 3 U.S.C. Sec. 102, note), by amending provisions relating to former Presidents' staffs (with accompanying papers); to the Committee on Post Office and Civil Service.

EXECUTIVE REPORT OF COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of January 24, 1977, the following executive report was submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Griffin B. Bell, of Georgia, to be Attorney General (Exec. Rept. No. 95–4).

REPORTS OF COMMITTES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Rules and Administration, with an amendment:

S. Res. 4. A resolution reorganizing the committee system of the Senate, and for other purposes (Rept. No. 95–2).

EXECUTIVE REPORTS OF COMMITTEES

Mr. STENNIS. Mr. President, from the Committee on Armed Services, I report favorably the nominations of Lt. Gen.

William G. Moore, Jr., U.S. Air Force for confirmation of recess appointment as senior U.S. Air Force member of the Military Staff Committee of the United Nations; and Maj. Gen. Edward C. Meyer, Army, to be lieutenant general; and Maj. Gen. Marvin D. Fuller, U.S. Army, to be lieutenant general. Also, there are four in the Army National Guard for appointment to the grade of major general—list beginning with Brig. Gen. Thomas C. Armstrong; and Gen. John R. Deane, Jr., Army to be placed on the retired list; and Vice Adm. Marmaduke G. Bayne, U.S. Navy, for appointment to the grade of vice admiral on the retired list. Also, Vice Adm. Bernard B. Forbes, Jr., U.S. Navy, for appointment to the grade of vice admiral on the retired list. I ask unanimous consent that these nominations be placed on the Executive Calendar.

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

Mr. STENNIS. In addition, there are 299 in the Air Force for promotion to the grade of colonel—list beginning with Philip Alder, Jr.; and 2,355 in the Air Force for promotion to the grade of lieutenant colonel and below—list beginning with Rallin J. Aars; and 75 in the Air Force for promotion to the grade of lieutenant colonel—list beginning with Jack C. Aarestad. Also, there are 23 in the Air National Guard for promotion to the grade of lieutenant colonel—list beginning with Maj. Walter A. Baker; and 2,680 in the Air Force for promotion to the grade of major and below—list beginning with Rallin J. Aars; and 40 in the Air Force for promotion to the grade of lieutenant colonel and below—list beginning with John R. Anderson. Also, there are 208 in the Air Force for appointment to the grade of captain and below—list beginning with Elizabeth A. Alexander; and 92 in the Army for appointment to the grade of colonel and below—list beginning with Milton T. Smith; and 218 in the Army for reappointment from the temporary disability retired list to the grade of colonel and below—list beginning with Edward E. Bennett. Also, there are 86 in the Army for promotion to the grade of colonel and below—list beginning with Ronald R. Baskin; and 336 in the Marine Corps Reserve for temporary appointment to the grade of lieutenant colonel and below—list begining with Nicholas J. Adamo; and 132 for appointment to the grade of second lieutenant in the Marine Corps—list beginning with Andrew M. Allen. Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of January 6, 10, and 11, 1976, at the end of the Senate proceedings.)

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. PEARSON (for himself and Mr. SCHMITT):

S. 421. A bill to provide for a comprehensive and coordinated national climate program, and for other purposes; to the Committee on Commerce.

By Mr. FORD (for himself and Mr. HUDDLESTON):

S. 422. A bill for the relief of the First Baptist Church of Paducah, Ky.; to the Committee on the Judiciary.

By Mr. BENTSEN:

S. 423. A bill for the relief of Peter Juergen Wiedemann and Maria del Carmen Castellanos de Wiedemann; to the Committee on the Judiciary.

By Mr. ROTH (for himself, Mr. ALLEN, Mr. BIDEN, Mr. CURTIS, Mr. EASTLAND, Mr. FORD, Mr. GARN, Mr. HANSEN, Mr. HELMS, Mr. HUDDLESTON, Mr. LAXALT, Mr. MCCLURE, Mr. NUNN, Mr. THURMOND, and Mr. TOWER):

S. 424. A bill to clarify the jurisdiction of certain courts with respect to public schools, and for other purposes; to the Committee on the Judiciary.

By Mr. GOLDWATER:

S. 425. A bill to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal, to Lt. Gen. Ira C. Eaker, U.S. Air Force—retired; to the Committee on Banking, Housing and Urban Affairs.

By Mr. SPARKMAN:

S. 426. A bill for the relief of German Perilla; to the Committee on the Judiciary.

By Mr. RANDOLPH (for himself, Mr. STAFFORD, Mr. BURDICK, Mr. CULVER, Mr. DECONCINI, Mr. GRAVEL, Mr. HART, Mr. HEINZ, Mr. HUMPHREY, and Mr. KENNEDY):

S. 427. A bill to provide additional authorizations for the public works employment program, to authorize a program for employment of teenaged youth in community improvement projects, and for other purposes; to the Committee on Public Works.

By Mr. MCCLURE:

S. 428. A bill to amend the Natural Gas Act to extend its application to the direct sale of natural gas in interstate commerce, and to provide that provisions of the act shall not apply to certain sales in interstate commerce; to the Committee on Commerce.

By Mr. RANDOLPH (for himself, Mr. DOMENICI, Mr. FORD, Mr. HUDDLESTON, and Mr. JACKSON):

S. 429. A bill to amend the Federal Nonnuclear Energy Research and Development Act of 1975 to provide assistance to the Energy Research and Development Administration for the advancement of research, development, and demonstration of nonnuclear energy technologies, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. RANDOLPH (for himself, Mr. DOMENICI, Mr. FORD, Mr. HUDDLESTON, and Mr. JACKSON):

S. 430. A bill to amend the Federal Nonnuclear Energy Research and Development Act of 1975 to provide generic authority to the Energy Research and Development Administration to utilize loan guarantee assistance to advance research, development, and demonstration of nonnuclear energy technologies, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. CHILES (for himself, Mr. WEICKER, Mr. MUSKIE, Mr. ROTH, Mr. GLENN, Mr. HATHAWAY, Mr. MCINTYRE, Mr. NUNN, and Mr. PERCY):

S. 431. A bill to distinguish Federal grant and cooperative agreement relationships from Federal procurement relationships, and for other purposes; to the Committee on Government Operations.

By Mr. SCHWEIKER:

S. 432. A bill for the relief of Rosalinda Flores Vaow; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 433. A bill to amend title 10 of the United States Code relating to retention in active status of certain officers; to the Committee on Armed Services.

S. 434. A bill to amend title 38 of the United States Code in order to entitle veterans with service-connected disabilities rated as total to domestic and overseas travel on military aircraft on a space-available basis; to the Committee on Veterans' Affairs.

S. 435. A bill for the relief of Mr. Sushil Kumar Garg; and

S. 436. A bill for the relief of Antoinette Hazel Gopaul; to the Committee on the Judiciary.

By Mr. EAGLETON:

S. 437. A bill to clarify and reaffirm the intent of Congress with respect to the transmission and sale of electric power and energy generated or purchased in the southwestern power area; to the Committee on Interior and Insular Affairs.

By Mr. STEVENS (for himself and Mr. CULVER):

S. 438. A bill to amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges; to the Committee on Finance.

By Mr. WILLIAMS:

S. 439. A bill to reorganize the executive branch of the Government to centralize Federal energy conservation and research and development policies in a National Energy Center; to the Committee on Interior and Insular Affairs.

By Mr. KENNEDY (for himself and Mr. BROOKE):

S. 440. A bill to amend the Cape Cod National Seashore Act, as amended, to provide additional authority to the Secretary of Interior to carry out the purposes of the act, to provide a reserve fund, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. PACKWOOD (for himself and Mr. HATFIELD):

S. 441. A bill to amend Public Law 566, Watershed Protection and Flood Prevention Act, as amended, to raise the limitation of any single loan or advancement for watershed works of improvement; to the Committee on Agriculture and Forestry.

S. 442. A bill to amend title III of the Bankhead-Jones Farm Tenant Act, as amended, to increase the amount of any loan for which funds may be appropriated without prior approval of such loan by congressional committees; to the Committee on Agriculture and Forestry.

By Mr. CHILES (for himself, Mr. STONE, and Mr. MCCLURE):

S. 443. A bill to prohibit travel at Government expense outside the United States by Members of Congress who are not reelected to the succeeding Congress; to the Committee on Government Operations.

By Mr. JOHNSTON (by request):

S. 444. A bill to credit certain service performed by National Guard technicians prior to January 1, 1969, as Federal employment

for the purpose of civil service retirement benefits.

By Mr. INOUYE:

S. 445. A bill to amend title 32 of the United States Code to authorize the establishment of a National Guard for Guam; to the Committee on Armed Services.

By Mr. WILLIAMS:

S. 446. A bill to authorize the Secretaries of the military departments to reimburse nonappropriated fund instrumentalities located in the Ryukyu Islands and Daito Islands, Japan, for increased costs in severance pay entitlements of their Japanese employees incurred as a result of the reversion of those islands to Japan; to the Committee on Armed Services.

By Mr. HATFIELD:

S.J. Res. 16. A joint resolution to restore posthumously full rights of citizenship to Jefferson F. Davis; to the Committee on the Judiciary.

By Mr. ROTH (for himself and Mr. THURMOND):

S.J. Res. 17. A joint resolution proposing an amendment to the Constitution of the United States to guarantee the human rights of pupils attending public schools; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PEARSON (for himself and Mr. SCHMITT):

S. 421. A bill to provide for a comprehensive and coordinated national climate program, and for other purposes; to the Committee on Commerce.

Mr. PEARSON. Mr. President, I am introducing today for myself and Senator SCHMITT, for appropriate reference, the National Climate Program Act, a bill that would authorize and direct the Secretary of Commerce to establish and operate a comprehensive national climate program.

Mr. President, climate, and its variability, affects the basic lifestyles and well-being of all individuals throughout the world. Basic societal needs and relationships are linked, often critically, to existing climate patterns. Energy production and demand, world food production, transportation and communications patterns and schedules, water availability and distribution, and population levels and densities are but a few of the important factors affected by climate.

Natural fluctuations in the climate of local and regional areas have sharply intensified short-term problems associated with two of the most important issues facing the world today—energy and food. The effects on U.S. food production, first, of last summer's drought weather conditions in many areas of the Midwest, and second, of the drought conditions currently being experienced throughout the Western United States, and on supplies of natural gas as a result of this winter's frigid temperatures, are recent examples of how vulnerable we are to even minor short-term climatic changes. Longer term changes in climate, whether naturally occurring or resulting from man's activities, or both, may in fact be leading to a new global climate regime that could have far-reaching implications for this Nation and the rest of the world community.

Given the important relationship existing between climate and man's well-being, it is, therefore, surprising that we understand so very little about basic climate processes and the profound effects even minor changes in existing climatic patterns or increased climate variability have upon our lives. Unfortunately, the Federal Government has failed to develop a comprehensive and coordinated climate program and has not promoted or funded atmospheric research activities at a level commensurate with the extremely high benefits that could accrue to the United States as a result of the implementation and operation of such a program. This deficiency has been highlighted in recent reports issued by the National Academy of Sciences, the Subcommittee on Climate Changes of the Domestic Council, the National Advisory Committee on Oceans and Atmosphere, and the Congressional Research Service.

Mr. President, the state of knowledge in the field of atmospheric sciences is such today that scientists cannot even agree on the very basic issue of whether the Earth's climate is cooling off or heating up. This is not to be regarded as a criticism of the intellect of our scientists, but a recognition of the complexity of obtaining a thorough understanding of basic climatic processes and the low priority that has been attached to supporting research in the atmospheric sciences. For example, observations for climatic purposes, which are the basis for much of our understanding of basic climatic processes, are now being made over only 22 percent of the Earth's surface; of such observations, only 2 percent are made in oceanic areas that cover over 70 percent of the Earth's surface.

Climate problems and processes recognize no national boundaries and, if we are to make real progress in our ability to understand the climate process, we must increase both our own atmospheric research efforts and our efforts to coordinate the activities of our national climate program with similar programs of other nations and international agencies and organizations. Similarly, additional emphasis has to be placed on educating increased numbers of highly qualified scientists and technicians in the areas of climatology, meteorology, and oceanography.

The costs of our lack of knowledge of the workings of the natural climatic system, to say nothing of our ignorance of man's effect on climate change and variability, are unacceptably high. We simply cannot continue to assume that the relatively favorable climatic conditions of the past several decades will continue indefinitely. The climatic events of the past several centuries, with associated changes in climatic patterns and increased climate variability, are quite likely to recur in the future. Development and implementation of a national climate program, as provided for in my bill, is a much needed step to provide us with the knowledge necessary to minimize the potentially high costs associated with such changes and to provide us with the basic knowledge necessary to understand both natural and man-induced climate changes and climatic processes.

Mr. President, I ask unanimous consent that the text of my bill, together with a section-by-section summary of its provision, be printed at this point in the RECORD.

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

S. 421

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Climate Program Act".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.

(a) FINDINGS.—The Congress finds and declares the following:

(1) The present ability to anticipate and explain either natural fluctuations or man-induced changes of climate is insufficient to proviae meaningful contributions to policy formulation concerning agriculture, energy, transportation, and other critical sectors of the economy.

(2) The Earth's climate has been and is in a constant state of change. Such changes, even if sustained for short periods of time or if only of small magnitude, could pose serious problems for a world increasingly sensitive to climate change. Climate change can significantly alter land and water use patterns, energy consumption levels and use patterns, population distribution, and world food production and have far-reaching consequences to our national economy, security, and well-being.

(3) The prospect for providing accurate monthly and seasonal forecasts is scientifically promising, provided an accelerated program of basic and applied research is established and adequately funded. Such forecasts would yield enormous benefits to virtually all sectors of the economy.

(4) Climate is a worldwide phenomenon. Large spatial gaps exist however in the existing global climate monitoring system, particularly in less-developed countries and in the 70 percent of the Earth's surface covered by the oceans. Particular emphasis needs to be given to increasing domestic efforts and international cooperation in the collection, distribution, and analysis of climatic data from such areas.

(5) Additional individuals need to be trained and educated in scientific fields dealing with climate research and development.

(6) The effects of man on the world's climate are little understood and represent a potentially significant variable in determining climatic conditions. Such effects may indeed prove to pose unreasonable risks to human health and the environment. Much additional research, on a high priority basis, needs to be done on this issue.

(7) Existing Federal efforts dealing with climate research, monitoring, and analysis are inadequate to meet existing and future needs of the Nation.

(8) The development and operation of a comprehensive and coordinated national program of climate research, monitoring, and analysis is needed. Potentially high benefits could derive to the Nation as a result of the implementation of such a program. The objectives of a national climate program are to enable the Nation to (a) better understand natural and man-induced climatic processes, (b) relate climate change information to its implications and effects on man and his welfare; and (c) respond more effectively to climate-induced problems.

(b) PURPOSES.—It is therefore declared to be the purpose of the Congress in this Act—

(1) to take immediate action to plan and implement a comprehensive national climate program that will enable the Nation to better understand climatic dynamics and to more effectively prepare for changes resulting from climatic variables, and

(2) to promote the education and training of highly qualified scientists and technicians in the fields of meteorology, climatology, and oceanography.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term "program" means the national climate program.

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

SEC. 4. AUTHORIZATION AND MANDATE FOR DEVELOPMENT AND OPERATION OF A NATIONAL CLIMATE POLICY AND PROGRAM

The Secretary is authorized and directed to coordinate the establishment and operation of a comprehnsive national climate program. The program shall include, but not be limited to, the following elements:

(1) Establishment and operation of a climatic impact advisory system to provide both real-time alerts and assessments of the risks and benefits associated with current and future climate impacts.

(2) Improvement in the reliability of monthly and seasonal predictions, with particular emphasis placed on the effects such climate patterns would have on global food production; the availability and distribution of water resources; energy consumption; and other key national programs and policies.

(3) Development and operation of more sophisticated mathematical-computer systems to assist in the prediction of climate and simulation of man's effect on climate.

(4) Development and operation of a global climate monitoring system, including the adoption of policies designed to (a) transfer where appropriate, climate technology to developing nations; (b) train additional scientists and technicians in the areas of climatology, meteorology, and oceanography; and (c) increase international cooperative efforts in the areas of climate research and monitoring.

(5) Development and utilization of climate risk-benefit analyses that analyze and describe the effects of climate change on man and his activities.

(6) Development and operation of a comprehensive and coordinated climate research and data management program, with appropriate involvement of affected Federal, State, and data management program, with approcies, academia, and the private sector, designed to assist in a timely achievement of the objectives of the national climate program.

SEC. 5. CONSULTATION WITH EXPERTS AND WITH FEDERAL DEPARTMENTS AND AGENCIES AND INTERAGENCY COOPERATION

(a) The Secretary shall establish and maintain such advisory committees as are necessary or appropriate to assist him in carrying out his responsibilities under this Act. The Secretary shall appoint, as members of such committees, experts in the field of climatology and related fields and representatives of departments, agencies, and other instrumentalities of the Federal Government which are interested in or affected by the national climate program.

(b) Members of such committees who are not employed by the Federal Government may receive compensation at the daily rate for GS-16 of the General Schedule when engaged in the actual performance of duties for the committee and while so serving away from their homes or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence.

(c) Each department, agency, and other instrumentality of the Federal Government is authorized and directed to assist the Secretary in formulating and implementing the national climate program.

SEC. 6. INTERNATIONAL COORDINATION AND COOPERATION.

The Secretary shall cooperate with the Secretary of State in (a) providing representation at all climate related international meetings and conferences in which the United States participates, and (b) coordinating the activities of the national climate program with the climate programs of other nations and international agencies and organizations, including the World Meteorological Organization, the International Council of Scientific Unions, the United National Environment Program, and the Intergovernmental Oceanographic Commission.

SEC. 7. PREPARATION OF ANNUAL PLAN AND REVIEW OF THE OFFICE OF MANAGEMENT AND BUDGET.

(a) The Secretary, in conjunction with all other Federal agencies responsible for constituent programs of the national climate program, shall prepare and submit each year to the Office of Management and Budget, on or before the date for submission of departmental requests for appropriations to the Office, an annual plan and request for appropriations for the national climate program for the subsequent fiscal period. In preparing the budget, the Office of Management and Budget shall review the plan and the request for appropriations as a coherent, multiple agency request.

(b) Section 304 of the Act of October 18, 1962 (76 Stat. 1097), is amended—

(1) by striking out "for fiscal year 1964 and each succeeding year" and inserting in lieu thereof "for the fiscal period beginning October 1, 1976, and ending September 30, 1977, and each succeeding fiscal year";

(2) by adding "and of the national climate program established under the National Climate Program Act" after "meteorology"; and

(3) by striking out "program" and inserting in lieu thereof "programs".

SEC. 8. ANNUAL REPORT.

The Secretary shall prepare and submit to the President and the Congress, not later than January 30 of each year, a report on the activities conducted pursuant to this Act during the preceding fiscal year. The report shall include, but not be restricted to, the following:

(a) a summary of the achievements of the program during the previous fiscal year;

(b) a review and analysis of the progress made toward achieving the objectives of the program;

(c) a review and analysis of the activities conducted under the constituent elements of the program;

(d) a summary and evaluation of difficulties encountered in administrating this Act;

(e) a summary of the plan and request for appropriations submitted for the upcoming fiscal year to the Office of Management and Budget pursuant to section 7 of this Act; and

(f) any recommendations for additional legislation which may be required to assist in achieving the objectives and carrying out the elements of the program.

SEC. 9. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for the use of the Secretary and other Federal departments and agencies participating in the program, for the purpose of carrying out the provisions of this Act, sums not to exceed $10,000,000 for the fiscal year ending September 30, 1977; not to exceed $16,000,000 for the fiscal year ending September 30, 1978; and not to exceed $20,000,000 for the fiscal year ending September 30, 1979.

SECTION-BY-SECTION SUMMARY OF THE NATIONAL CLIMATE PROGRAM ACT

The National Climate Program Act would—

Section 2(a)—make Congressional findings that the present ability to anticipate and explain changes in climate is insufficient to provide meaningful contributions to policy formulation; climate change can have far-reaching consequences to our national economy, society, and well-being; existing Federal efforts dealing with climate research, monitoring, and analysis are inadequate to meet existing and future needs of the Nation; and the development and operation of a comprehensive and coordinated national program of climate research, monitoring, and analysis is needed.

Section 2(b)—declare that the purposes of Congress in this Act are to take immediate action to plan and implement a comprehensive national climate program and to promote the education nad training of highly qualified scientists and technicians in the fields of meteorology, climatology, and oceanography.

Section 3—define the terms program and Secretary for purposes of this Act.

Section 4—authorize and direct the Secretary of Commerce to coordinate the establishment and operation of a comprehensive national climate program that shall include, but not be limited to, establishment and operation of a climate impact advisory system; improvement in the reliability of monthly and seasonal predictions; development of more sophisticated mathematical-computer systems; development and operation of a global climate monitoring system; development and utilization of climate risk-benefit analyses; and development and operation of a comprehensive and coordinated climate research and development program.

Section 5—require the Secretary of Commerce to establish and maintain such advisory committees as are necessary or appropriate to assist him in carrying out his responsibilities under this Act and direct each department, agency, or other instrumentality of the Federal Government to assist the Secretary in formulating and implementing the national climate program.

Section 6—require the Secretary of Commerce to both cooperate with the Secretary of State in providing representation at all climate related international meetings and conferences in which the U.S. participates and to coordinate the activities of the national climate program with the climate programs of other nations and of international agencies and organizations.

Section 7—require the Secretary of Commerce, in conjunction with all other Federal agencies responsible for constituent programs of the national climate program, to submit each year to OMB an annual plan and request for appropriations for the national climate program.

Section 8—require the Secretary of Commerce to prepare and submit to the President and the Congress, not later than January 30 of each year, a report on the activities conducted pursuant to this Act.

Section 9—authorize to be appropriated to the Secretary of Commerce and other Federal departments and agencies participating in the national climate program for the purpose of carrying out the provisions of this Act sums not to exceed $10,000,000 for the fiscal year ending September 30, 1977; $16,000,000 for the fiscal year ending September 30, 1978; and $20,000,000 for the fiscal year ending September 30, 1979.

By Mr. FORD (for himself and Mr. HUDDLESTON):

S. 422. A bill for the relief of the First Baptist Church of Paducah, Ky.; to the Committee on the Judiciary.

Mr. FORD. Mr. President, for myself and Senator HUDDLESTON, I introduce a bill for the relief of the First Baptist Church of Paducah, Ky., and I ask unanimous consent that a chronology of happenings to the First Baptist Church of Paducah, Ky., be printed at this point in the RECORD.

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

A CHRONOLOGY OF HAPPENINGS TO THE FIRST BAPTIST CHURCH, PADUCAH, KY., 1964–1976

This will document in a concise manner the sequence of events wherein two agencies of the Federal Government entered into the life of the First Baptist Church of Paducah, Kentucky, causing it substantial damage.

The unfortunate sequence of events started on March 23, 1964 when a news release from Washington through Congressman Frank A. Stubblefield, announced that the Post Office Department would expand and modernize the Federal Building in Paducah, which would require the taking of the Elks Building and the First Baptist Church property.

On July 7, 1964 Mr. John J. Kaspryk, representing the General Services Administration, Chicago, visited the church to explain the procedures of the Federal Government in appraising of the property and the taking. He explained their negotiating purchase price based on appraisal and their right to exercise eminent domain. He estimated that the entire process would require about six to eight months to complete.

By letter to the church dated September 9, 1964, Mr. Donald McDonald, Chief, Acquisition Branch, General Services Administration, Chicago, stated that "the Government will soon construct an extension to the U.S. Post Office at Paducah, Kentucky, and will require the land at the Southeast corner of 5th and Jefferson Streets. (First Baptist Church site) We desire to purchase this property. . . ." The letter further explained the appraisal process and states "We will do everything possible to complete the acquisition of the property with the least amount of inconvenience to you . . ."

At request of GSA the church executed a "Right to Entry" form for the benefit of the appraiser and a GSA Form 1226, "Contract to Sell Real Property", wherein the church agreed to a 360 day option to the Government to sell for $267,000. The basis of this figure was a letter to the church appraising the property for that amount for "insurable" value.

It so happened that the church had started construction on a new building in May 1963, estimating that it would take two years to complete. The Government announcement to acquire came at the very time the church was considering its method of selling the property. Two of its options were:

1. There were several smaller churches that were prospective purchasers of the property including all tables, chairs, pews, pianos, pipe organ, central air conditioning and many other church related items. The church was prepared to take one-third cash and two-thirds on a note and mortgage.

2. A number of the congregation preferred to remain at the old church and continue a church organization. Similar financial arrangement could have been made with this group.

All plans to market the site terminated with the announcement that the Federal Government was taking the property.

In December, 1964, Mr. Orrion W. Kattmann, MAI, from Evansville, inspected the building for the purpose of making an appraisal for the General Services Administration. His report was due in Chicago by January 10, 1965.

By letter dated February 12, 1965, the GSA notified the church that our offer to sell for $267,000 exceeded the value as determined "by an independent appraisal" and that "if you will furnish us with a written offer to sell the property for $180,000.00, we would be willing to give consideration to this proposal".

At time of receiving this letter from the GSA the church had no information of the value as established by the appraisal. With knowledge that the GSA procedures authorized negotiating an agreed sale price from 10 percent below the appraisal to 10 percent above appraisal the church responded by letter of February 22, 1965 offering to sell at price of $198,000. This amount was arrived at by adding 10 percent to the GSA suggested price, assuming it was the appraised value.

This letter from the church was delivered to Mr. Donald McDonald, Chief, Acquisition Branch, GSA, Chicago, by a member of the First Baptist Church, Febraury 24, 1965. Mr. McDonald said that within 24 hours he could advise the agent of the church if the counter offer was acceptable. On February 25, 1965 Mr. Donald McDonald informed the agent of the church that "the counter offer of $198,000 had been approved by both the Cincinnati and Washington offices".

It was with the above assurances that two banks in Paducah advanced the church $130,000, unsecured, towards completion of the church under construction.

The First Baptist Church of Paducah moved to its new building and held its first service March 14, 1965. All personal property of the old church was removed leaving the real estate secured and all utilities disconnected. The church started waiting for the Federal Government to carry out its verbal and written commitments.

A GSA letter dated July 16, 1965 stated "we anticipate that the revaluation of this property by the Post Office Department will be completed within ten days". GSA letter of October 20, 1965 stated "The revaluation of the extension and modernization of the Post Office Building in Paducah has not been completed. We will be glad to keep you informed at such time as a decision is reached by the Post Office Department". GSA letter of March 21, 1966 stated "As a result of this revaluation the extension and modernization project for the existing building has been cancelled . . . and we are sorry for any inconvenience caused you as a result of this change of plans."

Congressman Frank A. Stubblefield received a letter from J. E. Moody, Deputy Administrator, GSA, dated July 15, 1966 which had the sentence "As you know, the original plans to extend and modernize the building were based on a firm request and commitment for funding from the Post Office Department" . . .

A front page news story of the local paper quoted Walter Lutz, director of engineering and facilities for the Cincinnati Postal Region, as saying "the present Post Office facility would be converted into federal offices and the church property would be purchased, leveled and used as federal building parking lots."

Communications from Washington through Congressman Frank A. Stubblefield, Senator John Sherman Cooper, and Senator Thurston B. Morton stated that when the Post Office relocated, the General Services Administration would need the property for additional parking and that the church site would be needed. It was recommended that the church wait for this occasion, which should take place within the next year or two.

The last ten years has been a history of studies, plans, new plans, bids taken, cancelled and finally a contract and construction of a new building. It took the Post Office eleven years to relocate from the making of the decision to do so.

The church has been damaged by the fact that it could not be restored to its 1964 position of offering a church building in excellent condition with all mechanical equipment operational. The opportunity to offer a viable church building with church related personal property had been thwarted by actions of the Federal Government.

In November of 1965 on a visit to Washington by representatives of the church, Joseph P. Doherty, Executive Assistant to the Assistant Postmaster General, stated "I realize that our actions have damaged the church but there is nothing we can do about it".

The church was approached by national representatives of the J. C. Penney Company who were inquiring about possibilities of acquiring the church site for installation of an automotive supply store in conjunction with the main store opposite church site. They were informed that the church was anxious to sell but when they learned of the Government correspondence and publicity relating to the site all interest ceased. The property was saddled with a stigma of eminent domain.

The church knows that there was never in existence what is known as a legally binding contract to purchase. However, when the Federal Government sends a representative to the church to explain their procedures in taking the property and then follows up with letters stating "the Government will soon construct . . . will do everything possible to complete the acquisition of the property with the least amount of inconvenience to you . . . were based on a firm request and commitment for funding from the Post Office Department" . . . we and the community believed them!

The church is grateful that the General Services Administration has today the authorization to acquire our church site it proposed to purchase in 1964. The GSA appraisal of January 1965 was $182,000 and the GSA agreed purchase price was $198,000. The offering price of the GSA today is $41,500.

The irony of this offer is that the church property appraised in June 1976 is the handiwork of actions of the Federal Government. During the last 11 years the building has been vacant and the elements and vandals have gnawed constantly at the structure. An analogy of the offer today is a bulldozer accidently smashing into an automobile properly parked on the side of a street and to compensate the owner of the auto he is offered the cash value of the wreck.

In order to compensate, in part at least, for the damage wrought to the congregation of the First Baptist Church of Paducah, I am offering a bill to pay the church $263,000, $198,000 for the figure advanced for purchase of the church property, plus $65,000 to reimburse the church for interest paid on the purchase of the new church property it was forced to acquire because of Government action.

By Mr. ROTH (for himself, Mr. ALLEN, Mr. BIDEN, Mr. CURTIS, Mr. EASTLAND, Mr. FORD, Mr. GARN, Mr. HANSEN, Mr. HELMS, Mr. HUDDLESTON, Mr. LAXALT, Mr. MCCLURE, Mr. NUNN, Mr. THURMOND, and Mr. TOWER):

S. 424. A bill to clarify the jurisdiction of certain courts with respect to public schools, and for other purposes; to the Committee on the Judiciary.

By Mr. ROTH (for himself and Mr. THURMOND):

S.J. Res. 17. A joint resolution proposing an amendment to the Constitution of the United States to guarantee the human rights of pupils attending

public schools; to the Committee on the Judiciary.

Mr. ROTH. Mr. President, the American people are angered and frustrated by the social experimentation being forced on our children in the guise of equal educational opportunity.

The polls indicate that the vast majority of Americans favor desegregation yet oppose busing. What the American people are telling us is that they want desegration and quality education for all our children, not arbitrary racial balance without quality education for any of our children. What the American people oppose is the divisive remedies being employed to achieve coerced integration—something that goes far beyond the concept of equal opportunity. The American people are opposed to the disruption of their neighborhood schools—incensed at having no say as parents as to which school their children shall attend—outraged by constitutional interpretations that equal educational opportunity can only be achieved if schools and classrooms are racially balanced.

It is time the busing issue be laid to rest. The issue has tortured Americans long enough. It is time the Congress took meaningful action to end this problem.

It is to put this issue to rest that I now introduce a joint resolution providing for a constitutional amendment to preclude the busing of schoolchildren to a particular school because of his or her race, color, national origin, creed or sex. My proposed amendment merely adopts the Supreme Court's interpretation of the 14th amendment to the Constitution as it relates to equal educational opportunity: The Constitution prohibits the use of race or color as a basis to designate which school a pupil shall attend.

Mr. President, since adoption of a constitutional amendment takes time, and because I believe the Congress must take more immediate steps to curtail Federal court-ordered busing, I also send to the desk a bill which removes the authority of the lower Federal courts to order busing as a remedy to carry out a plan of racial desegregation of any school or school system.

Many people today are critical of the Federal judiciary. I, for one, believe the Federal courts have usurped prerogatives properly belonging to the elected representatives of the people. The Federal courts have become a superlegislature responsible to no one. But, while I am critical of the courts' repudiation of the principles of federalism and the separation of power which lie at the heart of our democratic form of government—I must also place responsibility on the Congress.

The Constitution grants all legislative power to the Congress. The Constitution allows the Congress, in its wisdom, not to exercise the power granted. However, the Constitution does not allow another branch of government to exercise legislative power. Just as the courts must check the Congress or the President for acting beyond the scope of legal authority, so must the Congress check judicial excess. To do otherwise equally repudiates the principles of federalism and the separation of power.

Too many Federal judges today believe they have a moral or legal obligation to require, by any means necessary, a "proper" racial mix in our public schools.

In ordering sweeping changes in our school systems for this purpose, without regard for costs or disruptions, these judges ignore several basic social and legal facts:

First. Concentrations of blacks in our schools—or, for that matter, concentrations of Irish, Italians, Germans, or any other ethnic groups—reflect residential concentrations that have always existed in American cities and towns.

They are a natural outgrowth of group loyalties, cultural bonds, similar income and educational levels and the like.

For most groups, these residential concentrations have usually brought increased political and economic influence. Today, for example, many blacks feel that gaining a larger voice in the operation of inner-city schools is more important than achieving racial balance.

The Constitution does not require that ethnic or racial communities be destroyed. It requires only that no individual be confined to them by law. Our whole history has been to allow individuals full freedom to maintain or abandon their ties with such communities.

Second. In assigning students to schools solely on the basis of race, the courts are standing the Constitution on its head. The landmark desegregation ruling of 1954 held that no child could be excluded from a public school on account of race. But the courts today are declaring that the 14th amendment, far from prohibiting the assignment of students on the basis of race, actually demands it. From an effort to expand the freedom of one group, they have gone far beyond the Constitution to the point where they are now restricting the freedoms of other groups. From a position that the Constitution is colorblind, they have moved to a preoccupation with race, creating a tangled web of statistical requirements based solely on group affiliation.

Third. No hard evidence can be found to support claims that the educational achievement of either black or white children is improved when they are shuttled from school to school to promote racial balance.

In truth, it is a form of racism to assume that blacks must share classrooms with whites in order to learn, or to assume that every black school is inferior to every white school. By some measures, blacks have made greater educational and economic progress in recent years than some white ethnic groups.

The courts, in ordering massive busing, have cited social theories and assumptions that have come into serious question. Among those who believe the courts have erred grieviously are such leading social scientists as Nathan Glazer of Harvard and James S. Coleman, the University of Chicago sociologist whose earlier studies were cited by the courts as justification for busing.

Instead of promoting better race relations, compulsory busing has bitterly divided communities. It has set back race relations by creating new tensions, and has led to greater separation of races as middle-income whites have fled to other school districts or systems.

Fourth. By seeking to promote special benefits for one group, the courts have penalized other groups and have created resentment and hostility. In the 1960's there was a clear consensus in this country that Jim Crow laws must be eliminated. And since then immense gains have been made by blacks. But public support has declined sharply as the courts have gone far beyond constitutional requirements to the dubious use of statistical distributions as the test of discrimination.

Court-ordered busing creates bitter opposition because it denies many families a cherished part of the American dream: the right to improve their lot, live in as desirable a neighborhood as they can afford, and send their children to good schools of their own choice where the parents can have a voice in how they are run. This is extremely important to people. It is one thing for children to be bused if that is necessary to get them to the nearest school or to the school of their choice, but it is quite another thing if the purpose is simply to provide an arbitrary racial mix.

Today, I am pleased to introduce with my distinguished colleagues, Senators ALLEN, BIDEN, CURTIS, EASTLAND, FORD, GARN, HANSEN, HELMS, HUDDLESTON, LAXALT, MCCLURE, NUNN, THURMOND and TOWER, a bill which exerts the prerogative of the Congress to eliminate the judicial authority of the lower Federal courts to order the transportation of students or teachers as a remedy to carry out a plan of racial desegregation of any school or school system. State courts, which are closer to the people and more cognizant of the local impact of court-ordered remedies, would retain jurisdiction. Hopefully the judges in State courts would be more thoughtful in their deliberations before ordering sweeping social reforms for the State over which they preside. The lower Federal courts would continue to have concurrent jurisdiction with the State courts where busing is not an issue. Furthermore, the Supreme Court's appellate jurisdiction would be unaffected. The right to appeal from the State courts to the Supreme Court would be preserved, thereby insuring conformity with constitutional standards.

The bill further provides for the termination of all lower Federal court orders, in force prior to enactment, which require busing as a remedy to carry out a plan of racial desegregation of any school or school system. Upon application of a party, the State courts may assume jurisdiction of the case for purposes of entering an order of appropriate remedial relief.

The history and precedents under article III, having to do with the creation of lower Federal courts and their jurisdiction clearly establish that Congress has the authority to enact this legislation. At the Constitutional Convention, the framers rejected a proposal that would have required Congress to establish Federal tribunals inferior to the Supreme Court. Instead, the Convention

adopted the present provision giving Congress discretion with respect to creation of the lower Federal courts. And while Congress in the Judiciary Act of 1789 created the lower courts, it did not vest them with all the jurisdiction they might have received under article III. For example, it did not confer "Federal question" jurisdiction—that is, cases involving the Constitution, treaties, and laws of the United States—but left litigants to remedies in State courts with appeals to the Supreme Court. General Federal question jurisdiction was not conferred until 1875 and then it was coupled with jurisdictional amount limitations so that claims involving amounts below a certain value had to be brought in State courts. These limitations remain in the law to this day. Moreover, the practice from the beginning has been to make Federal court jurisdiction concurrent with that of the State courts. As Justice Frankfurter stated in *Brown* v. *Gerdes*, 321 U.S. 178, 188 (1944) concurring:

> Since 1789, right derived from Federal law could be enforced in State courts unless Congress confined their enforcement to Federal court.

In a related line of decision, the Supreme Court has sustained an expansive view of Congress authority to limit and define the jurisdiction and remedies available in the lower Federal courts. Typical is the Court's ruling in *Gary* v. *Curtis*, 44 U.S. 236, 244–245 (1844) where it is stated that—

> The judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances applicable exclusively to this Court), dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who has the sole power of creating tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and with vesting them with jurisdiction either limited, concurrent, or exclusive, and withholding jurisdiction from them in the exact degree and character which to Congress seems proper for the public good.

See, also, *Lauf* v. *E. G. Skinner and Co.*, 303 U.S. 323 (1938).

It thus seems clear that Congress may constitutionally leave to enforcement in State courts a class of rights, or a specified remedy, which it might have given to the lower Federal courts. This is precisely the result that would be achieved by my bill.

I urge my colleagues to join me in assuring that these bills are passed. Our public school system is rapidly deteriorating. School tests demonstrate that children are not learning the basic skills of education. The results of the Scholastic Aptitude Tests taken recently by nearly 1 million college-bound seniors dropped sharply to the lowest level in more than two decades. Once we have curtailed this divisive issue of busing, we can get on with the very necessary job of providing quality education for all our children.

I ask unanimous consent that the joint resolution and the bill be printed at this point in the RECORD.

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

S. 424

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court created by Act of Congress and having general jurisdiction, original or appellate, with respect to cases or controversies arising under the laws or Constitution of the United States, shall have any jurisdiction to enter a decree requiring, directly or indirectly, the transportation of students or teachers in order to carry out a plan of racial desegregation of any school or school system. The jurisdiction terminated by this Act shall be vested in the courts of the several States, and, with respect to such cases or controversies arising in the District of Columbia or in any other territory or possession of the United States, in the Federal courts of an essentially local jurisdiction in such District, territory, or possession. In each such case or controversy, there is vested in the Supreme Court of the United States appellate jurisdiction by writ of certiorari from the highest State or territorial court exercising jurisdiction over such case or controversy.

SEC. 2. No order of any court, created by Act of Congress, requiring directly or indirectly the transportation of students or teachers to carry out a plan of racial desegregation of any school or school system operated by a local educational agency which is in effect on the day before the date of enactment of this Act shall remain in force or effect. On the application of a party, any State court of appropriate jurisdiction in the State wherein such local educational agency is located shall assume jurisdiction of the case for purposes of entering an order for appropriate remedial relief.

S.J. RES. 17

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date and final passage of this joint resolution:

"ARTICLE—

"SECTION 1. No public school pupil shall be transported to a particular school because of his or her race, color, national origin, creed, or sex.

"SEC. 2. Congress shall have the power to enforce this article by appropriate legislation."

By Mr. GOLDWATER:

S. 425. A bill to authorize the President of the United States to present on behalf of the Congress a specially struck gold meal to Lt. Gen. Ira C. Eaker, U.S. Air Force (retired); to the Committee on Banking, Housing and Urban Affairs.

Mr. GOLDWATER. Mr. President, I am reintroducing today a bill to authorize the President of the United States, on behalf of the Congress, to present a gold medal to retired Lt. Gen. Ira Eaker in recognition of his distinguished career as an aviation pioneer and Air Force leader.

Now Mr. President, few Americans have contributed more to the development of the U.S. Air Force and to our country than Ira Eaker. This is not just an expression of my personal feelings about this dedicated American, but represents the feelings of many, many others who have spoken and written to me over the years.

Mr. President, a brief summary of the accomplishments of Ira Eaker would include the following landmarks of his career:

Became a military pilot in 1918.

Was chief pilot in January 1929 of a Fokker C–2 which flew over 150 hours.

Set an endurance record by using in-flight refueling techniques.

Flew the first blind instrument transcontinental flight in June 1936.

Served with the RAF in early World War II studying their air operations to help develop the air arm of the United States.

Commanded the Eighth Air Force in World War II, along with Mediterranean Allied Air Forces, both being vital to the allied victory.

Designated by General Arnold to argue the case for a return to daylight bombing, following allied air losses in 1943. By helping to successfully persuade Prime Minister Churchill of this course of action, he helped pave the way to the allied victory.

Following World War II, served as Deputy Commander of the Army Air Force and Chief of the Air Staff until his retirement as a lieutenant general in 1947.

Mr. President, there is nothing unusual now about the type of medal I have proposed, although they were not available at the time General Eaker retired. For example, the Senate agreed to a House-passed bill in December of 1975 which provided for the presentation of a similar medal to Brig. Gen. Charles Yeager.

The previous administration and the Department of the Treasury submitted a favorable report on the proposal just last year, and I hope my colleagues will approve the special recognition that is due to an outstanding American.

Mr. President, I ask unanimous consent that the report on my bill submitted to the Committee on Banking, Housing and Urban Affairs be printed at this point in the RECORD.

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

EXECUTIVE BRANCH REPORT ON GENERAL IRA EAKER MEDAL BILL

From: The General Counsel of the Treasury.
To: The Senate Committee on Banking, Housing and Urban Affairs.
Date: April 30, 1976.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2093, "To authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Lieutenant General Ira C. Eaker, United States Air Force (retired)."

The proposed legislation would authorize the President to present, on behalf of the Congress, a gold medal to Lieutenant General Ira C. Eaker, U.S. Air Force (retired), in recognition of his distinguished career as an aviation pioneer and Air Force leader and for his current support of the airpower mission of the Nation. The bill would authorize and direct the Secretary of the Treasury to strike the gold medal with suitable emblems, devices and inscriptions to be determined by the Secretary of the Air Force with the approval of the Secretary of the Treasury. For the purpose of designing and manufacturing the medal, the bill would authorize the appropriation of $5,000. It would also authorize the Secretary to manufacture and sell to the general public bronze duplicates of the medal at a price sufficient to cover the cost of manufacture

including labor. The gold medal and its bronze duplicates would be national medals for the purpose of section 3551 of the Revised Statutes (31 U.S.C. 368).

The Department has no comments to make on the merits of the proposed legislation. The facilities of the Bureau of the Mint would be made available for the purpose of designing and striking this medal. The appropriation of $5,000, which would be authorized by the bill, would be sufficient to cover the cost of the medal, including the preparation of designs, models and master dies. The Department would also have no objection to adding this medal to those regularly struck for sale to the public, as provided in subsection (b) of the bill.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

By Mr. RANDOLPH (for himself, Mr. STAFFORD, Mr. BURDICK, Mr. CULVER, Mr. DECONCINI, Mr. GRAVEL, Mr. HART, Mr. HEINZ, Mr. HUMPHREY, and Mr. KENNEDY):

S. 427. A bill to provide additional authorizations for the public works employment program, to authorize a program for employment of teenaged youth in community improvement projects, and for other purposes; to the Committee on Public Works.

PUBLIC WORKS EMPLOYMENT ACT OF 1977

Mr. RANDOLPH. Mr. President, today I introduce the Public Works Employment Act of 1977, a bill to authorize an additional $4 billion for the public works jobs program. Two billion dollars are authorized for the period ending September 30, 1977, and another $2 billion is authorized to be available for appropriation through September 30, 1978.

This legislation has strong endorsement from both Democratic and Republican members of the Committee on Public Works, and other Members of the Senate. The measure was drafted to be consistent with the proposal for public works jobs advanced by President Carter as part of his economic stimulus package, to the extent details of that proposal have been developed.

This bill contains as title II a new youth community improvement employment program for young men and women of the ages of 16 through 19. This title was separately introduced by Senator STAFFORD, the ranking minority member of the Committee on Public Works, and myself, with cosponsors. Title II authorizes $1.5 billion, to be available through fiscal year 1978.

The purpose of title I is to provide $2 billion for early appropriation and speedy grants to projects already submitted but not funded in the first round of the local public works program. An additional $2 billion would be authorized for another round of projects if the economy requires additional stimulus. New applications would be submitted for grants under this authority.

In addition to new authorizations for public works jobs, this legislation contains some amendments designed to improve the administration of the second and possible third phases of the program.

Undoubtedly, we will make other improvements in the present program as we examine the analysis and recommendations of those persons who give us the benefit of their views.

Many applicants were unhappy with the first round, now coming to a close. I myself have questions relating to the program in our own State of West Virginia. Yet I understand that it is inevitable that there will be disappointment when so many areas seek a limited amount of funds.

Nearly 25,000 applications were received by the Economic Development Administration in the Department of Commerce. Slightly less than 2,000 were chosen. Nearly $25 billion in project applications competed for $2 billion. The Economic Development Administration had temporary personnel assigned to the task of processing these applications. I have been told that throughout the holiday weeks of December, many, many dedicated hours of overtime were required, including weekends.

Mr. President, the Economic Development Subcommittee, with Senator QUENTIN BURDICK presiding as acting chairman, will hold hearings on February 2 and 3, 1977, on this bill and S. 306. In those hearings we will examine the performance of the Department of Commerce in the first round of grants now nearing completion. We will receive testimony on the administration position on additional authorizations for public works jobs. Witnesses representing organized labor, cities, counties, and States also will be invited to present their analyses of the first round and their recommendations for the second and possible third rounds.

Several questions and recommendations have emerged as a result of the first experience with this program. Some of these are included in the legislation I propose today. These will be explored further, with other recommendations, in the committee hearings. In particular, I invite witnesses to provide their views on these questions:

Should the program give a higher weighting to the long-term benefits of projects proposed for funding under title I?

Should the unemployment data used in the program be the previous 12 months rather than the most recent 3 consecutive months as now required in the law?

Should project areas be so defined in the second round of funding to assure that projects are funded only in areas of the most severe unemployment? The bill directs the Economic Development Administration to provide for this result in the third round; is the potential delay associated with such a change in the second round worth the possible benefits?

Should a local match be required of project applicants, except where the jurisdiction has exhausted its effective taxing or borrowing capacity, in order to assure selection of those projects which meet urgent local needs and local priorities?

Even as the new administration prepares its economic stimulus package, there are those who say that public works investment is an inefficient way to create jobs. I do not believe President Carter shares that view. Neither Secretary of Labor Marshall nor Secretary of Commerce Kreps share that view, nor, I believe, do the majority of the Members of the Senate.

Mr. President, this program provides a much needed stimulus to the economy, and particularly to the construction industry that still suffers ill health. That industry normally produces about 10 percent of our gross national product, rising as high as 12 percent in good years. It is now only about 8.6 percent of the gross national product. Paul W. McCracken, former chairman of the Council of Economic Advisers, writing in the Wall Street Journal January 17, 1977, convincingly describes why public works now is a wise investment:

> There is, however, a case for stepped-up public works, and that case is quite simply that public works outlays have been lagging. The volume of public construction is now, in real terms, about 25% lower than a decade ago—in an economy that, in real terms, is 30% larger. Public construction is now so low, in fact, that the real value of public capital is probably now being maintained.

Nor should we lose sight of the fact that these projects have an importance that transcends the immediate new jobs created. Valuable and much needed as the backlog of 25,000 applications suggests, community facilities are built that may indeed endure for generations.

Unemployment remains too high across the country, particularly in the construction industry. This measure is but one of the creative ways of grappling with high unemployment in a sagging economy. It is intended to be a Senate initiative in responding to President Carter's call for $4 billion in additional public works jobs. I hope our colleagues will support it overwhelmingly and that we can present it to the President in a few short weeks.

Mr. President, I ask unanimous consent that an outline of the legislation and the text of the bill be printed in the RECORD at the conclusion of the remarks of my colleagues.

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

Mr. HUMPHREY. Mr. President, I am pleased to join Senator RANDOLPH and Senator STAFFORD in cosponsoring the Public Works Employment Act of 1977, which is being introduced today. This bill would increase to $6 billion the authorization for jobs-producing public works projects under the Local Public Works Capital Development and Improvement Act of 1976, instead of the $2 billion currently authorized, and would establish a youth employment program.

I am cosponsoring this legislation, despite reservations I have with the youth employment title, because I think it will be a swift and effective way of getting this economy moving again.

THE ECONOMIC SITUATION

Nineteen hundred and seventy-six was a disappointing year. We achieved very few of our economic objectives. We did a relatively good job on inflation, but a very poor job on employment.

When Congress voted on the fiscal 1977 budget last year, we established a goal of reducing unemployment to 7 percent by the end of 1976 and to 6 percent by the end of 1977. To do this, we needed a 7-percent growth in real GNP for both 1976 and 1977.

But we fell short. From the fourth

quarter of 1975 to the fourth quarter of 1976, real GNP only grew by 5.1 percent. Much of this growth was concentrated in the first half of 1976, with the growth rate falling to an anemic 3.9 percent during the third quarter and 3 percent during the fourth.

As a result, the unemployment rate fell nicely from 8.3 percent in December 1975 to 7.3 percent in May 1976, but then rose steadily to 7.8 percent in December 1976, for an overall reduction during the year of only half a percentage point. This was still a full percentage point above our goal.

Part of this disappointing performance can be attributed to inadequate business investment, part to a poor recovery in the housing sector, and part to a slowdown in the growth rates of our major trading partners.

But a good part of our failure was the result of an inadequate budget policy—we underestimated the amount of real growth needed to reduce unemployment to our goal and we failed to make sure that everything we appropriated was actually spent.

We cannot afford to repeat this in 1977. Already, we have had to scale up our unemployment goal to 6.5 percent by the end of this year, and even that looks pretty much like pie in the sky unless we move now to achieve it.

MORE PUBLIC WORKS JOBS

Although we do not have President Carter's budget recommendations in hand yet, he has indicated he will ask for a 2-year stimulus package of about $30 billion. I think this is an appropriate level of stimulus. But I think more of the stimulus could and should come during this year, and more of it should be directed toward job creation programs.

We can do this very easily, simply by increasing the authorization for local public works projects, and the bill does that by authorizing an added $4 billion.

There is no doubt that this amount can be gotten into the channels quickly to create new jobs in the areas and occupations where unemployment is just too high. When the Economic Development Administration received its current $2 billion spending authority for this program, is was flooded with applications. Today, EDA has on hand $20 billion in applications representing 20,000 projects from all over the country which could be approved and funded immediately. In addition, there are another 4,000 applications for over $4 billion which need some changes but which could be ready for approval within 1 week.

This is $24 billion worth of public works projects which are ready to go and put people back to work. These are not projects that will take a long time to start up and stimulate the economy only when we get back to full employment. They are ready to go now. The law requires that construction begin within 90 days.

And the Economic Development Administration assures me that they have the staff and time to evaluate and aplion right away, and $2 billion within another month or two.
prove $4 billion of new projects—$2 bil-

Now, I know that there are some problems with the allocation formula, and that we have heard about some areas getting too much money and some not getting enough. I would support the efforts of the Public Works Committees to improve the formula. But we cannot let this problem prevent us from authorizing and appropriating the amounts needed to get our economy back on its path toward a full recovery and full employment.

And we cannot let this problem prevent the funding of valuable and needed local public works projects. There are thousands of worthy projects lying on the desks at the EDA, waiting for the green light. For example, there is an application from Branford, Conn. for $2.7 million to construct a hospice, a facility to provide dignity and comfort during the last days for those who are terminally ill. It will be the first in the country. There is an application from De Kalb County, Ga., right outside Atlanta, for funds to build a facility for severely retarded children, who have nowhere else to turn. And in my own State of Minnesota, there are a number of worthy projects which are just waiting for approval, including a $293,000 application from the town of Melrose to improve and extend the town's sewer main, and a $379,500 application from the town of Lindstrom for storm sewers.

The $4 billion in the Public Works Employment Act would create a significant number of jobs and move us a long way toward the 6.5 percent unemployment goal President Carter has recommended for the end of this year. Each $1 billion spent on the public works projects in this legislation would create 75,000 jobs directly on the construction projects, plus another 75,000 in offsite jobs providing support and materials. With an additional $4 billion, as this bill authorizes, we can create 300,000 onsite jobs plus 300,000 offsite jobs.

This will be enough jobs to reduce the unemployment rate by almost 0.7 percentage points, or one-half of the President's goal.

YOUTH UNEMPLOYMENT

Youth unemployment in this country is a national crisis, and I welcome the concern and initiative of Senator RANDOLPH and Senator STAFFORD in trying to alleviate it through the creation of public works projects for youths aged 16 to 20 years old. Although I do not believe that title II of the Public Works Employment Act is wholly adequate to relieve this complex problem, I join in cosponsoring it because I want to emphasize my own concern for this very important issue.

On Tuesday, January 11, my good friend Senator JAVITS and I introduced a major youth employment bill which attacks all aspects of the youth unemployment problem—the Comprehensive Youth Employment Act of 1977. Although title II of the Public Works Employment Act would create a public service jobs programs for youths very similar to the youth community service program of the Comprehensive Youth Employment Act, youths have a wide variety of other needs that we must meet as well—including help in finding private sector jobs, job experience while they are still in school, good job counseling and guidance in their schools, and special programs to keep 14- and 15-year-old youths in school. In addition, I believe that any new programs for youths should be fully integrated with the training and counseling services already funded under the Comprehensive Employment and Training Act.

The Comprehensive Youth Employment Act would establish many of the programs needed to reduce youth unemployment—a youth community service program to create employment for youths on local community projects; a youth opportunities in private enterprise program to create jobs and help youths find jobs in private businesses; a work experience for inschool youth program to provide job experience prior to secondary school completion; and occupational information and career counseling program to provide youths with the job counseling and information needed to make informed career choices; a National Conservation Corps to provide jobs for youths on conservation projects; and an expansion of the Job Corps for severely disadvantaged youths.

I support the Public Works Employment Act and its funding of public works projects. I hope, in addition, that the Public Works Committee and the Labor and Public Welfare Committee will find a way to meld the various efforts to reduce youth unemployment and provide us with a comprehensive approach as soon as possible.

Mr. STAFFORD. Mr. President, I join today with the distinguished chairman of the Public Works Committee (Mr. RANDOLPH), in introducing a bill to extend the Public Works Employment Act of 1976, and to establish a youth community improvement program.

The response to the local public works program enacted last year has been overwhelming. Nearly 2,000 public works projects across the country have been selected, exhausting the appropriation for the program.

The bill introduced today authorizes an additional $2 billion for the program for the remainder of this fiscal year and another $2 billion in standby authority for fiscal year 1978. Because of the interest in and need for this legislation, the committee plans to give early consideration to the bill. Hearings have been scheduled for the 2d and 3d of February.

I am pleased that the bill also includes the youth community improvement program which I introduced last week, with several cosponsors, including the chairman.

The purpose of the youth community improvement program is to provide employment and early job experience to youths ages 16 through 19 on community improvement activities. Eligible activities would include work on community facilities, neighborhood projects, including repairs of low-income housing, and conservation and maintenance work on lands owned by the Federal Government, States and local communities. These would be activities which need to be done and would not otherwise be carried out.

Unemployment among the Nation's young people ages 16 through 19 stands at 19 percent. This age group alone constitutes about 24 percent of the total number of unemployed persons—this is

nearly a full quarter of the national unemployment figure.

The long-term impact of the joblessness facing our young may be quite adverse. In the teen years, most young people begin the transition from an academic environment to adult society. Early job experience provides the essential link between school and the adult world of work. This is the time to instill the value of work.

Without these early job opportunities, many young persons become frustrated, alienated from the work force and many reach their early adult years with no real connection with work and no sense of responsibility. Not only do they lack skills but they lack an adult, pragmatic view of what is required of them to obtain or hold a permanent job.

There is much work to be done in this country. All communities have such activities, which usually receive low priority, particularly in times of economic distress, and remain undone. These are, nevertheless, valuable projects which enhance the community and extend the useful life of many facilities and services. Not only does the community benefit from these improvements, which remain long after the project has ended, but the young people also have the satisfaction of serving their community.

Maximum flexibility is given each local sponsor in designing a program, allowing them to match local opportunities with the needs of youth. Also, efforts would be made to link activities funded under this program with other similar Federal programs. For example, the local sponsor is authorized to enter agreements with the National Park Service and National Forest Service for work on lands administered by these agencies. Youth could also be used for weatherization projects, supplementing the program operated by the Federal Energy Administration.

As I stated when I first introduced this proposal, it does not attempt to address the full range of long-term questions which must be faced in dealing with the problems of youth, including the role of the education system in facilitating the transition to permanent jobs and adult life. My bill is designed to address a limited but important aspect of the problem. The intent is to initiate jobs quickly, to provide a realistic job experience and training while at the same time serving the community in a concrete and meaningful way.

I ask unanimous consent that an article from the Valley Voice, published in Middlebury, Vt., be printed in the RECORD at this time. I believe the article, based on the personal experience of the author, clearly points out the importance and value of a youth employment program of this type.

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

[From the Middlebury (Vt.) Valley Voice, Dec. 15, 1976]

"LEAF-RAKING"

(By R. W. van de Velde)

Almost whenever the discussion turns to unemployment in this country and what to do about it, someone says something about "leaf-raking" or uses the term "dead-end jobs." In such a context, the scornful tone in which such terms are used is supposed to scare off any proposals for "make-work" projects or programs.

It seems to me that those who would dismiss all such job-finding or job-creating ideas—a new Civilian Conservation Corps (CCC) modeled from New Deal days, or some sort of government subsidies for work in the private sector—are doing us all a great disservice.

There aren't enough jobs now, and particularly jobs for the unskilled or semi-skilled—and that includes most young people. That's quite plain to anyone who looks at the figures. Some northeastern states as unlike one another as rural Vermont and urban New Jersey have overall unemployment, in double digits—10 percent to 13 percent depending on whose figures you use.

But if you select young people within the unemployed rolls, you find the percentages rising into the range of 18 to 25 percent. And if you select still further and look at inner-city young people, and especially at black young people, you get appalling figures like 40 to 60 percent. No society or sizeable segment of it can sustain its health with those numbers of unemployed among its physically most able age group.

The sense of "nothing to do," which so often seems to pervade students after school and on weekends, is usually the result of a lack of ingenuity, imagination, or gumption. Among young people who are both out of school and out of work (who probably have never been able to get even a "first" part-time job), that silly verbal surrender to boredom becomes a very acute cry for help. And we'd better heed it.

As a new Army officer in the mid-1930s, my first assignments were to a series of CCC camps (where the administration was the responsibility of the Army, and the work was supervised by either the U.S. Forest Service or the National Park Service). I have never forgotten that experience.

Nor, I dare say, have the thousands of kids who enrolled in the 3Cs. They came to us usually rather thin and sometimes frail, always very poor, often exhibiting an attitude of fear and suspicion. Almost always, they left us in better physical condition; almost always the rather hangdog demeanor, the suspicious glance, the distrustful sneer, had been replaced by a new-found self-confidence and self-respect; they looked you in the eye, and they smiled.

They had earned their keep, and they knew it. They had sent money home to unemployed or poverty-stricken parents, and they were proud of it.

Leaf-raking? Sure, you might say that, because it was work that didn't *have* to be done, at least didn't have to be done right then. But it was nationally useful work. Millions of trees were planted, thousands of miles of trails were built, thousands of acres of topsoil were saved; and so on. But almost all of it was nationally useful work because it helped "conserve" a very large segment of one whole generation.

Dead-end jobs? Sure, you might say that too, because there was no "future," no career-ladder to climb in the CCC. But the young people who entered the camps as bedraggled and "beaten" boys, left the program as young men with knowledge that they could work and the sense that their country—their fellowman—did care and would help.

This time, I think a "CCC" should include the work of cleaning up and rehabilitating city slums and rebuilding railroad roadbeds, for instance, as well as work on public parks and in public forests.

Healthy cities are a national resource which we need, and their rapid decay is a *national* disease we must no longer countenance.

Railroads also are a *national* resource, and we proved we now realize it by inventing Amtrack and Conrail. One way to help them keep on being a resource is to keep them physically fit. If we can put public employees to work maintaining our highways for private use, because we believe that sort of mobility to be essential to our economic health and national security, we can put some public employees to work helping the semi-public, semi-private railroads keep those economic sinews healthy and working for our national health and security too.

It would cost more (and be more "artificial," like "made-work," if you wish), but I believe it would be useful to the sense of oneness of the nation for part of a young person's enlistment to be in a setting very different from the home one. Thus, for half the term I'd send city young people to the hills and woods and put rural young people on slum work. They would all benefit from knowing more about the nation, from learning "how the other half lives." But they'd also gain a sense of personal independence and self-confidence from learning to live and work in a "foreign" setting.

It would, I am convinced, be beneficial for these neo-CCC young people to work the last half of their terms in or near their home settings. I think the sense of helping to repair or rebuild some aspect of "home" would create a sense of pride as well as of accomplishment in a personally known "stake" which would go a long way toward their never again letting anyone wantonly destroy resources or ravage neighborhoods.

It's worth trying, I think, even if some will call it leaf-raking.

(NOTE.—R. W. van de Velde is a professor in and director of The Woodrow Wilson School of Public and International Affairs at Princeton University. He owns a home in Middlebury.)

Mr. GRAVEL. Mr. President, I am pleased to join my colleagues as a cosponsor of legislation extending the local public works program authorized under title I of the Public Works Employment Act of 1976 and creating a new program of employment for teenaged youth through community improvement projects and projects for conservation and restoration of natural resources.

The local public works program has several attractive features that recommend it for extension. The emphasis of the program is on job creation in the private sector. These are not make-work jobs that merely provide a wage until funds run out. Projects under this program can include construction and renovation of municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, recreation facilities, civic and convention centers, and museums. These facilities in turn create staffing and maintenance jobs in the locality and income is generated and recycled on the local level. The National Council on Employment Policy, a group of academic manpower experts, noted in July 1975 that "public works yield a lasting product with an immediate impact on the private sector. Although the direct job creation per dollar of outlay may not be as great as in other strategies, the multiplier effect of public works may be greater than that of other job-creation measures."

Another attractive feature is the presence of projects that are ready to go. Under the first round of title I funding, EDA received 25,477 applications representing $23.9 billion in projects. Considering the huge backlog of applications already submitted, EDA could move rapidly to finance additional local public

works projects if Congress approves the extension.

The Public Works Committee is well aware of the problems with the formula used to allocate funds under this program. In many areas of the country, inadequate data has brought about some unusual instances of misallocation of funds. However, I feel confident that the Public Works Committee will exercise its oversight function in such a way as to insure proper distribution of funds for the future.

Title II of this bill would create a youth community improvement program. The program would provide EDA with $1.5 billion to make grants to States, local government, and Indian tribes for employment of youth aged 16 to 19 in community improvement projects.

The legislation addresses the severe problem of youth unemployment. The unemployment rate for youths, particularly inner-city blacks, has been extremely high for some time. In 1975, youths from 16 to 24 accounted for almost half of the total unemployment rate, although they constituted only a fourth of the labor force. In November, the unemployment rate for black youths from 16 to 19 was 35.5 percent.

Community improvement projects eligible for grant funds include rehabilitation, alteration or improvement of public buildings or other public facilities; neighborhood improvements—including basic repairs to low-income housing—and projects for conservation, maintenance, or restoration of resources on publicly owned lands.

Of particular interest to me is the provision allowing eligible applicants to enter into agreements with the National Park Service and U.S. Forest Service to carry out community improvement projects on lands administered by those agencies. Alaska has 20 million acres of National Forest Service land and 7 million acres of National Park Service land. There is a distinct need for work in the areas of reforestation and soil erosion control.

I am pleased that the Public Works Committee is addressing the issue of unemployment in a comprehensive manner and look forward to early congressional consideration and approval of these matters.

PUBLIC WORKS EMPLOYMENT AND YOUTH COMMUNITY IMPROVEMENT PROGRAMS

Following is the outline of a proposed bill authorizing an additional $4 billion for the local public works program under title I of the Public Works Employment Act of 1976, and creating a new program of employment for teenaged youth through community improvement projects, authorized at $1.5 billion. The total authorization in the bill is $5.5 billion. This legislation is consistent with the proposal for public works jobs advanced by President-elect Carter, to the extent details of that proposals are known.

TITLE I—PUBLIC WORKS EMPLOYMENT

(A) $2 billion are authorized for immediate grants to projects already submitted under title I of the Public Works Employment Act of 1976.

(1) Eligible projects are all those in the first round (about 20,000 projects totaling $18 billion) plus those for which applications had been received by EDA by December 23, 1976, the first round selection announcement date.

(2) 2½% of the appropriation would be set aside for Indian projects.

(3) Funds would be distributed and grants awarded in accordance with the provisions of title I of the Public Works Employment Act of 1976, except that:

(a) 85% of the funds in a State would be reserved for applicants with unemployment above the national average and 15% would be reserved for applicants with unemployment data between 6.5% and the national average (current law requires 70% and 30%, respectively, to be reserved).

(b) EDA may require all applicants to update their unemployment data to the most recent available statistics.

(c) EPA may require all applicants to update their project cost data.

(d) In determining whether there has been an undue concentration of funds in an area, EDA may take into consideration project awards in the previous round relative to the severity of unemployment in the area.

(B) $2 billion are authorized for possible future grants for local public work projects, if the state of the economy requires.

(1) Eligible projects include newly submitted applications, as well as those for which applications have already been received (which would have to be updated and reformulated).

(2) Eligible applicants are expanded to include private nonprofit health care and rehabilitation facilities.

(3) 2½% of the appropriations would be set aside for Indian projects.

(4) Funds would be distributed and grants awarded in accordance with the provisions of title I of the Public Works Employment Act of 1976, as modified under (A), and in addition:

(a) EDA would be directed to set limits on the definition of project areas to prevent gerrymandering the unemployment data.

(b) The Federal share of project costs would be 80%, except that for Indian tribes and where the Secretary determines that taxing or borrowing capacity has been exhausted, the non-Federal share can be reduced or waived.

TITLE II—YOUTH COMMUNITY IMPROVEMENT PROGRAM

(A) $1.5 billion are authorized through fiscal year 1978 for a program to provide employment for youth aged 16–19 in community improvement projects.

(1) States, local governments and Indian tribes are eligible to sponsor projects.

(2) Each sponsor establishes a non-profit corporation to administer the local projects, with representatives from government, labor, business, educators and community organizations.

(3) The Department of Commerce administers the program and makes grants.

(B) Community improvement projects eligible for grant funds include rehabilitation, alteration, or improvement of public buildings or other public facilities; neighborhood improvements (including basic repairs to low income housing); and projects for conservation, maintenance or restoration of natural resources on publicly owned lands, which:

(1) would not otherwise be undertaken.

(2) prinicpally provide employment opportunities for youth aged 16–19 (whether in school or out-of-school).

(3) provide skill development for such youth and qualified supervision.

(4) offer employment for a twelve-month period.

(C) Youth participants would receive the minimum wage, reduced by an amount to partially offset the administrative expenses of the program; supervisory and skilled labor involved in training would receive the prevailing wage for the area.

(1) Provision of food, shelter and transportation costs would be possible where a project is away from the usual residence of most of the participants.

S. 427

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

TITLE I—PUBLIC WORKS EMPLOYMENT

SEC. 101. This title may be cited as the "Public Works Employment Act of 1977".

SEC. 102. (a) There are authorized to be appropriated not to exceed $2,000,000,000 for the period ending September 30, 1977, for the purpose of making grants for projects for which applications have been submitted under title I of the Public Works Employment Act of 1976 (90 Stat. 999).

(b) Projects eligible for such grants shall be those projects considered under title I of the Public Works Employment Act of 1976 (90 Stat. 999) prior to December 23, 1976, and not selected for funding and those projects for which applications under such Act were submitted prior to December 23, 1976, and not considered for funding under such Act because such applications were not received in a timely manner or in the judgment of the Secretary of Commerce were improperly rejected for consideration.

(c) Up to 2½ per centum of the funds appropriated under this section shall be available for projects requested by Indian tribes or Alaska native organizations; and such funds shall be set aside as the exclusive source of funds for such projects before any allocation of the funds appropriated under this section among the States is made.

(d) Funds appropriated under this section shall be distributed and all grants under this section shall be made in accordance with the provisions of title I of the Public Works Employment Act of 1976 (90 Stat. 999), except that:

(1) In lieu of the provisions of section 108(d) of such title, eighty-five per centum of all amounts appropriated to carry out this section shall be granted for projects given priority under clause (1) of the first sentence of section 108(c) of such title, and the remaining 15 per centum shall be available for projects given priority under clause (2) of the first sentence of such section 108(c);

(2) The Secretary of Commerce, acting through the Economic Development Administration, may require all State and local governments that have submitted applications eligible for funding under this section to submit the most recent unemployment data that are available, before consideration for grants under this section. Such Secretary may also require all such State and local governments to revise estimates of project cost, as appropriate; and

(3) In determining whether certain possible grants may result in an undue concentration of funds under this section in a particular area, the Secretary of Commerce, acting through the Economic Development Administration, may take into consideration grants made in such area under title I of the Public Works Employment Act of 1976 (90 Stat. 999), relative to the severity of unemployment in such area.

SEC. 103. (a) There are authorized to be appropriated not to exceed $2,000,000,000 for the period ending September 30, 1978, for the purpose of making additional grants under title I of the Public Works Employment Act of 1976 (90 Stat. 999).

(b) Projects eligible for grants under this section shall include projects eligible for grants under the provisions of title I of the Public Works Employment Act of 1976 (90 Stat. 999) and projects for construction, ren-

ovation, repair, or other improvements of health care or rehabilitation facilities owned and operated by private nonprofit-making entities. The Secretary of Commerce, acting through the Economic Development Administration, shall receive and consider new applications for grants under this section in addition to applications received under title I of the Public Works and Economic Development Act of 1976 (90 Stat. 999). Any projects for which applications have been submitted prior to enactment of this section shall be revised and new information required to be submitted, as appropriate.

(c) Up to 2½ per centum of the funds appropriated under this section shall be available for projects requested by Indian tribes or Alaskan native organizations; and such funds shall be set aside as the exclusive source of funds for such projects before any allocation of the funds appropriated under this section among the States is made.

(d) Funds appropriated under this section shall be distributed and all grants under this section shall be made in accordance with the provisions of title I of the Public Works Employment Act of 1976 (90 Stat. 999), except that:

(1) In lieu of the provisions of section 108 (d) of such title, 85 per centum of all amounts appropriated to carry out this section shall be granted for projects given priority under clause (1) of the first sentence of section 108(c) of such title, and the remaining 15 per centum shall be available for projects given priority under clause (2) of the first sentence of such section 108 (c);

(2) The Secretary of Commerce, acting through the Economic Development Administration, shall require all State and local governments that have submitted applications eligible for funding under this section to submit the most recent unemployment data that are available, before consideration for grants under this section. Such Secretary shall also require all such State and local governments to revise estimates of project cost, as appropriate;

(3) In determining whether certain possible grants may result in an undue concentration of funds under this section in a particular area, the Secretary of Commerce, acting through the Economic Development Administration, may take into consideration grants made in such area under title I of the Public Works Employment Act of 1976 (90 Stat. 999), relative to the severity of unemployment in such area;

(4) The Federal share for any project for which a grant is made under this section shall be 80 per centum of the cost of the project, except that in the case of an Indian tribe or Alaska native organization or in the case of a State or local government which in the judgment of the Secretary has exhausted its effective taxing or borrowing capacity, the Secretary may reduce or waive the non-Federal share; and

(5) The Secretary of Commerce, acting through the Economic Development Administration, shall promulgate regulations with respect to section 108 (e) and (f) of title I of the Public Works Employment Act of 1976 (90 Stat. 999) to assure that reasonable project areas are identified, for which the unemployment statistics supporting individual project applications are submitted. Such regulations shall follow the intent of such section 108 (e) and (f) to assure that grants are made under this section to the areas with the most severe unemployment.

TITLE II—YOUTH COMMUNITY IMPROVEMENT PROGRAM

SEC. 201. This title may be cited as the "Youth Community Improvement Act of 1977".

SEC. 202. The Public Works and Economic Development Act of 1965, as amended, is amended by adding the following new title:

"TITLE XI—YOUTH COMMUNITY IMPROVEMENT PROGRAM

"STATEMENT OF PURPOSE

"SEC 1101. It is the purpose of this title to establish a program of community improvement projects to provide employment, work experience, and skill training to youths in areas of aggravated unemployment.

"DEFINITIONS

"SEC. 1102. As used in this title the term—

"(1) 'eligible applicant' means any State of local government or Indian Tribe or Alaska Native organization;

"(2) 'youth' means an individual who has attained the age sixteen but not age twenty;

"(3) 'Secretary' means the Secretary of Commerce;

"(4) 'State' includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1103. There are authorized to be appropriated $1,500,000,000 for the period beginning on the date of enactment of this title and ending September 30, 1978, to carry out the provisions of this title.

"ALLOCATION OF FUNDS

"SEC. 1104. In allocating funds appropriated under this title, the Secretary shall take into consideration the severity of unemployment among youths eligible for assistance under this title residing in the areas under the jurisdiction of each eligible applicant: *Provided, however,* That not less than one-half of 1 per centum of all amounts appropriated to carry out this title shall be granted under this title for programs within any one State, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, not less than one-half of 1 per centum in the aggregate shall be granted for such projects in all four of these jurisdictions.

"COMMUNITY IMPROVEMENT YOUTH EMPLOYMENT PROGRAM

"SEC. 1105. (a) The Secretary is authorized in accordance with the provisions of this title, to make grants to, and to enter into contracts with, eligible applicants to pay the costs of community improvement projects to be carried out by youths employed by such applicants. Community improvements projects include work on community capital improvements, which would not otherwise be carried out, including the rehabilitation, alteration or improvement of public facilities, neighborhood improvements, including basic repairs to low income housing; and conservation, maintenance or restoration of natural resources on publicly-held lands. Any eligible applicant may enter into agreements with the National Park Service or the United States Forest Service to carry out community improvement projects on lands administered by such agencies. Eligible applicants shall undertake to develop sufficient projects to provide twelve months of employment and training for each enrolled youth.

"(b) No grant may be made, and no contract may be entered into, under the provisions of this title unless the agreement evidencing such grant or contract provides assurances that—

"(1) the community improvement project is an eligible project which will be conducted in such manner as to permit the youth employed in that project who are in school to coordinate the job with classroom instruction and, to the extent feasible, to permit such youth to receive credit from the appropriate local educational agency or school involved;

"(2) youths employed in community improvement projects under this title shall be paid wages which are not lower than (A) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(1) of such Act applied to the youth and if he were not exempt under section 13 thereof, (B) the State or local minimum wage for the most nearly comparable employment, or (C) the prevailing rates of pay for persons employed in similar public occupations by the same employer, except that the eligible applicant may make provisions to offset such wages by the reasonable cost of supervisory or administrative expenses and, where necessary food, shelter, and transportation costs related to the employment of such youth, pursuant to such regulations as the Secretary may prescribe;

"(3) persons employed in necessary technical and supervisory positions assisted under this title shall be paid the prevailing rates of pay for persons employed in similar activities in the area. In the case of persons performing work of the type to which the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5) applies, the prevailing wage will be determined in accordance with that Act;

"(4) the activities of the project subject to such agreement (A) will result in an increase in employment opportunities over those which would otherwise be available, (B) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of non-overtime or wages or employment benefits), (C) will not impair existing contracts for services or result in the substitution of Federal or other funds in connection with the work that would otherwise be performed, and (D) will not substitute jobs assisted under this title for existing federally assisted jobs; and

"(5) no person with responsibility in the operation of such an agreement will discriminate with respect to any youth or any applicant for participation in any eligible project because of race, creed, color, national origin, sex, political affiliation, or beliefs.

"APPLICATIONS

"SEC. 1106. (a) Financial assistance under this title may be provided by the Secretary only pursuant to an application which is submitted by an eligible applicant and which is approved by the Secretary in accordance with the provisions of this title and in accordance with the rules and regulations which the Secretary has promulgated governing programs to be funded under this title.

"(b) Each such application shall—

"(1) provide a description of the jobs to be filled, a listing of the major kinds of work to be performed to carry out eligible projects, and the approximate duration for which the participants would be assigned to such jobs;

"(2) provide a description of job training and skill development opportunities that will be made available to participating youth, as well as a description of plans to coordinate the training and work experience with school related programs including vocational training and the awarding of academic credit;

"(3) describe the wages or salaries to be paid youths and other persons employed in jobs and supervisory positions assisted under this title.

"(4) set forth assurances that there will be an adequate number of supervisory personnel on an eligible project and that the supervisory personnel are adequately trained in skills needed to carry out the project and can instruct participating youths in skills needed to carry out a project;

"(5) set forth assurances that any income generated by the project will be applied toward the cost of the project; and

"(6) set forth such other assurances, arrangements, and conditions consistent with the provisions of this title, as the Secretary deems necessary, in accordance with such regulations as the Secretary shall prescribe.

"(7) describe the organization and responsibilities of the administering local corporation required under section 1109 of this Act.

"PAYMENTS

"SEC. 1107. (a) The Secretary is authorized to pay any eligible applicant having an agreement under this title for that fiscal year the amount necessary to carry out that agreement, as determined by him.

"(b) Payments under this title may be made in installments, in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

"REVIEW AND AUDIT

"SEC. 1108. The Secretary and the Comptroller General of the United States, or any duly authorized representatives, shall have access for the purpose of audit and examination, to any books, documents, papers, and records of a grant or contract entered into under this title that are pertinent to the grant or contract.

"LOCAL CORPORATIONS

"SEC. 1109. To carry out the activities funded under this title, each eligible applicant shall establish or designate a local nonprofit corporation. The corporation shall include at least one representative for each of the following interests: the local government, local educational institutions, the business community, labor organizations, community based organizations, and the local manpower office. The Secretary in issuing guidelines and regulations shall include regulations concerning the organization and responsibilities of such local corporation.

"EDUCATION CREDIT

"SEC. 1110. The Secretary of Commerce in carrying out the purposes of this title, shall work with the appropriate State education agency to provide that academic credit be awarded for work experience gained through this program.

"UTILIZATION OF OTHER FEDERAL AGENCIES SERVICES AND FACILITIES

"SEC. 1111. In addition to such other authority as he may have, the Secretary is authorized, in the performance of his functions under this title, and to the extent permitted by law, to utilize the services and facilities of departments, agencies, and establishments of the United States. The Secretary is also authorized to accept and utilize the services and facilities of the agencies of any State or political subdivision of a State, with their consent: *Provided, however,* That where any such facilities are not adequate or available, the Secretary is authorized to provide for the housing, food, transportation, and medical needs of youth employed in the national parks and national forests.".

Mr. HEINZ. Mr. President, I am pleased to join my distinguished colleagues from the Committee on Public Works, the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Vermont (Mr. STAFFORD), in cosponsoring the Public Works Employment Act extension.

We are all very much aware of the fact that millions of Americans need jobs. This Congress and the Carter administration have made a commitment to the American people to work together to reduce the tragic problem of unemployment which now stands at 7.9 percent. Last year we spent $19 billion on unemployment compensation, but still every month, 200,000 more workers are exhausting their unemployment benefits.

The 94th Congress enacted a $2 billion public works employment program and the Economic Development Administration subsequently awarded grants to communities shortly before Christmas, 1976. This was a start that we needed to make, but in light of the massive number of men and women who remain out of work, we must continue to press on in our efforts to put people back to work.

The response to the Public Works program has been overwhelming, which indicates a great need for additional funding. Within 60 days of enactment of the legislation authorizing $2 billion for this program, 25,000 applications totaling some $24 billion for local projects had been received. These applications, 12 times the number which could be accommodated, included such vital public facilities as hospitals, schools, libraries, and sewage and water treatment facilities.

This program, however, was not administered without any complications. Not only was the Economic Development Administration faced with the problem of establishing fair and comprehensive guidelines for processing grant applications to meet all the dictates of Congress, but the individual applicants were confronted with a lengthy and extremely complex form to complete.

Many communities in Pennsylvania have expressed their hope that the Congress consider a more equitable distribution of funds if this act is to be extended. Unfortunately, there were many communities in Pennsylvania and across the country that have unreasonably high unemployment rates and did not receive any funding under the 1976 act. Because of formula and regulation deficiencies, areas in my home state like Erie, Scranton, Lancaster, York, and Wilkes Barre, all of which have an unemployment rate in excess of 10 percent, did not receive 1 cent of the money in this program. Most of these areas have submitted projects that were designed to provide the basic needs of the community and were in desperate need of an economic boost.

Erie, Pa., for instance, has submitted a vocational training center project which would not only have the benefit of employing people to construct this facility, but would have the added benefit of being a job training center. Erie has an unemployment rate of 10.5 percent, but neither this nor any other grant was approved for the city of Erie.

Wilkes-Barre, Pa., has applied for a grant to construct a new police station. The current station is in such a deteriorated state that it has caused serious safety hazards. Wilkes-Barre has an unemployment rate of 10.03 percent but received no funds under the Public Works Act of 1976.

York, Pa., applied for a $1.6 million grant for much needed street repairs and storm drainage facilities. This project would have employed 74 people. York has an unemployment rate of 10.54 percent, yet no grants were approved for the city of York.

Pittsburgh, Pa., applied for a $1.6 million bridge repair project which would have created 100 jobs and assisted that city with one of its most serious problems unsafe bridges. This is just one of the many bridges in Pittsburgh that has been classified as critically deficient and presents a daily threat to motorists. Pittsburgh has an unemployment rate of 9.16 percent. No funds were approved for the city of Pittsburgh under the 1976 act.

Obviously, there have been some problems in implementing this jobs program, but I think we can learn from our mistakes and make the necessary changes prior to extending this program for another year. There is no doubt that a real need exists for an extension and I am proud to be a cosponsor of the legislation that will help meet that need.

People need jobs and the mechanism to provide those jobs is already in place. It will be our task to make sure that the mechanism works, that it is fairly administered and that it meets the goal of providing work in those areas of high unemployment. I look forward to working with my colleagues in the Senate and on the Public Works Committee to eliminate the discrepancies that have prevented many worthwhile projects from being funded and providing the funds necessary for putting people to work.

By Mr. McCLURE:

S. 428. A bill to amend the Natural Gas Act to extend its application to the direct sale of natural gas in interstate commerce, and to provide that provisions of the act shall not apply to certain sales in interstate commerce; to the Committee on Commerce.

NATURAL GAS CONSERVATION ACT OF 1977

Mr. McCLURE. Mr. President, the present crisis in natural gas deliveries is resulting in political demands for more of the poison which brought us to this point—increased Government control of the natural gas market. Despite the warnings of the past 6 years—and even longer—the Congress has insisted on maintaining price controls on natural gas, resulting in increased demand and constantly decreasing supply. The situation has reached such a desperate level that the natural gas companies have requested authority from the FPC to use a portion of the natural gas in the ground required to maintain field pressure for production. The FPC has granted permission to extract this necessary base for future gas deliveries.

To those not familiar with natural gas field operations, what this amounts to is that the companies are "eating their seed grain." If farmers could not meet food demands and had to resort to selling their next year's seed grain, the seriousness of the shortage would be obvious to all. Getting through one crisis by guaranteeing another during the coming year should alert even the most biased opponents of industry to the outlook for the future.

But, obviously it has not. Instead of demands for logical action—removal of the Government controls which created this crisis—we hear demands for even more controls. The people and their elected Representatives have to make a decision now: Are they going to continue to listen to those who have claimed that there is no danger of a shortage of natural gas, that the shortage is "phony," or will they finally decide to disregard those discredited claims and to turn to those who have accurately predicted the results of Government controls.

The advocates of more controls now want to add "allocation" to "price control." We know, of course, that price controls lead to shortages, which in turn lead to demands for "allocations," or rationing. It is time to turn away from the discredited advocates of controls and turn to the job of increasing supplies of natural gas while we work to conserve existing supplies.

Mr. President, any objective analysis of the present energy crisis must conclude that one basic cause was the 1954 Supreme Court decision concerning price regulation of natural gas. In this decision, concerning Phillips Petroleum Co. against Wisconsin, the Court held that the Federal Power Commission had authority to regulate the prices at which natural gas field producers sold their production to interstate pipeline companies. The Warren Court came to this conclusion despite the explicit intent of Congress, expressed by the Natural Gas Act of 1938 in these terms—(15 U.S.C. 717(b) The provisions of this chapter * * * shall not apply to the production or gathering of natural gas.

I will not go into the sorry record of the attempts by the Federal Power Commission to regulate wellhead prices. Whether based on some unwieldy costs of service procedures or on setting area-wide ceiling prices, involving distinctions between old gas and new gas, the results speak for themselves. The residential natural gas consumer has not been helped by political efforts to hold down prices. These efforts have led directly to the present shortage of fuel oil, gasoline, and technology for removing sulfur from coal and sulfur dioxide from powerplant exhaust gases.

The time has come to reverse this decline in natural gas reserves. And the first step in this process is to remove the authority of the Federal Power Commission to regulate wellhead prices for new supplies of natural gas. This will accomplish these vital objectives.

First, it will stimulate exploration and development of new gas fields, plus increase the economic feasibility of existing marginal wells. Second, it will conserve new supplies of natural gas, by discouraging wasteful uses—uses which were created by the cheapness of price-controlled gas. And, third, it will stimulate the search for new sources of clean fuel, particularly from coal, and new techniques for existing reserves.

My proposal, the Natural Gas Conservation Act of 1977, exempts only gas from new wells, not rededicated supplies. This will, I believe, stimulate necessary exploration and development without imposing additional economic burden on the consumer.

Second, my proposal would leave jurisdiction for a 3-year period over price ceilings with the Federal Power Commission. I believe that this 3-year transition is necessary to protect against possible exorbitant price increases of a temporary nature. After 3 years, supply and demand should maintain competitive levels without this ceiling-setting authority.

Mr. President, to summarize my objection to the present system of regulation and to lend further argument for my proposal, I quote from an article entitled, "The Natural Gas Shortage and the Regulation of Natural Gas Producers," written by Stephen Breyer, professor of law at Harvard Law School, and Paul W. MacAvoy, professor of economics at MIT. This article, printed in the Harvard Law Review, is adapted from a book on energy regulation by the authors, funded by the Brookings Institution:

> In sum, the arguments against the present system of gas field market regulation are compelling. Price control is not needed to check monopoly power, and efforts to control rents require impossible calculations of producer costs and lead to arbitrary allocation of cheap gas supplies. In practice, regulation has led to a virtually inevitable gas shortage. It has brought about a variety of economically wasteful results, and it has ended up by hurting those whom it was designed to benefit. Thus, less, not more, regulation is required.

I recommend the complete article to my colleagues as an excellent analysis of this complex subject, and hope that the authors will have the opportunity to testify before the appropriate committees on the proposed legislation.

Conservation of natural gas demands that Federal Power Commission price controls on wellhead production of new supplies be removed. Despite statements to the contrary, the residential consumer will not be hit with outrageous price increases, since higher priced new gas will be rolled in with lower priced existing supplies. In that manner, a further deterioration of the existing natural gas supply situation—with its attendant harmful effects on other forms of fuel and energy—can be reversed and future consumers of this clean, valuable energy source will be protected. I urge immediate attention to this legislation, in light of the continuing energy crisis in our Nation today.

Mr. President, I ask unanimous consent that two articles from the Journal of Commerce, detailing the impact of the present shortage, be printed in the RECORD.

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

COLD WAVE HAS MANY IN "SWEAT"

(By Charles A. Fuller)

The brutal cold wave gripping most of the nation is hitting the nation's economy with sledgehammer force, idling tens of thousands of workers as factories are forced to close because of shortages of electricity and natural gas.

Automakers alone temporarily laid off 50,000 workers on Tuesday while United States Steel laid off 4,000 of its 10,000 workers at the company's Fairfield Works in Birmingham, Ala., and more layoffs were expected.

MORE CASUALTIES

As the day wore on, more economic casualties surfaced as a result of the bitter cold and energy shortages which are mounting ominously with the passage of time. Among the severe developments Tuesday were:

Pennsylvania Lieutenant Governor Ernest Kline said his state would declare "a state of extreme emergency" with the establishment of mass care centers in case natural gas supplies are cut off to residential users. He said the gas companies are simply unable to get enough gas into the lines.

Nearly half of the 14,000 carpet workers in Dalton, Ga., were thrown out of work because of gas shortages at their plants, and the lack of gas is expected to continue there for at least two to three more weeks.

Philadelphia Electric Co. said it will curtail natural gas supplies for 29 big industrial customers in the Philadelphia suburbs including a U.S. Steel Co. plant at Morrisville, Pa., Alan Wood Steel Co., Standard Pressed Steel Co., Phoenix Steel Co. and Scott Paper Co.

Peoples Gas Light & Coke reportedly was cutting as much as 50 per cent of the power going to large industrial customers in the Chicago area.

Dayton Power and Light Co. declared a power emergency for 24 Southwestern Ohio counties.

NEW JERSEY STATE OF EMERGENCY

Governor Brendan Byrne declared a state of emergency in New Jersey after pipeline suppliers cut gas supplies by more than one third, closing the plants of 15 large industrial customers of South Jersey Gas Co.

Virginia Electric and Power Co. shut off electricity of nearly one-third of its one million customers.

Citrus fruit and vegetables froze in massive quantities in Florida fields, a situation which could force up food prices.

Commercial shipping between Lake Superior and the rest of the Great Lakes was suspended because of worsening ice conditions while traffic on the Mississippi River is virtually non existant because of ice.

But despite all of the above events and more, the full economic impact cannot be measured as of this time. Of perhaps even greater damage than the outright layoffs of workers, is the fact that hundreds of thousands of workers in many states did not go to work on Tuesday simply because their autos would not start in the extreme cold.

The mercury in Cincinnati dropped to 25 degrees below zero Tuesday, an all-time low for that city, while Watertown, N.Y. shivered with an even colder temperature, 32 degrees below zero.

HEATING BILLS SOARING

Heating oil bills for millions of Americans from New England to the southern states are soaring, putting greater pressure on wage earners, many of whom are only just making ends meet economically. This is certain to have a substantial impact upon the ability of Americans to buy other products such as autos, appliances, vacations, etc.

One New York area woman whose take-home pay is less than $150 a week, said her heating bill for last month alone was $150, and this month she expects the cost of heating to at least double.

If the cold continues, more economic damage is bound to pile up. But the National Weather Service is not very optimistic, with expectations that the polar air will stay around for some time longer, perhaps even weeks in some areas.

The weather, it seems, has gone crazy by normal standards. Snow fell in Northern Florida, six inches blanketed Northern and Central Mississippi and Alabama. Record low temperatures were reached Tuesday from Indiana to North Carolina and up North to New England.

SOUTHEAST STATES MAY GET ENOUGH GAS

While federal officials plead for conservation and some industry leaders gripe about government regulation, there are signs southern homes and businesses may soon get sufficient emergency supplies of natural gas to avert further crises.

More than 8,000 Alabama and Georgia workers have been laid off because gas service to their factories were turned off, and hundreds of industrial and commercial operations in North and South Carolina are scheduled to have their gas cut off in the next few days.

The Federal Power Commission Friday gave the green light to more emergency supplies at prices above the government ceiling from the Houston Pipeline Co., after hearing appeals from state officials of Georgia, Maryland, North Carolina and South Carolina.

But it was uncertain how soon they would be available and whether there would be enough.

Gas distributors across the nation have dipped deep into their reserve supplies because of the higher demand caused by an unusually cold winter. In some southern states, those reserves are nearly depleted and firms have begun turning off supplies to all but residential customers and smaller businesses.

In Dalton, Ga., nearly one-third of the 14,000 employes at carpet plants were laid off, and 400 persons in nearby Cartersville were also out of work temporarily.

In Birmingham, Ala., more than 3,000 workers were laid off from a U. S. steel plant and the company expected more furloughs this week.

"We're surprised about the gas shortage coming all of a sudden like it did, said Frank Waters, 51, who was laid off from a Dalton carpet firm last week.

"It was a big shock to me and a big shock to everyone here in Dalton . . . we all go back to work (at this plant) Monday morning because we converted to electricity. But a lot of plants can't."

The plants in Georgia and Alabama are supplied by Southern Natural Gas Co., which said it did not expect to be able to resume service to industrial customers for at least three weeks. Southern Natural officials said they were still unsure of the effect the FPC decision would have on their company.

After approving the Houston sale Friday, FPC chairman Richard L. Dunham urged Americans to "conserve natural gas in every way" and urged Congress to act to ease the crisis.

By Mr. RANDOLPH (for himself, Mr. DOMENICI, Mr. FORD, Mr. HUDDLESTON, and Mr. JACKSON):

S. 429. A bill to amend the Federal Nonnuclear Energy Research and Development Act of 1975 to provide assistance to the Energy Research and Development Administration for the advancement of research, development, and demonstration of nonnuclear energy technologies, and for other purposes: to the Committee on Interior and Insular Affairs.

By Mr. RANDOLPH (for himself, Mr. DOMENICI, Mr. FORD, Mr. HUDDLESTON, and Mr. JACKSON):

S. 430. A bill to amend the Federal Nonnuclear Energy Research and Development Act of 1975 to provide generic authority to the Energy Research and Development Administration to utilize loan guarantee assistance to advance research, development and demonstration of nonnuclear energy technologies, and for other purposes; to the Committee on Interior and Insular Affairs.

SYNTHETIC FUELS ACT OF 1977

Mr. RANDOLPH. Mr. President, if synthetic fuels are to contribute to the U.S. energy supplies the Congress must make the basic decision to direct the course of national energy policies.

Energy conservation can minimize the economic impact of energy independence but alternative energy supplies also are needed to support our economy, particularly our transportation system. Renewable resources such as biomass and solar and geothermal energy are of limited value to transportation. The principal domestic options are synthetic fuels from coal by gasification and liquefaction and, eventually, in situ oil shale conversion.

EARLY FEDERAL PROGRAMS

The use of Federal incentives for this purpose is not a new idea.

The first congressional initiative to develop nonnuclear energy technologies was in the mid-1940's when Senator Joseph O'Mahoney of Wyoming and I introduced in the Senate and House the Synthetic Liquid Fuels Act, which was signed into law on April 5, 1944. That law authorized the first Federal programs for gasification of coal, liquefaction of coal and lignite, and production of synthetic crude oil from oil shale.

Under the Synthetic Liquid Fuels Act of 1944 the Bureau of Mines continued preliminary investigations begun in 1916 on oil shale and begun in 1926 on synthetic oil from coal. Demonstration was undertaken of coal gasification and oil shale extraction.

In conjunction with the Department of Agriculture, the Bureau of Mines initiated new technologies to produce alcohol and other liquid fuels from agricultural residues.

Experience under this program led Secretary of the Interior Julius Krug to conclude in January 1948 that—

> The establishment of a synthetic fuel industry is far too large an operation . . . to be undertaken under emergency or war conditions . . . It should be undertaken now when the country is at peace and completed over a period of five to ten years.

The extensive knowledge and skill acquired in the conversion of coals and oil shale into liquid and gaseous fuels, for the most part, has been lost in the intervening years. This is sad to remember.

These nonnuclear technologies did not become realities in the United States due to economic factors. But these same technologies were pursued to commercial realities in such oil deficient but coal abundant countries as South Africa. The American corporation, M. W. Kellogg Co., designed and supervised construction of the facilities in South Africa that are often cited as an example of the potential for coal liquefaction. But we did not proceed in the United States. We should have done so.

During the 11 years of the program under the Synthetic Fuels Act about $82 million of Federal moneys were expended out of appropriations totaling $85.2 million. So little done, my colleagues, and then came the realization, in part, of the wasted years from the standpoint of an energy policy and a national security posture.

By comparison, over the 27-year period from 1948 to 1974 more than $47 billion were expended by the Federal Government on nuclear reactor development programs.

CREATION OF ERDA

In October 1974 the Congress created the Energy Research and Development Administration to assure that nonnuclear energy alternatives would receive their equitable share of Federal moneys for energy research, development and demonstration. The Federal Non-Nuclear Research and Development Act of 1974 subsequently authorized the use of such Federal incentives as direct grants, contracts, and loans for development of nonnuclear new energy technologies.

Besides this general authority special economic incentives were provided in the Solar Energy Research, Development and Demonstration Act of 1974, in the Solar Heating and Cooling Demonstration Act of 1974, and in the Geothermal Energy Research, Development and Demonstration Act of 1974.

However, since creation of ERDA expenditures on nuclear power have continued to dominate the Federal energy budget. Approximately $1.1 billion and $1.3 billion were spent in fiscal years 1975 and 1976 respectively, on nuclear related research and development. And approximately $1.3 billion are programmed for fiscal year 1977 for a total of approximately $50.7 billion since 1948.

The report of the Interior Committee on S. 598, the 1976 ERDA authorization bill, declared:

> Greater Federal incentives are needed to cut the Gordian Knot of economics for the first generation of pioneer synthetic fuels plants in this country. The market place does not now provide sufficient incentives or an adequate mechanism for encouragement of the establishment of this industry.

The economic incentives available to ERDA must be restructured and broadly applied to assure the commercial development of synthetic natural gas and oil in the United States. We must act.

Flexible Government incentives are essential to remove the uncertainties surrounding commercialization of many new energy technologies. ERDA needs a range of incentives, or combination of incentives, so that it can tailor Federal support to enable the minimum Federal support required to attract proposals from qualified operators.

General authority is not available to ERDA to minimize Federal participation by such means as loan guarantees or possible grants which are convertible to commercial demonstration facility.

COAL GASIFICATION AND LIQUEFACTION

As natural gas production declines, substitute energy supplies must be found. The United States presently has over $100 billion invested in its gas transmission, distribution, and end-user equipment system. On an economic basis, keeping these gas pipelines full, even

with higher priced synthetics, may be cheaper for the American consumer. Extension of the useful life of present pipeline systems is cheaper than creating new systems—cheaper by far—yes, cheaper by far.

A frequent criticism of coal gasification is cost. However, synthetic natural gas, while more costly than natural gas from the suppliers' point of view, is significantly cheaper than electricity—one-third the cost—for home cooking, clothes drying, space and hot water heating. The production, transportation, and distribution of natural gas also is more efficient—67 percent for synthetic natural gas compared to 37 percent for electricity.

The capital required to produce and deliver a unit of energy in the form of synthetic natural gas from coal also is less than that required to produce electricity from coal. With the utility-financing mechanisms available to the pipelines the costs of fuels could be reduced by one-third, compared to 100 percent equity financing as employed by oil companies.

For residential customers, synthetic natural gas is more efficient and less costly than electricity. Should we fail to act and deny American consumers synthetic substitutes we would commit them to conversion to higher cost alternatives, either oil or electricity.

In the longer term, coal liquefaction also will be important in the production of chemicals and similar specialty products.

Mr. President, the need for synthetic fuels is greatest for transportation. As the Senator from Kentucky (Mr. FORD) stated to this body on October 1, 1976—

Our entire transportation system and our economy are vulnerable, exposed by our own shortsightedness. If the American people fully realized the extent of our vulnerability, I believe there would be an immediate outpouring of national concern.

The Subcommittee on Aerospace Technology and National Needs, which our able colleague chairs, had just completed hearings on "Alternative Fuels for Aviation." Navy witnesses had explained that 95 percent of the petroleum consumed by our U.S. Pacific Command is foreign oil; 81 percent by our European Command. Should foreign oil become unavailable to us, our Armed Forces would look to America where our domestic production meets only half our needs.

The Senator observed that this situation is alarming—

The point is, our transportation system runs on liquid fuels. Liquid fuels are what we're short of now. Oil—our primary liquid fuel—is what the world is running out of. That is the heart of the energy crisis and many people miss that point. To be sure we will need these other sources of electric base power, but if commerce is to continue in this country then we need liquid fuels on which to run our transportation system.

Senator FORD then added—

A massive program to build a synthetics fuels industry in this country will not be inexpensive.

But if we are to reduce our vulnerability to embargoes, arbitrary price increases, and eventual depletion of the oil reserves, we must act with dispatch.

Mr. President, I agree with the judgment of the Senator from Kentucky (Mr. FORD).

Clearly the inadequate Federal commitment to the development of coal gasification and liquefaction does not reflect the urgency of our country's energy problems. Because of the small Federal nonnuclear energy research programs, the United States must now stockpile high cost oil in an attempt to neutralize oil against the possibility of another embargo.

The Energy Policy and Conservation Act directs that strategic oil reserves be established to assure 90-day supplies. By the end of 1978 approximately 150 million barrels of crude oil will be stored at Federal expense to protect our country in the event of future oil supply interruptions. Eventually the full strategic reserve system could be as large as a billion barrels.

These emergency stockpiles will cost about $12.5 billion. An identical Federal investment could construct coal gasification facilities capable of supplying the equivalent of 1 million barrels of oil per day for at least 20 years. Logic is on the side of investing now in coal gasification facilities.

Let us examine the national effort that would be required to replace imports of 1 million barrels of oil per day with synthetic gaseous and liquid fuels. Let us also assume that commercially available Koppers-Totzek gasifiers will be used. In order to meet our goal approximately 25 different plants would be required, each employing about 20 gasifiers. Therefore, some 500 gasification units would be required.

Because the cost of each gasifier is approximately $25 million, a typical plant would cost about $500 million. To achieve our production goal of 1 million barrels of oil per day, about 25 plants would be required, a capital investment of about $12.5 billion.

Construction of each plant would take about 1,800 craftsmen and journeymen, working for 3 years. All of the plants could not be built at the same time; no more than three or four plants could be constructed at a given time.

FEDERAL INCENTIVES NEEDED

The January 1976 report of the Congressional Budget Office on Commercialization of Synthetic Fuels characterized the circumstances under which a Federal program can be justified:

A synthetic fuels commercialization program can be justified if the production of some amount of synthetic fuel in an appropriate time frame is itself considered worthwhile. The two relevant time frames are 1975 to 1985 and beyond 1985. Production of synthetic fuels would be worthwhile if their costs (at some point, presumably beyond 1985) were lower than the costs of equivalent quantities of energy provided through alternatives . . . where the costs . . . reflect the possibility of embargo or further price increases.

Clearly these circumstances now exist in the United States.

The principal obstacle to the commercialization of synthetic fuels is the scale of the capital required. This was graphically set forth by the Congressional Budget Office which estimates that—

The total investment in every production needed to keep petroleum imports in 1985 at current levels is $560 billion. Individual projects are also costly. A single high-Btu synthetic gas plant will cost approximately $1.0 billion.

To place those costs in context, the Budget Committee notes that in 1975 only 162 industrial corporations have assets greater than $1 billion, and only 30 have assets over $4 billion. The Budget Committee states:

Major oil firms and utilities are the most likely participants in synfuel ventures, although various manufacturing companies and smaller oil and coal companies have expressed interest . . .

A major consortium would have to be assembled to spread risk adequately.

Moreover, some potential participants in synfuel development face particular financial constraints. Electric utilities, for example, are having difficulty raising capital for construction of new generating plants.

Among the regulated natural gas utility companies, 10 had net plant and stockholder equities in 1975 greater than $1 billion. The largest, Columbia Gas, had plant assets of only $2,171 million, and a net worth of only $1,063 million. Clearly such regulated companies will face great difficulty financing synthetic fuels such as coal gasification without Federal incentives.

Mr. President, I ask unanimous consent that a table listing these 10 companies be printed in the RECORD at this point in my remarks:

1975 NET PLANT AND STOCKHOLDER EQUITY OF LARGEST GAS UTILITY COMPANIES

Rank (net plant) and gas utility company	Net plant [1] (millions)	Stock holder equity [2] (millions)
1—Columbia Gas	$2,171	$1,063
2—Texas Eastern	1,979	901
3—El Paso Co	1,788	530
4—American Natural	1,773	709
5—Peoples Gas (Illinois)	1,570	684
6—Consolidated Natural	1,462	706
7—Transco	1,343	455
8—Northern Natural	1,248	650
9—Pacific Lighting	1,217	614
10—Panhandle Eastern	1,133	491

[1] Depreciated value of plant assets.
[2] Net worth.

Source: Moody's Public Utility Manual 1976.

Mr. President, a number of factors are effectively restricting commercialization of synthetics by the private sector. As the August 1976 report of the Congressional Budget Office notes—

Projects that are in the national interest but have an unfavorable risk/return ratio are not ordinarily undertaken by private industry.

Mr. President, development of a synthetic fuels capability in the United States is in the national interest. Faced with present uncertainties this development is not proceeding in a timely manner as a replacement for oil imports. Among the more significant impediments are:

First. Legislative and regulatory uncertainties.

Second. Financial uncertainty. Synthetics are inherently capital intensive. Investors also may be unwilling to provide capital because of the uncertain legislative and regulatory environment.

Third. Technological uncertainties. Although processes have been proven in laboratory or even pilot-scale operations, substantial uncertainties remain about commercial-scale operations.

Fourth. Timing uncertainties. Abnormally long leadtimes complicated by delays in approvals, environmental reviews and litigation.

These uncertainties compound the risks inherent in the tremendous investments required by private industry to advance new energy technologies beyond the precommercial stage. For these reasons the report of the Congressional Budget Office recommends that—

If it is decided that a commercial synthetic fuels industry should be established immediately, a choice must be made among Government-ownership, provision of loan guarantees alone, or provision of loan and price guarantees.

As mentioned, 2 years ago the Congress created the Federal Energy Research and Development Administration to foster nonnuclear energy alternatives. Subsequently, the Federal Non-Nuclear Research and Development Act of 1974 authorized the use of such Federal incentives as direct grants, contracts, and loans. The 1974 act also authorized Federal purchase of products and the creation of Government-industry corporations.

These Federal programs and incentives now must be restructured to include Federal loan guarantees. If we wait until the economics are precisely defined, conventional oil and gas supplies will be on their deathbed. Our economy will be in chaos. The United States cannot afford to wait. We must act now to commercially demonstrate known technologies.

Construction of a limited number of first generation systems can provide us with financing as well as operating experience. To provide an additional financial incentive I introduced legislation in the 94th Congress to provide Federal loan guarantees for the commercial demonstration of synthetic fuels from coal as well as other new energy technologies.

Recently, Governor Lamm of Colorado, endorsed such Federal loan guarantees as necessary for the orderly development of a synthetic fuels industry in the United States.

Loan guarantees are modest incentives, particularly applicable to utilities-tvpe operations wherein costs can be rolled into a rate structure. Federal loan guarantees are important and necessary aids to encouraging energy industries to invest in new energy techologies.

Other aids such as investment tax credits and accelerated tax writeoffs are available to all industries, not just energy industries. As such they do not provide the added incentives needed to foster adoption of new, as opposed to conventional energy alternatives. As the August 1976 report of the Congressional Budget Office notes—

General tax incentives, such as increased investment tax credit or accelerated depreciation, could in principle provide adequate incentives if specifically aimed at synfuel projects. However, they would not help firms with low taxable income. It would be difficult to control program size with such incentives. Tax incentives and programs that would rely on increasing all energy prices—deregulation of natural gas or oil prices, tariffs, or import quotas—to increase synfuel production share a common drawback. They are indiscriminate, subsidizing investments that would be made anyway as well as those for which the program was conceived.

The Senate Budget Committee report adds—

Unlike tax incentives . . . which are available to all investments that satisfy stated criteria, these (loan) guarantees are made available only to selected projects. Thus, they are appropriate to remedy specific obstacles to investment, rather than obstacles arising from general economic conditions.

The merits of Federal loan guarantees for financing energy development are cogently stated in the 1976 report of the Senate Committee on Budget which states—

Underlying the increasing use of guarantees in the energy area is the need to finance new sources of energy. So far, the private sector has for the most part been hesitant to develop new energy sources such as synthetic fuels, the sun, and geothermal heat. The obstacles to private investment are the scale of the capital required, the uncertainty of future prices for petroleum energy, technological uncertainty, and regulatory policy.

The August 1976 report notes these obstacles exist for solar and geothermal energy as well as synthetic fuels, adding—

Loan guarantees can reduce 'front-end' risks, especially those due to uncertainty about the cost or performance of new technologies. Government construction of a synthetic fuel plant, with later sale to a private firm, can perform a similar service.

By utilizing Federal loan guarantees the Government enters the private financial market in such a way as to reduce or remove the risks associated with these obstacles, thereby allowing the private sector to proceed with the capital investment. As the Congressional Budget Committee report observes—

When the government uses such guarantees, private participants in a selected venture are protected from some or all of the effect of its economic failure. By employing such guarantees direct Federal expenditures appear to be avoided and a major private role is assured.

With guarantees the Federal Government can assure the ultimate financial viability of a particular enterprise and at the same time avoid direct Federal expenditures. A major private role also is assured.

A frequent criticism of Federal loan guarantees that deserve response is that the principal proponents, and likely recipients of guarantees for coal gasification, will be natural gas transmission companies—not the multinational oil companies.

However, competition would be stimulated between the pipelines and major oil companies. For this reason, in part, Exxon opposed such legislation. On the other hand, the expertise on synthetic fuels technologies resides in the larger companies. To restrict their participation in Federal programs would not provide the Government with the best expertise and would increase the risk of failure and default on federally guaranteed loans. Moreover, the profits of interstate natural gas pipelines are regulated by the Federal Power Commission. The consumer would be protected against windfall profits associated with Federal loan guarantees.

SYNTHETIC FUELS ACT OF 1977

Mr. President, because of my continuing concern for the timely development of a synthetic fuels capability for the United States, I introduce S. 429, the Synthetic Fuels Act of 1977. This measure is structured to reflect similar measures considered by the Senate during the 94th Congress. The principal difference is that this bill does not authorize funds for Federal loan guarantees, but makes such authorizations subject to the annual authorizations and appropriations process now followed by ERDA. This amendment to the Federal Nonnuclear Energy Research and Development Act of 1974 would enable ERDA to request loan guarantees for new energy technologies on a project-by-project basis. Such requests, as part of the annual authorizations and appropriations process, would then be reviewed by the appropriate jurisdictional committees of the Congress. Each proposal thus would be reviewed by the Congress and would require a line item authorization and appropriation.

Moreover, authorizations for loan guarantees would become budget items at the time the loan guarantees are awarded. This revision to the earlier measure is in response to concerns expressed by the Senate Budget Committee.

This legislation did not commit the Congress to a large program of loan guarantees for synthetic fuels development. As each proposal is submitted to the Congress by ERDA it would be subject to the normal checks involved in the process for the authorizations and appropriations of funds.

The effect of this revision is to convert S. 2869 and H.R. 12112 as considered by the 94th Congress into generic authority for ERDA to request funds to support Federal loan guarantees. The bill thus sets forth the necessary conditions for receipt of such loan guarantees and the procedures to be followed by ERDA in their administration.

Similar generic authority passed the Senate on June 25, 1976, in an abbreviated form by a vote of 65 to 15. This minimum provision was subsequently incorporated in the conference report on H.R. 13350 which the Senate was unable to consider due to time limitations during the closing days of the 94th Congress.

Mr. President, I introduce two measures to provide ERDA with general loan guarantee authority for new energy technologies. The first, the Synthetic Fuels Act of 1977, is the revised bill to which I referred earlier. This measure is cosponsored by Senators DOMENICI, FORD, HUDDLESTON, and JACKSON.

The second is the conference agreement reached on H.R. 13350, which did

not receive final consideration by the 94th Congress. This measure is cosponsored by Senators DOMENICI, FORD, HUDDLESTON, and JACKSON.

I ask unanimous consent that these bills be printed in the RECORD.

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

S. 429

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

SEC. 101. That this Act may be cited as the "Synthetic Fuels Act of 1977".

SEC. 102. Section 7(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5906) is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (5),

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following new paragraph:

"(7) Federal loan guarantees: *Provided,* That all of the other provisions of this Act apply to such guarantees and commitments to guarantee in the same manner and to the same extent as they apply to demonstrations under this Act.".

(b) The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901, et seq.) is further amended by adding at the end thereof the following new section:

"LOAN GUARANTEES FOR DEMONSTRATION FACILITIES

"SEC. 19. (a) It is the purpose of this section—

"(1) to assure adequate Federal support to foster a demonstration program to produce synthetic fuels from coal, oil shale, and other domestic resources, to employ biomass and renewable and geothermal energy sources to produce synthetic fuels and other desirable forms of energy, and to assure the availability of energy-efficient industrial equipment and facilities;

"(2) to authorize assistance, through loan guarantees and commitments to guarantee under subsection (b) for construction and startup and related costs under section 7 of the Federal Nonnuclear Energy Research and Development Act of 1974 (43 U.S.C. 3901, et seq.) to demonstration facilities (A) for the conversion of domestic coal, oil shale, biomass, and other domestic resources into synthetic fuels; (B) for the demonstration of synthetic fuels and other desirable forms of energy from renewable and geothermal sources; and (C) for the demonstration of energy-efficient industrial equipment and facilities; and

"(3) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities;

"(b)(1) Except as provided in paragraph (5) of this subsection, the Administrator is authorized, in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee, in such manner and subject to such conditions (not inconsistent with the provisions of this Act) as he deems appropriate, the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by, or on behalf of, any borrower for the purpose of (A) financing the construction and startup costs of demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into synthetic fuels, including, but not limited to, such synthetic fuels from coal as high Btu gaseous fuels compatible for mixture and transportation with natural gas by pipeline; gaseous, liquid, and solid fuels suitable for boiler use in compliance with applicable environmental requirements; liquid fuels for transportation users; and petrochemicals: *Provided,* That no loan guarantee for a full-sized oil shale facility shall be provided under this section until after successful demonstration of a modular facility producing between three and twelve thousand barrels per day, taking into account such considerations as water usage, environmental effects, waste disposal, labor conditions, health and safety, and the socioeconomic impacts on local communities: *Provided further,* That no loan guarantee shall be available under this clause for the manufacture of component parts for demonstration facilities eligible for assistance under this clause; (B) financing the construction and startup costs of demonstration facilities to generate desirable forms of energy (including synthetic fuels) from direct solar, wind, ocean thermal gradient, bioconversion, or other renewable energy resources; (C) financing the purchase, construction, installation, and startup costs of energy-efficient industrial equipment and facilities for demonstration by small business concerns and others for general use; and (D) further implementing the financing of geothermal resource development under the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1101, et seq.): *Provided,* That the indebtedness guaranteed or committed to be guaranteed under this subsection which may be outstanding at any time in any fiscal year shall not exceed the aggregate of the total amount authorized pursuant to this section for that fiscal year and all preceding fiscal years. With regard to such limitation the Administrator shall make no new commitments for loan guarantees after September 30, 1984, and shall furnish no guarantees after September 30, 1986. The authorized indebtedness to be guaranteed under clauses (A), (B), and (C) of this paragraph shall be allocated by the Administrator so that no more than 50 per centum is for high Btu coal gasification, no more than 30 per centum for other fossil based synthetic fuels, and no more than 50 per centum for renewable energy resources, including biomass, urban and other waste, direct solar, wind, ocean thermal gradient, bioconversion, and for industrial energy conservation. All guarantees or commitments to guarantee authorized by this section shall be made only for demonstration facilities constructed within the United States or in waters contiguous to its territory. Loan guarantees for geothermal resource development under clause (D) of this paragraph shall be carried out pursuant to the authority and provisions of the Geothermal Energy Research, Development, and Demonstration Act of 1974: *Provided,* That paragraphs (2) and (4) of this subsection, and subsections (g)(2), (h), (j), (n), (s), and (v) of this section, shall also apply to such guarantees: *Provided further,* That the limitations in section 201(e) of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1141 (e)) shall not apply to such guarantees.

"(2) An applicant for any financial assistance under this section shall provide information to the Administrator in such form and with such consent as the Administrator deems necessary.

"(3) Prior to issuing any guarantee under this section the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of the loan to which such guarantee applies. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

"(4) The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

"(5)(A) The Administrator is authorized, in the case of a facility for the conversion of oil shale to synthetic fuels which is determined by the Administrator pursuant to the proviso in paragraph (1)(A) of this subsection, to be constructed at a modular size, to enter into a cooperative agreement with the applicant in accordance with section 8 of this Act and the other provisions of this Act to share the estimated total planning, design and construction costs, plus operation and maintenance costs, of such modular facility. The Federal share shall not exceed 75 per centum of such costs. All receipts for the sale of any products produced during the operation of the facility shall be used to offset the costs incurred in the operation and maintenance of the facility. The provisions of subsections (d), (e), (k), (m), (p), (s), (t), (u), (v), (w), (x), (y), and (z) shall apply to any such modular facility. The provisions of this section shall apply to any loan guarantee for such modular facility.

"(B) After successful demonstration of such modular facility, as determined by the Administrator, the facility is eligible for financial assistance under this section for purposes of expansion to a full-sized facility and the applicant may purchase the Federal interest in the modular facility as represented by the Federal share thereof by means of (i) a cash payment to the United States, or (ii) a share of the product or sales resulting from such expanded operation, as determined by the Administrator. If expansion of such facility is determined not to be warranted by the Administrator, he may, at the option of the applicant, dispose of the modular facility to the applicant at not less than fair market value, as determined by the Administrator as of the date of the disposal, or otherwise dispose of it, in accordance with applicable provisions of law, and distribute the net proceeds thereof, after expenses of such disposal, to the applicant in proportion to the applicant's share of the costs of such facility.

"(C) There is authorized to carry out the purposes of subparagraph (A) of this paragraph, cost-sharing agreements as provided therein or through other forms of Federal assistance authorized by section 7 of this Act.

"(6) To the extent possible, loan guarantees and cooperative agreements shall be issued on the basis of competitive bidding among applicants in a particular technology area.

"(7) With respect to any demonstration facility for the conversion of solid waste (as that term is defined in the Solid Waste Disposal Act, as amended), the Administrator, prior to issuing any guarantee under this section, must be in receipt of a certification from the Administrator of the Environmental Protection Agency and any appropriate State or areawide solid waste management planning agency that the proposed application for a guarantee is consistent with any applicable suggested guidelines published pursuant to section 209(a) of the Solid Waste Disposal Act, as amended and any applicable State or regional solid waste management plan.

"(c)(1) The Administrator, with due regard for the need for competition, shall guarantee or make a commitment to guarantee any obligation under subsection (b) or enter into a cooperative agreement only if—

"(A) the Administrator is satisfied that the financial assistance applied for is necessary to encourage financial participation;

"(B) the Administrator has determined, taking into consideration all reasonably

available forms of assistance under this section and other Federal and State statutes, that the impacts resulting from the proposed demonstration facility have been fully evaluated by the borrower, the Administrator, and the Governor of the affected State, and that effective steps have been taken or will be taken in a timely manner to finance community planning and development costs resulting from such facility under this section, under other provisions of law, or by other means;

"(C) the Administrator has determined that, in the case of any demonstration or modular facility planned to be located on Indian lands, the appropriate Indian tribe, with the approval of the Secretary of the Interior, has given written consent to such location;

"(2) The Administrator, with due regard for the need for competition, shall guarantee or make a commitment to guarantee any obligation under subsection (b) only if—

"(A) the amount guaranteed to any borrower at any time does not exceed—

"(i) an amount equal to 75 per centum of the project cost of the demonstration facility as estimated at the time the guarantee is issued, which cost shall not include amounts expended for facilities and equipment used in the extraction of a mineral other than coal or shale, and in the case of coal only to the extent that the Administrator determines that the coal is to be converted to synthetic fuel; and

"(ii) an amount equal to 60 per centum of that portion of the actual total project cost of any demonstration facility which exceeds the project cost of such facility as estimated at the time the loan guarantee is issued;

"(B) the Administrator has determined that there will be a continued reasonable assurance of full repayment;

"(C) the obligation is subject to the condition that it not be subordinated to any other financing;

"(D) the maximum maturity of the obligation does not exceed thirty years, or 90 percentum of the projected useful economic life of the physical assets of the demonstration facility covered by the guarantee, whichever is less, as determined by the Administrator;

"(E) the obligation provides for the orderly and ratable retirement of the obligation and includes sinking fund provisions, installment payment provisions or other methods of payments and reserves as may be reasonably required by the Administrator. Prior to approving any repayment schedule the Administrator may consider the date on which operating revenues are anticipated to be generated by the project. To the maximum extent possible repayment or provision therefor shall be required to be made in equal amounts payable at equal intervals; and

"(F) the Administrator shall, after a period of not less than ten years from issuance of the obligation, taking into consideration whether the Government's needs for information to be derived from the project have been substantially met and whether the project is capable of commercial operation, determine the feasibility and advisability of terminating the Federal participation in the project. In the event that such determination is positive, the Administrator shall notify the borrower and provide the borrower with not less than two nor more than three years in which to find alternative financing. At the expiration of the designated period of time, if the borrower has been unable to secure alternative financing, the Administrator is authorized to collect from the borrower an additional fee of 1 per centum per annum on the remaining obligation to which the Federal guarantee applies.

"(d) Prior to submitting a report to Congress pursuant to subsection (m) of this section on each guarantee and cooperative agreement in excess of $100 million the Administrator shall request from the Attorney General and the Chairman of the Federal Trade Commission written views, comments, and recommendations concerning the impact of such guarantee or commitment, or agreement on competition and concentration in the production of energy and give due consideration to views, comments, and recommendations received: *Provided*, That if either official, within sixty days after receipt of such request or at any time prior to the Administrator submitting such report to Congress, recommends against making such guarantee or commitment or agreement and, if for reasons of national interest, the Administrator recommends that a guarantee or commitment or agreement be provided, the proposed guarantee or commitment or agreement shall then be referred to the President, and the Administrator shall not do so unless the President determines in writing that such guarantee or commitment or agreement is in the national interest.

"(e)(1) As soon as the Administrator knows the geographic location of a proposed commercial demonstration facility for which a guarantee or a commitment to guarantee or cooperative agreement is sought under this section or section 7 of this Act he shall inform the Governor of the State, and officials of each political subdivision and Indian tribe, as appropriate, in which the facility would be located or which would be impacted by such facility. The Administrator shall not guarantee or make a commitment to guarantee a loan or enter into a cooperative agreement under subsection (b) of this section if the Governor of the State in which the proposed facility would be located recommends that such action not be taken, unless the Administrator finds that there is an overriding national interest in taking such action in order to achieve the purpose of this section. If the Administrator decides to guarantee or make a commitment to guarantee or enter into a cooperative agreement despite a Governor's recommendation not to take such action, the Administrator shall communicate, in writing, to the Governor reasons for not concurring with such recommendation. The Administrator's decision, pursuant to this subsection, shall be final unless determined upon judicial review initiated by the Governor to be unlawful by the reviewing court pursuant to 5 U.S.C. 706(2) (A) through (D). Such review shall take place in the United States court of appeals for the circuit in which the State involved is located, upon application made within ninety days from the date of such decision. The Administrator shall, by regulation, establish procedures for review of, and comment on, the proposed facility by States, local political subdivision and Indian tribes which may be impacted by such facility, and the general public.

"(2) The Administrator shall review and approve the plans of the applicant for the construction and operation of any demonstration and related facilities constructed or to be constructed with assistance under this section. Such plans and the actual construction shall include such monitoring and other data-gathering costs associated with such facility as are required by the comprehensive plan and program under this section. The Administrator shall determine the estimated total cost of such demonstration facility, including, but not limited to, construction costs, startup costs, costs to political subdivisions and Indian tribes by such facility, and costs of any water storage facilities needed in connection with such demonstration facility, and determine who shall pay such costs. Such determination shall not be binding upon the States, political subdivisions, or Indian tribes.

"(3) There is hereby established a panel to advise the Administrator on matters relating to the program authorized by this section, including, but not limited to, the impact of the demonstration facilities on communities and States and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts, and other matters relating to the development of synthetic fuels and other energy sources under this section. The panel shall include such Governors or their designees as shall be designated by the Chairman of the National Governors Conference, Representatives of Indian tribes, industry, environmental organizations, and the general public shall be appointed by the Administrator. The Chairman of the panel shall be selected by the Administrator. No person shall be appointed to the panel who has a financial interest in any applicant applying for assistance under this section. Members of the panel shall serve without compensation. The provisions of section 106(e) of the Energy Reorganization Act of 1974 (42 U.S.C. 5816(e)) shall apply to the panel.

"(f) Except in accordance with reasonable terms and conditions contained in the written contract of guarantee, no guarantee issued or commitment to guarantee a loan made under this section shall be terminated, canceled, or otherwise revoked. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this section and that such obligation has been approved and is legal as to principal, interest, and other terms. Subject to the conditions of the guarantee or commitment to guarantee, such a guarantee shall be incontestable in the hands of the holder of the guaranteed obligation, except as to fraud or material misrepresentation on the part of the holder.

"(g)(1) If there is a default by the borrower, as defined in regulations promulgated by the Administrator and in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Administrator. Within such period as may be specified in the guarantee or related agreements, the Administrator shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of, the guaranteed obligation as to which the borrower has defaulted, unless the Administrator finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any forebearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the guaranteed obligation and approved by the Administrator.

"(2) If the Administrator makes a payment under paragraph (1) of this subsection or section 202(b) of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1142(b)), the Administrator shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the guarantee or related agreements), including the authority to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or any other property of the borrower (of a value equal to the amount of such payment) to the extent that the guarantee applies to amounts in excess of the estimated project cost under subsection (c)(2)(B), without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act (40 U.S.C. 488), or any other law, or to permit the borrower, pursuant to an agreement with the Administrator, to continue to pursue the purposes of

the demonstration facility if the Administrator determines that this is in the public interest. The rights of the Administrator with respect to any property acquired pursuant to such guarantee or related agreements, shall be superior to the rights of any other person with respect to such property.

"(3) In the event of a default on any guarantee under this section, the Administrator shall notify the Attorney General, who shall take such action as may be appropriate to recover the amounts of any payments made under paragraph (1) including any payment of principal and interest under subsection (h) from such assets of the defaulting borrower as are associated with the demonstration facility, or from any other security included in the terms of the guarantee.

"(4) For purposes of this section, patents, including any inventions for which a waiver was made by the Administrator under section 9 of this Act, and technology resulting from the demonstration facility, shall be treated as project assets of such facility. The guarantee agreement shall include such detailed terms and conditions as the Administrator deems appropriate to protect the interests of the United States in the case of default and to have available all the patents and technology necessary for any person selected, including, but not limited to, the Administrator to complete and operate the defaulting project. Furthermore, the guarantee agreement shall contain a provision specifying that patents, technology, and other proprietary rights which are necessary for the completion or operation of the demonstration facility shall be available to the United States and its designee on equitable terms, including due consideration to the amount of the United States default payments. Inventions made or conceived in the course of or under such guarantee, title to which is vested in the United States under this Act, shall not be treated as project assets of such facility for disposal purposes under this subsection, unless the Administrator determines in writing that it is in the best interests of the United States to do so.

"(h) With respect to any obligation guaranteed under this section, the Administrator is authorized to enter into a contract to pay, and to pay, holders of the obligation, for and on behalf of the borrower, from the fund established by this section or from the Geothermal Resources Development Fund, as applicable, the principal and interest payments which become due and payable on the unpaid balance of such obligation if the Administrator finds that—

"(1) the borrower is unable to meet such payments and is not in default; it is in the public interest to permit the borrower to continue to pursue the purposes of such demonstration facility; and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which would result in the event of a default;

"(2) the amount of such payment which the Administrator is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

"(3) the borrower agrees to reimburse the Administrator for such payment on terms and conditions, including interest, which are satisfactory to the Administrator.

"(i) Regulations required by this section shall be issued within two hundred and forty days after enactment of this section, except as provided in subsection (t) of this section. All regulations under this section and any amendments thereto shall be issued in accordance with section 553 of title 5, of the United States Code.

"(j) The Administrator shall charge and collect fees for guarantees of obligations authorized by classes (A), (B), (C), and (D) of subsection (b)(1), in amounts which (1) are sufficient in the judgment of the Administrator to cover the applicable administrative costs, and (2) reflect the percentage of project costs guaranteed. In no event shall the fee be less than 1 per centum per annum of the outstanding indebtedness covered by the guarantee. Nothing in this subsection shall be construed to apply to community planning and development assistance pursuant to subsection (k) of this section.

"(k)(1) In accordance with such rules and regulations as the Administrator in consultation with the Secretary of the Treasury shall prescribe, and subject to such terms and conditions as he deems appropriate, the Administrator is authorized, for the purpose of financing essential community development and planning which directly result from, or are necessitated by, one or more demonstration facilities assisted under this section to—

"(A) guarantee and make commitments to guarantee the payment of interest on, and the principal balance of, obligations for such financing issued by eligible States, political subdivisions, or Indian tribes,

"(B) guarantee and make commitments to guarantee the payment of taxes imposed on such demonstration facilities by eligible non-Federal taxing authorities which taxes are earmarked by such authorities to support the payment of interest and principal on obligations for such financing, and

"(C) require that the applicant for assistance for a demonstration facility under this section advance sums to eligible States, political subdivisions, and Indian tribes to pay for the financing of such development and planning: *Provided*, That the State, political subdivision, or Indian tribe agrees to provide tax abatement credit over the life of the facilities for such payments by such applicant.

"(2) Prior to issuing any guarantee under this subsection, the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

"(3) The amount of obligations authorized for any guarantee and commitment to guarantee under paragraph (1) of this subsection which may be outstanding at any time in any fiscal year shall not exceed the aggregate of the total amount authorized pursuant to this subsection for that fiscal year and all preceding fiscal years, and shall be included in the limitation on outstanding indebtedness set forth in subsection (b)(1) of this section.

"(4) In the event of any default by the borrower in the payment of taxes guaranteed by the Administrator under this subsection, the Administrator shall pay out of the fund established by this section such taxes at the time or times they may fall due, and shall have by reason of such payment a claim against the borrower for all sums paid plus interest.

"(5) If after consultation with the State, political subdivision, or Indian tribe, the Administrator finds that the financial assistance programs of paragraph (1) of this subsection will not result in sufficient funds to carry out the purposes of this subsection then the Administrator may—

"(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: *Provided*, That such loans shall be made on such reasonable terms and conditions as the Administrator shall prescribe: *Provided further*, That the Administrator may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Administrator that due to a change in circumstances there will be net adverse impacts resulting from such demonstration facility that would probably cause such State, subdivision, or tribe to default on the loan; or

"(B) require that any community development and planning costs which are associated with, or result from, such demonstration facility and which are determined by the Administrator to be appropriated for such inclusion shall be included in the total costs of the demonstration facility.

"(6) The Administrator is further authorized to make grants to States, political subdivisions, or Indian tribes for studying and planning for the potential economic, environmental, and social consequences of demonstration facilities, and for establishing related management expertise.

"(7) At any time the Administrator may, with the concurrence of the Secretary of the Treasury, redeem, in whole or in part, out of the fund established by this section, the debt obligations guaranteed or the debt obligations for which tax payments are guaranteed under this subsection.

"(8) When one or more States, political subdivisions, or Indian tribes would be eligible for assistance under this subsection, but for the fact that construction and operation of the demonstration facilities occur outside its jurisdiction, the Administrator is authorized to provide, to the greatest extent possible, arrangements for equitable sharing of such assistance.

"(9) Such amounts as may be necessary for direct loans and grants pursuant to this subsection shall be available as provided in annual authorization Acts.

"(10) The Administrator, if appropriate, shall provide assistance in the financing of up to 100 per centum of the costs of the required community development and planning pursuant to this subsection.

"(11) In carrying out the provisions of this subsection, the Administrator shall provide that title to any facility receiving financial assistance under this subsection shall vest in the applicable State, political subdivision, or Indian tribe, as appropriate, and in the case of default by the borrower on a loan guarantee made or committed under subsection (b) of this section, such facility shall not be considered a project asset for the purposes of subsection (g) of this section.

"(l)(1) The Administrator is directed to submit a report to the Congress within one hundred and eighty days after the enactment of this section setting forth his recommendations on the best opportunities to implement a program of Federal financial assistance with the objective of demonstrating production and conservation of energy. Such report shall be updated and submitted to Congress at least annually for the duration of the program authorized by this section and shall include specific comments and recommendations by the Secretary of the Treasury on the methods and procedures set forth in subparagraph (B)(viii) of this subsection, including their adequacy, and changes necessary to satisfy the objectives stated in this subsection. This report shall include—

"(A) a study of the purchase or commitment to purchase by the Federal Government, for use by the United States, of all or a portion of the products of any synthetic fuel facilities constructed pursuant to this program as a direct or an alternate form of Federal assistance, which assistance, if recommended, shall be carried out pursuant to section 7(a)(4) of this Act; and

"(B) a comprehensive plan and program to acquire information and evaluate the environmental, economic, social, and technological impacts of the demonstration program under this section. In preparing such a comprehensive plan and program, the Administrator shall consult with the Environ-

mental Protection Agency, the Federal Energy Administration, the Department of Housing and Urban Development, the Department of the Interior, the Department of Agriculture, and the Department of the Treasury, and shall include therein, but not be limited to, the following:

"(i) information about potential demonstration facilities proposed in the program under this section;

"(ii) any significant adverse impacts which may result from any activity included in the program;

"(iii) the extent to which it is feasible to commercialize the technologies as they affect different regions of the Nation;

"(iv) proposed regulations required to carry out the purposes of this section;

"(v) a list of Federal agencies, governmental entities, and other persons that will be consulted or utilized to implement the program;

"(vi) the methods and procedures by which the information gathered under the program will be analyzed and disseminated;

"(vii) a plan for the study and monitoring of the health effects of such facilities on workers and other persons, including, but not limited to, any carcinogenic effect of synthetic fuels; and

"(viii) the methods and procedures to insure that (1) the use of Federal assistance for demonstration facilities is kept to the minimum level necessary for the information objectives of this section, (2) the impact of loan guarantees on the capital markets of the United States is minimized, taking into account other Federal direct and indirect securities activities, and any economic sectors which may be negatively impacted as a result of the reduction of capital by the placement of guaranteed loans, and (3) the granting of Federal loan guarantees under this Act does not impede movement toward improvement in the climate for attracting private capital to develop synthetic fuels without continued direct Federal incentives.

"(2) The Administrator shall annually submit a detailed report to the Congress concerning—

"(A) the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including, but not be limited to (i) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility, including byproduct production therefrom, and the distribution of such products and byproducts, (ii) a detailed statement of the financial conditions of each such demonstration facility, (iii) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (iv) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (v) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section; and

"(B) The activities of the funds referred to in subsection (n) of this section during the preceding fiscal year, including a statement of the amount and source of fees or other moneys, property, or assets deposited into the funds, all payments made, the notes or other obligations issued by the Administrator, and such other data as may be appropriate.

"(3) The annual reports required by this subsection shall be a part of the annual report required by section 15 of this Act, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports and the one-hundred-and-eighty-day report required in paragraph (1) of this subsection shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science and Technology and to the President of the Senate and the Committee on Interior and Insular Affairs of the Senate.

"(m) Prior to issuing any guarantee or commitment to guarantee or cooperative agreement pursuant to subsection (b) of this section, the Administrator shall submit to the Committee on Science and Technology of the House of Representatives and the Committee on Interior and Insular Affairs of the Senate a full and complete report on the proposed demonstration facility and such guarantee or agreement. Such guarantee or commitment to guarantee or cooperative agreement shall not be finalized under the authority granted by this section prior to the expiration of ninety calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees: *Provided*, That where the cost of such demonstration facility exceeds $200,000,000, such guarantee or commitment to guarantee or cooperative agreement shall not be finalized if prior to the close of such ninety-day period both Houses pass a resolution stating in substance that the Congress does not favor the making of such guarantee or commitment or agreement.

"(n)(1) There is hereby created within the Treasury a separate fund (hereafter in this section called the 'fund') which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purpose of carrying out the program authorized by clauses (A), (B), and (C) of subsection (b)(1) and subsections (g) and (h) of this section. The Geothermal Resources Development Fund established by the Geothermal Energy Research, Development, and Demonstration Act of 1974 shall be available for the purpose of carrying out the geothermal loan guarantee program as established by that Act and as further implemented by this section.

"(2) There are hereby authorized to be appropriated to the fund for administrative expenses such funds as may be necessary to carry out the purposes of the applicable provisions of this section, including, but not limited to, the payments of interest and principal and the payment of interest differentials and redemption of debt. All amounts received by the Administrator as interest payments or repayments of principal on loans which are guaranteed under this section, fees, and any other moneys, property, or assets derived by him from operations under this section shall be deposited in the fund or in the Geothermal Resources Development Fund, as applicable.

"(3) All payments on obligations, appropriate expenses (including reimbursements to other government accounts), and repayments pursuant to operations of the Administrator under this section shall be paid from the fund subject to appropriations or from the Geothermal Resources Development Fund, as applicable. If at any time the Administrator determines that moneys in the fund exceed the present and reasonably foreseeable future requirements of the fund, such excess shall be transferred to the general fund of the Treasury.

"(4) If at any time the moneys available in the fund or in the Geothermal Resources Development Fund are insufficient to enable the Administrator to discharge his responsibilities as authorized by subsections (b)(1), (g), and (h) of this section, or the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1101), as the case may be, the Administrator shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Administrator from appropriations or other moneys available under paragraph (2) of this subsection for loan guarantees authorized by clauses (A), (B), and (C) of subsection (b)(1) and subsections (g) and (h) of this section, and from appropriations or other moneys available under section 204 of the Geothermal Energy Research, Development, and Demonstration Act of 1974 for loan guarantees described in clause (D) of subsection (b)(1) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act; and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"(o) For the purposes of this section, the term—

"(1) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, or any territory or possession of the United States.

"(2) 'United States' means the several States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, and

"(3) 'borrower' or 'applicant' shall include any individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other non-Federal entity.

"(p)(1) An applicant seeking a guarantee or cooperative agreement under subsection (b) of this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Administrator determines that it satisfactorily meets all the requirements of section 802 of title 46, United States Code, for determining such citizenship, except that the provisions in subsection (a) of such section 802 concerning (1) the citizenship of officers or directors of a corporation, and (2) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable.

"(2) The Administrator, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

"(q) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after the date of enactment of this section: *Provided*, That project agreements entered into pursuant to this section for any commercial demonstration facility for the conversion or bioconversion of solid waste (as that term is defined in the Solid Waste Disposal Act, as amended) shall be administered in accord-

ance with the May 7, 1976, 'Interagency Agreement Between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy From Solid Wastes', and specifically that in accordance with this agreement, (1) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (2) all energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Energy Research and Development Administration; and (3) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 209(a) of the Solid Waste Disposal Act, as amended, and any applicable State or regional solid waste management plan.

"(r) Inventions made or conceived in the course of or under a guarantee authorized by this section shall be subject to the title and waiver requirements and conditions of section 9 of this Act.

"(s) With respect to any obligation which is issued after the enactment of this section by, or in behalf of, any State, political subdivision, or Indian tribe and which is either guaranteed under, or supported by taxes levied by said issuer which are guaranteed under, this section, the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successor in interest) shall be included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954, as amended: *Provided,* That the Administrator shall pay to such issuer out of the fund established by this section such portion of the interest on such obligations, as determined by the Secretary of the Treasury to be appropriate after taking into account current market yields (1) on obligations of said issuer, if any, or (2) on other obligations with similar terms and conditions, the interest on which is not so included in gross income for purposes of chapter 1 of said Code, and in accordance with such terms and conditions as the Secretary of the Treasury shall require.

"(t)(1) Each officer or employee of the Energy Research and Development Administration who—

"(A) performs any function or duty under this section; and

"(B)(i) has any known financial interest in any person who is applying for or receiving financial assistance for a demonstration facility under this section; or

"(ii) has any known financial interest in property from which coal, natural gas, oil shale, crude oil, or other energy resources is produced in connection with any demonstration facility receiving financial assistance under this section,

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

"(2) The Administrator shall—

"(A) act within ninety days after the date of enactment of this Act—

"(i) to define the term 'known financial interest' for purposes of paragraph (1) of this subsection; and

"(ii) to establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

"(B) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

"(3) In the rules prescribed in paragraph (2) of this subsection, the Administrator may identify specific positions within the Administration which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this subsection.

"(4) Any officer or employee who is subject to, and knowingly violates, this subsection shall be fined not more than $2,500 or imprisoned not more than one year, or both.

"(u) Nothing in this section shall be construed as affecting the obligations of any person receiving financial assistance pursuant to this section to comply with applicable Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

"(v) The information maintained by the Administrator under this section shall be made available to the public subject to the provision of section 552 of title 5, United States Code, and section 1906 of title 18, United States Code, and to other Government agencies in a manner that will facilitate its dissemination: *Provided,* That upon a showing satisfactory to the Administrator by any person that any information, or portion thereof obtained under this section by the Administrator directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, and Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code: *Provided further,* That the Administrator shall, upon request, provide such information to (A) any delegate of the Administrator for the purpose of carrying out this Act, and (B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Federal Energy Administration, the Environmental Protection Agency, the Federal Power Commission, the General Accounting Office, other Federal agencies, or heads of other Federal agencies, when necessary to carry out their duties and responsibilities under this and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress, or from any committee of Congress upon request of the Chairman, For the purposes of this subsection, the term 'person' shall include the borrower.

"(w) Notwithstanding any other provision of this section, the authority provided in this section to make guarantees or commitments to guarantee to enter into cooperative agreements under subsection (b)(1), to make guarantees or commitments to guarantee, or to make loans or grants, under subsection (K), to make contracts under subsection (h) to use fees and receipts collected under subsections (b) and (j) of this section, and the authorities provided under subsection (n) of this section shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this section.

"(x) No person in the United States shall on the grounds of race, color, religion, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with assistance made available under this section: *Provided,* That Indian tribes are exempt from the operation of this subsection: *Provided further,* That such exemption shall be limited to the planning and provision of public facilities which are located on reservations and which are provided for members of the affected Indian tribes as the primary beneficiaries.

"(y) In carrying out his functions under this section, the Administrator shall provide a realistic and adequate opportunity for small business concerns to participate in the program to the optimum extent feasible consistent with the size and nature of each project.

"(z)(1)(A) Recipients of financial assistance under this section shall keep such records and other pertinent documents, as the Administrator shall prescribe by regulation, including, but not limited to, records which fully disclose the disposition of the proceeds of such assistance, the cost of any facility, the total cost of the provision of public facilities for which assistance was used, and such other records as the Administrator may require to facilitate an effective audit. The Administrator and the Comptroller General of the United States or their duly authorized representatives shall have access, for the purpose of audit, to such records and other pertinent documents.

"(B) Within six months after the date of enactment of this section and at six-month intervals thereafter, the Comptroller General of the United States shall make an audit of recipients of financial assistance under this section, except that the Comptroller General may, at his discretion, make audits at longer intervals for community assistance and smaller projects. The Comptroller General may prescribe such regulations as he deems necessary to carry out this subparagraph.

"(2) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).".

ASSISTANT ADMINISTRATOR FOR COMMERCIAL DEMONSTRATION

SEC. 802. (a) The first sentence of subsection 102(d) of the Energy Reorganization Act of 1974 is amended by deleting the words "six Assistant Administrators" and inserting in lieu thereof "seven Assistant Administrators", and adding after "fossil energy," the words "another for commercial demonstration".

(b) The first sentence of subsection 102(f) of the Energy Reorganization Act of 1974 is amended by deleting the word "eight" and inserting in lieu thereof "nine".

(c) Subchapter II (Extensive Schedule pay rates) of chapter 53 of title 5, United States Code, is amended as follows: paragraph (100) of section 5315 "Assistant Administrators, Energy Research and Development Administration (6)" is amended by deleting "(6)" and inserting in lieu thereof "(7)"; paragraph (135) of section 5316 "Additional Officers, Energy Research and Development Administration (8)" is amended by deleting "(8)" and inserting in lieu thereof "(9).".

S. 430

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

SEC. 101. Section 7(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5906) is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (5),

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following new paragraph:

"(7) Federal loan guarantees: *Provided*, That all of the other provisions of this Act apply to such guarantees and commitments to guarantee in the same manner and to the same extent as they apply to demonstrations under this Act.".

Mr. DOMENICI. Mr. President, again newspapers are focusing on the severe adverse impact resulting from the worsening shortages of natural gas. Factories are closing causing as many as 200,000 people to lose their jobs, and schools are being closed for a lack of an adequate supply of natural gas.

U.S. energy demand increased at nearly a 5-percent rate from 1965 to 1970. In recent years the rate of growth has slowed to 3 percent. However, in order to maintain and improve the economy we must expect continued energy growth rates in the future.

Natural gas supplies are declining and there will be intense competition for the remaining gas supplies.

Mr. President, the Congress must do something affirmative to assure a continuing supply of energy for the Nation. I believe that the bill which my distinguished colleague from West Virginia (Mr. RANDOLPH) is introducing today may very well be a partial solution to the problem of our growing energy needs. The bill would provide for loan guarantees for the commercial synthetic fuel program.

Synfuel plants could augment a rapidly depleting natural gas supply which would be free from foreign control. In addition, with proper resource management and careful planning to assure the quality of our environment, these projects could bring many social benefits to the Four Corners area and the State of New Mexico if we so choose to implement construction of such projects.

New Mexico and the Navajo Indian people will have ample opportunity to decide whether they want such payments, but if they do loan guarantees will be available.

Mr. President, it has become apparent that financial incentives will be necessary in order to permit private industry to undertake this type of capital intensive, risk venture. It is important to note that the proposed loan guarantee program does not commit the Federal Government to create a synthetic fuels industry. Instead, it is designed to promote the early construction of a commercial coal gasification plant which will act as a catalyst for development of future synthetic fuel plants.

The main constraint to development of this known technology is availability of enough capital at reasonable interest rates. Therefore, if we are to benefit from development of a viable synthetic fuel program, the Federal Government must encourage the commercialization of the first generation technologies.

Mr. President, the Senate favorably considered a similar loan guarantee bill during the 94th Congress and I would hope that the committee will act quickly on this bill.

By Mr. CHILES (for himself, Mr. WEICKER, Mr. MUSKIE, Mr. ROTH, Mr. GLENN, Mr. HATHAWAY, Mr. MCINTYRE, Mr. NUNN, and Mr. PERCY):

S. 431. A bill to distinguish Federal grant and cooperative agreement relationships from Federal procurement relationships, and for other purposes; to the Committee on Government Operations.

FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT

Mr. CHILES. Mr. President, on behalf of myself and the Senator from Connecticut (Mr. WEICKER), the Senator from Maine (Mr. MUSKIE), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. GLENN), the Senator from Maine (Mr. HATHAWAY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Georgia (Mr. NUNN), and the Senator from Illinois (Mr. PERCY), I am introducing a bill to bring some long needed discipline to the way the Federal Government spends over $135 billion each year on contracts and grants, spending mechanisms which have become confused, misused, and abused.

The Federal grant and cooperative agreement of 1977 is identical to S. 1437, the Federal Grant and Cooperative Agreement Act of 1976, a bill that passed both Houses of the 94th Congress without dissent. Despite the unanimous approval of Congress, S. 1437 was opposed by top leadership within the Office of Management and Budget. Consequently, President Ford's last pocket veto was applied to S. 1437 last October 22.

Companion legislation has already been reintroduced in the House (H.R. 1503).

This legislation would implement two key recommendations made by the Commission on Government Procurement that resulted from its 2½-year study. Since the Commission reported in 1972, 6 days of joint hearings have been held by the Government Operations Subcommittee on Federal Spending Practices and Intergovernmental Relations. Two days of hearings have been held by the House. The bill has generated considerable support from chief executives at the State and local levels of government, among business groups in the private sector, volunteer human service organizations, and the Comptroller General. The bill has received bipartisan sponsorship in both Houses.

I am reintroducing the legislation because I feel that it represents a necessary and constructive step to prevent certain abuses that occur when agencies are allowed to arbitrarily switch between their use of either "Grants" or "Contracts," and will provide a basis to cut redtape and better manage Federal assistance programs.

BILLS PROVISIONS

The Federal Grant and Cooperative Agreement Act of 1977 would take two steps.

First, it would establish Government-wide criteria for selecting the appropriate class of legal instruments to achieve standard terminology and use by executive agencies. It would not dictate the specific terms or conditions placed on contracts or grants, but rather would, for the first time, reflect the type of relationships expected between the Federal Government and recipients.

Second, the bill would mandate a study to examine alternatives for implementing Federal assistance programs and to begin the development of a comprehensive system of guidance for the management of grants, cooperative agreements, and other forms of assistance.

NEED FOR LEGISLATION

A brief look at the historical development of Federal grant programs in the last 15 years demonstrates the need for this legislation. Federal grants to States and localities alone rose from $2.2 billion in 1950 to $6.8 billion in 1960, to over $65 billion in this fiscal year. Within the past 5 years, grant-type disbursements have expanded at an annual rate of 17 percent. When grants to nongovernmental institutions such as nonprofit organizations, universities, and individuals are added to these figures, the growth is even more apparent.

The increase in the number of grant programs corresponds to the growth in dollar amounts. There are now over 500 different program authorizations that Congress has promulgated and the Federal Domestic Catalog of Federal Assistance lists over 1,000 separate programs that have evolved from these authorizations.

As the Commission on Government Procurement concluded, Federal grant-type activities have become a vast and complex collection of assistance programs, functioning with little central guidance in a variety of ways that are often characterized as being consistent only in their inconsistency. Similar programs or projects have often been left to "do their own thing," in a manner which, when viewed from an overall perspective of Federal spending, leads to undue complexity, confusion, and uncertainty for recipients who must work with these programs; for parts of the executive branch that must coordinate these programs; and significantly, for the Congress that must exercise effective oversight of Federal spending.

HEARINGS AND FINDINGS

The Commission on Government Procurement focused upon several major causes for this disarray. They were:

Confusion of grant-type assistance relationships and transactions with procurement relationships and transactions; and

Failure to recognize that there is more than one kind of grant-type relationship of transaction; and

Lack of Government-wide guidance for Federal grant-type relationships and transactions.

Some agencies admit that they use grants instead of procurement contracts to avoid certain requirements such as advance payment justifications. Some program officials who have responsibility

for negotiating and administering grants, but not contracts, tend to shift to contracts when they are busy in order to place the workload elsewhere.

Some agencies use more grants in June to obligate funds before the end of the fiscal year because grants are quicker to process than contracts. Figures show that during one fiscal year, the Department of Health, Education, and Welfare issued about three grants for each contract over the course of the fiscal year. But, in June, that ratio jumped to 7 to 1 while total outlays in grants and contracts exploded 800 percent—from an average of $300 million per month to over $2.4 billion in June alone.

With the lack of congressional guidance and under circumstances such as these, the potential for the misuse of grants is enhanced.

Moreover, as was revealed in subcommittee hearings, the lack of congressional guidance as to when grants or contracts should be used has allowed grants to be used to avoid the competition required in Federal procurement or, more generally, to avoid other controls of the Federal procurement system.

For example, HEW has acknowledged that many agencies use grants to obtain goods and services in direct support of agency operations. Specifically, grants instead of procurement contracts are being used to obtain consulting studies, technical assistance, collect data, perform surveys, studies and training programs for agencies.

On the other side of the coin, we have found instances where procurement contracts are being used simply to avoid cost-sharing requirements of grants. Failure to distinguish between procurement and assistance relationships has also led to the adding of unnecessary redtape to grants. The Department of Labor, for example, has ceased managing some of its manpower programs to State and local governments as procurement contracts and now manages them as grants.

This bill should discipline Federal agencies to consciously decide what the principle purpose of a transaction will be and what requirements are or are not needed. In the absence of congressional guidance, agencies today are able to employ practices which give them administrative discretion not intended by Congress.

This bill will both eliminate the use of grants in procurement situations and will contribute to the lessening of "red tape" in grant programs.

Part of the confusion that exists is the result of both enabling and appropriation statutes for grant programs. As a group they lack consistency in requirements, terminology, level of detail, and emphasis. No uniform statutory guidance exists in specifying the circumstances under which procurement contracts, grant, or cooperative agreement instruments should be used.

Consequently, grants and contracts are often used interchangeably within agencies and among agencies for similar types of projects—not because of different demands on controlling spending but for the reasons of administrative expediency.

This bill would establish broad congressional guidance by defining the circumstances under which agencies should employ procurement contracts or grant and cooperative agreements and by empowering them to do so. It represents a beginning step in bringing about some overdue discipline. When one considers that one-third of the Federal budget is spent through outlays on procurement contracts—$70 billion—and grants $65 billion, the importance of this measure is highlighted.

The need for a Government-wide system of guidance for Federal assistance programs is analogous to the need for the Office of Federal Procurement Policy for procurement. The primary concern is to get a "handle" on the entire process for Federal assistance and to promote better understanding and guidance. Compared to the Federal procurement system, the so-called grant system is primitive, underdeveloped. The bill's required study should lead to additional improvements in the overall management of assistance programs.

Witnesses who appeared before the subcommittees strongly supported the need to make the Federal assistance system more rational and more understandable. State and local government witnesses were particularly emphatic on this point. The study mandated by this bill should not only serve as a follow-up to the basic definitions set forth but should also provide an additional ray of sunshine in an area which is presently clouded with complexity and confusion.

ARGUMENTS

In withholding approval, the President expressed certain reservations. I want to mention them because the subcommittees gave all these concerns due consideration many times in passing this bill through the Senate unanimously in both the 93d and 94th Congresses. In the process, several changes were made, some at the behest of the executive branch, to improve the bill.

One concern expressed was that no matter how careful the drafting, the bill would probably result in limiting the flexibility of Federal agencies in administering their programs. A particular difficulty was cited for basic research programs.

The issue was a direct concern of the committee and was addressed in the committee report. Examples provided by the executive branch were examined. No problem was seen in requiring agencies to label their transactions according to the broad criteria contained in the bill. Moreover, section 9(d), which authorized the Director of OMB to exempt individual transactions, was added to the bill during deliberations of the 93d Congress.

As for the basic research programs, programs that were cited as presenting problems were also examined and, again, no problems were found. The Energy Research and Development Administration, for example, plans to implement the concepts contained in the bill anyway.

The criteria in sections 4, 5, and 6 clarify the meaning of the terms "contract," "grant," and "cooperative agreement" by requiring that the terms be consistently Government-wide and the legal instruments employed by executive agencies reflect the character of the relationships. While the bill will bring basic discipline to Federal agencies, it also provides them with needed flexibility to select the proper instrument and determine its precise provisions.

Objection to the section 8 study of the bill was based on the grounds that OMB is already conducting the activity contemplated. This is the posture the executive branch has taken for the past 4 years since this legislation was introduced. Little progress has been made despite repeated promises. The Commission on Government Procurement, witnesses from State and local government, and groups representing the private sector strongly urged that the study be given priority. The legislative mandate of section 8 will meet this need.

SUMMARY

The support for this legislation has been overwhelming. The Congress has already passed this bill without dissent. What opposition there was to this bill was a natural resistance to change on the part of the executive agencies. As the Comptroller General commented in House hearings on this bill, the executive agencies have traditionally resisted any kind of guidance from Congress along these lines.

I urge my colleagues to join in supporting and cosponsoring this legislation. I feel confident that the new administration will view this measure differently.

Today's times demand more accountability for Federal expenditures. This bill will improve the Congress' and the public's capacity to understand what is happening with Federal expenditures and will prevent some wasteful and abusive practices that have developed.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of supporters of this legislation, a letter from the Comptroller General, and the text of the bill.

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

S. 431

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Federal Grant and Cooperative Agreement Act of 1977".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) there is a need to distinguish Federal assistance relationships from Federal procurement relationships and thereby to standardize usage and clarify the meaning of the legal instruments which reflect such relationships;

(2) uncertainty as to the meaning of such terms as "contract", "grant", and "cooperative agreement" and the relationships they reflect causes operational inconsistencies, confusion, inefficiency, and waste for recipients of awards as well as for executive agencies; and

(3) the Commission on Government Procurement has documented these findings and

concluded that a reduction of the existing confusions, inconsistencies, and inefficiencies is feasible and necessary through legislative action.

(b) The purposes of this Act are—

(1) to characterize the relationships between the Federal Government and contractors, State and local governments, and other recipients in the acquisition of property and services and in the furnishing of assistance by the Federal Government so as to promote a better understanding of Federal spending and help eliminate unnecessary administrative requirements on recipients of Federal awards;

(2) to establish Government-wide criteria for selection of appropriate legal instruments to achieve uniformity in the use by the executive agencies of such instruments, a clear definition of the relationships they reflect, and a better understanding of the responsibilities of the parties;

(3) to promote increased discipline in the selection and use of types of contract, grant agreement, and cooperative agreements and to maximize competition in the award of contracts and encourage competition, where deemed appropriate, in the award of grants and cooperative agreements; and

(4) to require a study of the relationship between the Federal Government and grantees and other recipients in Federal assistance programs and the feasibility of developing a comprehensive system of guidance for the use of grant and cooperative agreements, and other forms of Federal assistance in carrying out such programs.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "State government" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State, and any multi-State, regional, or interstate entity which has government functions;

(2) "local government" means any unit of government within a State, a county, municipality, city, town, township, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, other interstate government entity, or any other instrumentality of a local government;

(3) "other recipient" means any person or recipient other than a State or local government who is authorized to receive Federal assistance or procurement contracts and includes any charitable or educational institution;

(4) "executive agency" means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, an independent establishment as defined in section 104 of title 5, United States Code (except that it shall not include the General Accounting Office), a wholly-owned Government corporation; and

(5) "grant or cooperative agreement" does not include any agreement under which only direct Federal cash assistance to individuals, a subsidy, a loan, a loan guarantee, or insurance is provided.

USE OF CONTRACTS

SEC. 4. Each executive agency shall use a type of procurement contract as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient—

(1) whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate.

USE OF GRANT AGREEMENTS

SEC. 5. Each executive agency shall use a type of grant agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever—

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

USE OF COOPERATIVE AGREEMENTS

SEC. 6. Each executive agency shall use a type of cooperative agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever—

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient to accomplish a public purpose of support of stimulation authorized by Federal statute, rather than acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

AUTHORIZATIONS

SEC. 7. (a) Notwithstanding any other provision of law, each executive agency authorized by law to enter into contracts, grant or cooperative agreements, or similar arrangements is authorized and directed to enter into and use types of contracts, grant agreements, or cooperative agreements as required by this Act.

(b) The authority to make contracts, grants, and cooperative agreements for the conduct of basic or applied scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research shall include discretionary authority, when it is deemed by the head of the executive agency to be in furtherance of the objectives of the agency, to vest in such institutions or organizations, without further obligation to the Government, or on such other terms and conditions as deemed appropriate, title to equipment or other tangible personal property purchased with such funds.

STUDY OF FEDERAL ASSISTANCE PROGRAMS

SEC. 8. The Director of the Office of Management and Budget, in cooperation with the executive agencies, shall undertake a study to develop a better understanding of alternative means of implementing Federal assistance programs, and to determine the feasibility of developing a comprehensive system of guidance for Federal assistance programs. Such study shall include a thorough consideration of the findings and recommendations of the Commission on Government Procurement relating to the feasibility of developing such a system. The Director shall consult with and to the extent practicable, involve representatives of the executive agencies, the Congress, the General Accounting Office, and State and local governments, other recipients and other interested members of the public. The result of the study shall be reported to the Committee on Government Operations of the Senate and the House of Representatives at the earliest practicable date, but in no event later than two years after the date of enactment of this Act. The report on the study shall include (1) detailed descriptions of the alternative means of implementing Federal assistance programs and of the circumstances in which the use of each appears to be most desirable, (2) detailed descriptions of the basic characteristics and an outline of such comprehensive system of guidance for Federal assistance programs, the development of which may be determined feasible, and (3) recommendations concerning arrangements to proceed with the full development of such comprehensive system of guidance and for such administrative or statutory changes, including changes in the provisions of sections 3 through 7 of this Act, as may be deemed appropriate on the basis of the findings of the study.

REPEALS AND SAVINGS PROVISIONS

SEC. 9. (a) The Act entitled "An Act to authorize the expenditure of funds through grants for support of scientific research, and for other purposes", approved September 6, 1958 (72 Stat. 1793; 42 U.S.C. 1891, 1892, and 1893), is repealed, effective one year after the date of enactment of this Act.

(b) Nothing in this Act shall be construed to render void or voidable any existing contract, grant, cooperative agreement, or other contract, grant, or cooperative agreement entered into up to one year after the date of enactment of this Act.

(c) Nothing in this Act shall require the establishment of a single relationship between the Federal Government and a State or local government or other recipient or a jointly funded project, involving funds from more than one program or appropriation, where different relationships would otherwise be appropriate for different components of the project.

(d) The Director of the Office of Management and Budget may except invidiual transactions or programs of any executive agency from the application of the provisions of this Act. This authority shall expire one hundred and eighty days after receipt by the Congress of the study provided for in section 8 of this Act.

LIST OF SUPPORTERS FOR THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT

Federal Paperwork Commission.
Council of Jewish Federations and Welfare Funds.
National Conference of Catholic Charities.
National Urban League.
The Salvation Army.
American Bar Association.
National Governors' Conference.
State of Florida.
Commonwealth of Virginia.
Commonwealth of Pennsylvania.
State of Michigan.
State of Minnesota.
American National Red Cross.
American Road Builders Association, Contractors Division.
Boy Scouts of America.
Girl Scouts of the U.S.A.
Girls Clubs of America.
Good Will Industries of America.
United Way of America.
U.S. General Accounting Office.
Camp Fire Girls.
The Child Welfare League of America, Inc.
Family Service Association of America.
McGraw-Hill, Inc.
National Association of Counties.
National Association of Life Sciences Industries.
National Association for Mental Health.
Stanford Research Institute.
University of Tennessee.

National Association of State Budget Officers.
National Board of the YMCA's.
National Board of the YWCA's of the U.S.A.
National Council of Professional Services Firms.
National Federation of Settlements and Neighborhood Centers.
National Security Industrial Association.
Travelers Aid International Social Service of America.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C. November 29, 1976.

Hon. LAWTON CHILES,
Chairman, Subcommittee on Federal Spending Practices, Efficiency and Open Government, Committee on Government Operations, U.S. Senate.

DEAR MR. CHAIRMAN: I am very disappointed with the President's action on October 22, 1976, when he withheld his approval of S. 1437, the Federal Grant and Cooperative Agreement Act of 1976.

As indicated by the President in his memorandum of disapproval, this legislation had a laudable goal—to clarify and rationalize the legal instruments through which the Federal Government acquires property and services and furnishes assistance to State and local governments and other recipients. The bill would establish three categories of legal instruments which Federal agencies would be required to use: procurement contracts, grant agreements, and cooperative agreements. These categories would be defined according to their different purposes.

S. 1437 would have also required the Director of the Office of Management and Budget to undertake a study which would (1) "develop a better understanding of alternative means of implementing Federal assistance programs * * *," and (2) "* * * determine the feasibility of developing a comprehensive system of guidance for Federal assistance programs."

Enactment of the bill would have had the effect of adopting the substance of two recommendations (F–1 and F–2) of the Commission on Government Procurement. As you know, I was a statutory member of the Commission and supported each of the two recommendations.

On July 10, 1974, we testified before the Ad Hoc Subcommittee on Federal Procurement and the Subcommittee on Intergovernmental Relations, Senate Committee on Government Operations, regarding the then proposed similar bill S. 3514. On November 25, 1974, we also testified before the House Subcommittee on Legislation and Military Operations, regarding S. 3514 as it passed the Senate on October 9, 1974. Again, on September 13, 1976, we testified before the Subcommittee on Legislation and National Security, House Committee on Government Operations, regarding H.R. 15499, which was identical to S. 1437 as it passed the Senate on August 31, 1976.

We supported on these occasions, and support now, the adoption of both Commission recommendations, as was provided for in S. 1437 and for the same basic reasons offered by the Commission. We believe enactment of S. 1437 would have been a significant step forward and that the study called for by section 8, addressing the matters set forth in the relevant part of the Commission's report, would have set the basis for further significant progress.

In summary, we urge the introduction of bills similar to S. 1437 in the House and the Senate for consideration by the 95th Congress and the new Administration. We continue to stand behind the two recommendations of the Procurement Commission and will be happy to testify further to that effect if called upon.

Sincerely yours,

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

By Mr. EAGLETON:

S. 437. A bill to clarify and reaffirm the intent of Congress with respect to the transmission and sale of electric power and energy generated or purchased in the southwestern power area; to the Committee on Interior and Insular Affairs.

Mr. EAGLETON. Mr. President, today I am reintroducing a bill to prohibit rate discrimination among customers of the Southwestern Power Administration—SPA.

The need for this legislation arises from a decision by SPA in 1970 to impose a special transmission charge on its rural Missouri customers for service identical to that provided in other States without such a charge. For the 350,000 Missourians affected, this special charge will add $80 million to utility bills by the year 2000. More importantly, the SPA action has the effect of unilaterally canceling a contractual obligation to Missouri cooperatives the agency undertook in 1950 at congressional direction.

That obligation stemmed from a decision by Congress not to appropriate further money for construction of Federal transmission lines in Missouri. Instead, SPA was directed to use lines which the cooperatives would build with money borrowed from REA. SPA, in turn, was to pay rentals adequate to service that REA debt, as well as operation and maintenance costs.

Except for that rental payment, rural electric cooperatives customers in the 114 Missouri counties were to be treated just like other customers in the SPA system. All were to pay the same basic SPA rate for power delivered to load centers. The Appropriations Committees even insisted this assurance of nondiscriminatory rates be written into the SPA-Missouri cooperatives contract.

That is how the matter stood until 1970 when the Nixon administration, taking note of growing SPA deficits, ordered a special transmission charge levied on Missouri cooperatives above and beyond the basic SPA rate charged everywhere else.

The rationale was that the payments made by SPA for lease of the Missouri lines was a cost, and since the Agency was charged by law to recover all costs, it was only appropriate to offset the lease payments by levying a transmission charge on the cooperatives receiving those payments.

The net effect of this circular argument is that Missouri cooperatives are providing transmission service free of charge to SPA. In the other States served by SPA, transmission lines either were built with Federal funds or leased from private power companies, but no special cost-recovery charge is levied on customers. Only in Missouri has that been the case.

To add to the inequity, Missourians continue to pay the basic SPA rate which is designed to recover all costs of the system, including amortization of the Federal investment in transmission lines outside of Missouri. In short, Missourians are helping to shoulder the cost of delivering power to other States but are being asked to assume the total cost of delivering SPA power in their own State.

This discriminatory transmission charge would increase the cost per kilowatt to Missouri cooperatives more than 60 percent above the price per kilowatt charged to users of peaking power in other States.

Commitments made by SPA to deliver power to all customers at the same basic rate without distinction as to whether the users were served over Government-owned or Government-leased lines were simply ignored. The long history of congressional approval of the arrangement between SPA and Missouri cooperatives was shunted aside.

With the imposition of the transmission charge, SPA effectively relieves itself of its obligation to compensate Missouri cooperatives for use of their transmission facilities. The cooperatives, however, remained obligated to repay the REA debt which they incurred to build the lines for SPA.

Not surprisingly, Mr. President, Missouri cooperatives went to court and in 1973 won a summary judgment in district court. However, that decision, was reversed in 1974 by the court of appeals on grounds the Administrator of SPA had not exceeded his ratemaking authority. The Supreme Court refused to review the case and the matter is now back in district court for a factual determination on what the exact amount of the charge should be.

Mr. President, the courts have held that SPA acted within its legal powers but I do not believe it acted fairly or in keeping with the expressed intent of Congress. I am confident that, upon the review of the facts, the Congress will agree and insist on an end to the discriminatory rate.

By Mr. STEVENS (for himself and Mr. CULVER):

S. 438. A bill to amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges; to the Committee on Finance.

Mr. STEVENS. Mr. President, the legislation which we introduce today would amend the tariff schedules of the United States to provide for the duty-free entry of bobsleds and luges.

Bobsledding and luge are two winter sports that involve racing down a run of snow and ice at high speeds. They are dangerous and exciting sports, which demand a great amount of skill. Split-second timing is required as the sled must be maneuvered through hairpin turns and down high-speed straightaways. Both are Olympic sports in which U.S. athletes compete. However, the United States has not won a medal in bobsled

competition since 1956. We have never won an Olympic medal in the luge event.

In the fall of 1975, Senator CULVER and I were appointed to serve on the President's Commission on Olympic Sports. The Commission was charged by the President to examine the problems associated with amateur athletics in the United States. One of my functions as a member of that group was to look into the problems besetting bobsledding and luge. During my investigation I spoke with many participants of these two sports. Two problem areas became evident. One was the lack of bobsled and luge runs. The other was the high cost of participation which is burdened by each athlete. One of those costs is the duty which must be paid when a bobsled or luge is imported into the United States.

The modern bobsled is a highly specialized and complicated steel and aluminum machine. It has two sets of runners; the front set is used for steering whereas the rear set is attached solidly to the frame. Retractable push handles are mounted on the sides of the sled to help the crew get off to a running start. All sleds are designed so that wind resistance is reduced to a minimum. The luge is a much smaller sled of wood and iron construction with wide runners faced with steel. It is ridden in a sitting position and steered with the feet and a hand rope.

One of the single most important elements determining the success of a bobsled team or luge competitor is the sled. Presently there are no bobsleds or luges manufactured in the United States. Almost all bobsleds are made in a small Italian village. Luges are manufactured in various European and Eastern European countries. This means that U.S. bobsledders and lugers have to import their sleds if they wish to train and compete. The duty on these items can be high. The tariff schedules of the United States impose a duty at the rate of 9 percent ad valorem for sleds coming from countries with most-favored-nation status. Sleds imported from other countries are charged duty at the rate of 45 percent ad valorem. A four-man bobsled can cost up to $5,000. Duty on such an item, if imported from a country with most-favored-trade status, would be $450. Although luges are less expensive, the duty charge can still be burdensome.

On January 13, 1977, the Commission on Olympic Sports submitted its final report to President Ford. In its report the Commission recommended that bobsleds and luges be exempted from duty charges. Exemption from these charges would help reduce the expenses which our athletes must pay in order to compete. Further, it would not hinder any U.S. enterprise because competition bobsleds and luges are not manufactured in the United States. If the United States is to develop topflight competitors for Olympic and other international competitions, it must support those athletes who give their time and efforts to compete. Athletes who represent the United States in bobsled and luges have to spend large sums of money in order to obtain equipment and use of training facilities. We should not penalize them by requiring duty charges on bobsleds and luges imported into the United States. Rather, we should reduce the hardships and encourage participation. This legislation would be a step in that direction.

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

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

S. 438

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subpart D of part 5 of schedule 7 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out item 734.97 and inserting in lieu thereof the following:

"	734.97	00	Bobsleds and luges designed for use in competition	No	Free	Free
	734.98	00	Other	X	9% ad val.	45% ad val. ".

SEC. 2. (a) The rate of duty prescribed in rate column numbered 1 of the Tariff Schedules of the United States for item 734.97, as amended by this Act, shall be considered to have been proclaimed by the President as necessary or appropriate to trade agreements to which the United States is a party, not as a statutory provision enacted by the Congress.

(b) The amendments made by this Act apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date of enactment of this Act.

By Mr. WILLIAMS:

S. 439. A bill to reorganize the executive branch of the Government to centralize Federal energy conservation and research and development policies in a National Energy Center; to the Committee on Interior and Insular Affairs.

NATIONAL ENERGY CENTER ACT OF 1977

Mr. WILLIAMS. Mr. President, I am introducing today legislation to create a National Energy Center within the Energy Research and Development Administration. I sponsored an identical bill in the 94th Congress and I am hopeful that Congress will more thoroughly evaluate this proposal when it considers energy reorganization and consolidation legislation in this session. The Energy Center would serve as the focal point for the formulation and implementation of energy research and development strategies. An energy conservation office would be established within the center for providing services which would contribute significantly to our conservation efforts. The center would be a link between the Federal Government's energy conservation programs and research and development planning and the implementation of energy techniques and technology.

Our reliance on imported energy and dwindling conventional fuel sources has been dramatically demonstrated in the past several years. The realization that our traditional energy resources were truly finite has resulted in concerted congressional action to develop a coherent national energy policy. Congress has made great strides but much remains to be done.

In an effort to determine where we stand in terms of energy supply and where we are headed, Congress established the Energy Research and Development Administration. This agency is charged with forming public policy to manage our energy supply and use, and to develop new energy sources to deal with our long-term needs. It has made considerable efforts to meet the policy goals mandated by Congress. And when we consider the relatively short life of the agency, the complexity of the problems, and the uniqueness of its task, we must, in all fairness commend ERDA for its efforts.

However, ERDA's energy policies have not resulted in an aggresive or effective energy-conservation and research program. Several key gaps in the previous administration's set of national energy goals still exist. The measure being introduced today seeks to create a mechanism which will assist ERDA in closing these gaps.

To accomplish this task, the center would advise and assist ERDA in its endeavor to comply with the congressional mandate to act as the lead energy research and development agency. It would not usurp any of the responsibilities of ERDA but complement the agency's energy efforts.

The National Energy Center would fulfill the needed requisite for a consistent national energy policy. It would house a headquarters for the development, collection, and dissemination of an energy conservation program and an office to oversee the development of an integrated energy research policy.

Energy conservation is of crucial importance. No longer can programs related to end-use demand reductions take a backseat to programs designed to increase energy supplies. The two strategies are indispensable for achieving effective energy programs, and they must be pursued with equal vigor.

The bill creates an Energy Conservation Service within the center to develop and coordinate a comprehensive energy conservation plan to encourage the maximum use of limited energy supplies. As headquarters for such a service, the energy center would develop, collect, evaluate, and disseminate energy conservation programs and concepts to citizens and communities as well as to the industrial and commercial sectors on a national scale. Training programs would be provided at the facilities—and other regional centers to be located throughout the country—to instruct field representatives in the most advanced methods of energy conservation and efficiency These field representatives would then be sent to operate out of metropolitan city, suburban and rural offices to advise and provide assistance and technical expertise to all sectors of the community. This assistance would come in varied forms including, individual assistance, general distribution of energy conservation guidance materials, seminars and training sessions for civic and public leaders and organizations, and use of the media when appropriate.

A similar concept was favorably received by both the House and the Senate

in the 94th Congress. Unfortunately, Congress did not take final action on this legislation. In addition, ERDA has revised its earlier energy research and development strategy to include a greatly expanded energy conservation program. Clearly, there is a unanimous recognition of the importance of conservation in meeting short-term objectives.

By creating an effective energy conservation ethic, we can both reduce our current energy consumption and provide the time for an orderly reassessment of the direction of our energy development program. This would provide a period to weigh thoughtfully our opinions and avoid irrevocable commitments to hazardous or improbable energy sources. The faster we as a nation move toward firm policies of energy conservation, the greater the flexibility we will have in choosing among energy sources, and the less compulsion we will feel to use supplies that unduly stress the environment or risk national security.

A second function of the Energy Center would be the development and implementation of new energy sources. It would serve as an energy policy clearinghouse to formulate, evaluate and implement alternative energy policies and strategies which are consistent with social, institutional and other factors and constraints related to the implementation of alternate energy technologies.

One of the principal findings in a study issued by the Office of Technology Assessment in the 94th Congress cited the absence of a mechanism to evaluate nontechnical or institutional constraints which may be inherent in any particular new energy alternative:

> Simply establishing technical feasibility is insufficient as nontechnical constraints may prohibit implementation. Such constraints could include any or all of: transportation, resource, manpower, and capital availability; public acceptability; or institutional, jurisdictional; economic, and environmental compatability. If ERDA confines its activities predominantly to the proving of the feasibility of technological options, some other entity should address the more complex issues underlying energy solutions. In such a case, clear coordination with ERDA would be essential.

The center would be charged with the responsibility to determine the impact of such nontechnical constraints. For example, according to the nuclear task group of OTA, the primary obstacle to achieve nuclear objectives are financial and institutional. The solar geothermal and advanced system task group of OTA indicated that rapid implementation of geothermal resources is hampered primarily by legal and institutional constraints. The conservation task group reported that the ERDA plan does not sufficiently consider political, economic, and environmental constraints inherent in the implementation of energy conservation technologies. With no mechanism in existence to orchestrate the administration of these various areas, counterproductive efforts result, frustrating progress toward national energy goals.

A more recent OTA report on offshore energy facilities reveals that implementation of such systems may prove objectionable because we have not adequately considered possible conflicts among users and the potential excessive burdens on ocean and coastal environments. The study further cites the absence of a structure to evaluate these impacts and develop a coordinated well-planned offshore energy strategy. A primary function of the center I am proposing would be to integrate these type of energy systems within the framework of a national energy policy.

It is imperative that our search for alternate technologies be conducted under the guidance of a single research center. While such a center is responsible to determine the feasibility of new technology, it would also conduct the research to expedite utilization of a new technology. This research should take into account global energy considerations such as international cooperation with regard to coping with environmental effects of energy generating technology, addressing security issues such as the management of nuclear materials and waste, and the management of the oceans.

In addition, socioeconomic research and analysis must be considered in identifying obstacles to acceptable energy solutions. Effective commercialization policies must be coordinated with business and industries. A research program must seriously address these factors in order to introduce commercially feasible and institutionally acceptable advanced technologies.

The center would also be responsible for establishing techniques for the accurate and timely assessment of existing energy resources. This would help insure that policy analysis is based upon reliable resource availability data. It should also expand the development of net energy analysis methodologies in order to establish it as a consistent and acceptable tool for aiding in setting priorities for existing and developing technologies. The more precise the criteria for decisions, the more productive and cost-effective our energy development will be.

Our national energy research and development effort certainly requires the highest public profile not only to mobilize the support of the electorate which must ultimately pay the bill for developing new energy sources, but also to provide public accountability for the decisions which must be made that will have a profound effect on the quality of all of our lives in the decades to come. The creation of a center for the high-level activities of our energy agencies is an essential step in providing it with the profile necessary to galvanize public support.

The conclusion obviously is that there is a serious lack of a cohesive national energy policy in the Federal energy program. The resources to establish a national policy exist, but at present, the efforts have been piecemeal and uncoordinated. It seems clear that the creation of an Energy Center would facilitate much needed policy coordination and provide the impetus for a full scale national energy conservation program, while enhancing the profile of our national energy efforts as a means toward generating both public support and participation.

The National Energy Center conceptualized in this bill would be located at a site to be determined by a site selection board. In designating the location of the center, the board should keep in mind the objectives of the center and the characteristics of a particular region which would enhance these objectives.

A primary consideration should be the functional needs of the center and its representative staff. Particular attention must be given to the availability of an extensive scientific and engineering community and a substantial on-site technical support. The location of the center should also maximize the opportunity for interaction between the center and the business and industrial community.

In addition, realization of energy development and conservation strategies will greatly rely on effective implementation programs. Therefore, site selection should consider the proximity to financial centers, auxiliary research institutions, universities, and industrial complexes in order to facilitate the transfer of research and technological developments into commercial products and services.

Climatic factors should also be taken into account. The siting of the center in a four-season climate representative of that in which the majority of the population of the United States resides would certainly contribute to the reliability of technologies and strategies under most weather conditions. This could significantly reduce the time for practical implementation.

It must be recognized that a national energy research center such as proposed is essential to this country's energy program regardless of where it is finally located. However, it must also be recognized that the optimal site location of such a center can contribute significantly to the achievement of goals to be accomplished there and I believe that New Jersey offers many of the criteria which would make it an optimal location.

New Jersey is located at the center of the largest megalopolis in the world. It is also the center of one of the largest market places in the world. Therefore, New Jersey would be uniquely suited as a testing ground for policies developed by the National Energy Research Center.

New Jersey is in many ways an ideal microcosm of this Nation. Within its borders thrive virtually every form of industrial activity from agricultural to heavy manufacturing, most notably a well developed oil refinery complex and a diverse energy research and development sector. New Jersey reflects a full cross section of community structures ranging from sparsely populated rural and agricultural areas to densely populated industrial and urban centers. These aspects of New Jersey make it particularly well suited for the study of social and economic impacts of alternative energy policies and strategies. Thus, the State could serve as an excellent laboratory for the evaluation of

any proposed strategies before implementation on a national scale.

In addition, New Jersey is a State which relies almost exclusively upon imported energy resources. This places New Jersey in a very vulnerable position with respect to future energy shortages, which in turn creates a great interest in the national goal of energy self-sufficiency. There is also an acknowledged need to transform new product technology into new products and new markets. This fact, viewed in terms of its analytical potential, is yet factor which makes New Jersey a prime location for alternative energy policy evaluation and implementation.

Furthermore, New Jersey provides a typical four season climate ideal for testing new technologies and conservation strategies under all climatic conditions, and has a full range of energy uses.

New Jersey is one of the world's leading research and development centers, boasting more than 70,000 scientists, engineers, and technicians involved in public and private research and development programs in New Jersey. This industry's annual expenditures in New Jersey are estimated at over $3 billion a year, a significant percentage of the Nation's total research and development spending. Close to 80 percent of these funds emanate from the private sector. No other State in the Nation can come close to matching this figure.

New Jersey can further boast of an exceptionally strong system of higher education. Princeton University has attracted some of the world's most brilliant scholars and scientists. Additional scientific and intellectual resources can be found at Rutgers, the State University, Stevens Institute of Technology, Seton Hall University, the Institute for Advanced Study in Princeton, and many others.

Another significant attraction of New Jersey is the critical role New Jersey will inevitably play in the development of offshore oil drilling technologies. Off the coast of New Jersey, below the Atlantic Outer Continental Shelf, is the potential for as much as 8 billion barrels of oil and 22 trillion cubic feet of natural gas. These areas will soon be exploited by new technologies and New Jersey will be the chief State to bear the impacts of these technologies whether for better or for worse. Thus New Jersey offers an excellent opportunity to study these impacts.

With the assets and resources available, in New Jersey, in terms of manpower, skilled labor, intellectual atmosphere, energy-related activity, and the capacity to supply and service laboratories of any size, it is indisputable that New Jersey offers an ideal location for a National Energy Research Center.

Mr. President, the need to sustain an effective national energy policy convinces me that a central resource is needed for all phases of energy development. Considering the complexity of the problems and tasks confronting ERDA, a National Energy Center operating under the authority of ERDA would assuredly improve our energy development posture. The National Energy Center I propose would help ERDA respond to congressional mandates for a consistent and coordinated energy effort. Perhaps equally important, the Center would be a symbol of this Nation's effort to seek solutions to its energy problems. 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. 439

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Energy Center Act of 1977".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress recognizes that the conservation of conventional energy resources and the development and implementation of alternate energy technologies, strategies and policies will have a profound impact on technological, economic, social, environmental, health, institutional, and other factors relating to the quality of life.

(b) Congress hereby finds—

(1) that the efficient utilization of energy requires a vigorous, coordinated national conservation effort;

(2) that the many diverse energy research and development programs presently in effect would best be served by establishing an energy analysis center to identify, compile, define, categorize, evaluate, and disseminate energy-related technological data and energy conservation techniques; and

(3) that such a center should integrate a concern for the quality of life with the pursuit of alternative energy technology and conservation practices.

(c) It is the purpose of this Act to establish a National Energy Center within the Energy Research and Development Administration to serve as the focal point for the formulation and implementation of energy research and development and to contribute to the national goal of energy self-sufficiency by—

(1) providing leadership in the implementation of new energy technologies by integrating energy strategies and policies;

(2) assisting the Administrator of the Energy Research and Development Administration in developing an integrated, comprehensive framework of energy policy by formulating, evaluating, and demonstrating alternative national energy strategies to supplement energy conservation efforts;

(3) establishing a national program to manage the efficient use of available energy resources; and

(4) fostering international cooperation in developing worldwide energy strategies.

NATIONAL ENERGY CENTER

SEC. 3. There is established in the Energy Research and Development Administration (hereinafter referred to as the "Administration") a National Energy Center (hereinafter referred to as the "Center") to be composed of an Energy Conservation Service and an Office for Energy Research and Policy Analysis to formulate, evaluate, and implement energy research and development policies, and conservation programs related to—

(1) energy technology, techniques, concepts, and programs for the development of alternative energy resources, increasing the efficiency with which energy resources are used, and improving energy conservation practices; and

(2) economic, social, environmental, health, institutional, and other factors which must be taken into account if successful alternative energy technology and energy conservation strategies are to be implemented successfully.

ENERGY CONSERVATION SERVICE

SEC. 4. (a) There is established in the Center an Energy Conservation Service (hereinafter referred to as the "Service") through which the Director shall establish and implement comprehensive programs for the identification, development, and demonstration of energy conserving practices, techniques, materials, and equipment for—

(1) agricultural, industrial, governmental, and educational institutions, small business concerns, and private citizens; and

(2) residential, industrial, governmental, commercial, or agricultural buildings or structures.

Such programs shall provide for technical assistance, instruction, and practical demonstrations in energy conservation methods and practices.

(b) accomplish the purposes of this Act, the Service shall establish service extension offices consisting of metropolitan city offices, county agents, and technical staff assistants.

(c) In establishing such service extension offices, the Director is authorized to enter into agreements for the utilization of existing Agriculture Extension Service resources, or such other offices and personnel as may be appropriate, and to provide funds for such operations.

(d) Service extension offices shall disseminate information and provide advice and assistance under this section to individuals, groups, and units of States and local government by means of—

(1) specific studies and recommendations applicable to private residences, businesses, and agricultural or commercial establishments;

(2) demonstration projects;

(3) distribution of studies and instructional materials;

(4) seminars and other training sessions for State and local government officials and the public; and

(5) other programs designed to provide assistance to the public.

(e) The Service shall also identify, compile, evaluate, index, categorize, and disseminate energy conservation related data. Such information shall be made available to the public including but not limited to—

(1) agricultural, commercial, residential, and industrial sectors; and

(2) private citizens.

OFFICE FOR ENERGY RESEARCH AND POLICY ANALYSIS

SEC. 5. There is hereby established in the Center an Office for Energy Research and Policy Analysis through which the Director shall—

(1) oversee the development of an integrated energy research policy;

(2) serve as principal adviser to the Administrator on matters relating to the development of new energy sources, including specifying alternatives for prospective policy decisions, assuring the anticipated impact of new energy sources, and monitoring and evaluating the coordination of a national energy effort;

(3) improve coordination of energy policy-making of Federal agencies;

(4) develop a capability to collect, analyze, and interpret data and evaluate energy research and development programs; and

(5) determine the effect of existing or proposed energy systems including economic, social, environmental, health, and other related impacts.

OFFICERS

SEC. 6. (a) The Center shall be headed by a Director (hereinafter in this Act referred to as the "Director") who shall be appointed by the Administrator. The Director shall be a person who by reason of training, experience, and attainments is exceptionally qualified to implement the program of the Office. The Director shall be compensated at a rate equal to that for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) There shall be in the Office a Deputy

Director who shall be appointed by the Administrator, who shall perform such functions, powers, and duties as may be prescribed from time to time by the Director, and who shall act for and exercise the powers of the Director during the absence or disability of the Director, or in the event of a vacancy in the office of Director.

DUTIES

SEC. 7. (a) The Director shall consult with the Secretary of Housing and Urban Development, the Administrator of the Federal Energy Administration, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and the heads of other Federal agencies administering energy-related programs, with a view toward achieving optimal coordination of programs administered by the Office with such other programs, and shall promote the coordination of programs under this Act with other public or private programs or projects of a similar nature.

(b) Federal agencies described in subsection (a) shall cooperate with the Director and the Administrator in disseminating information with respect to the availability of information and services under this Act, and in identifying energy-related interests of individuals, groups, or business and commercial establishments eligible for information or assistance under this Act.

(c) The Director shall promulgate such regulations as may be necessary to carry out the functions of the Office.

(d) The Director may employ such personnel, and retain such experts and consultants under section 3109 of title 5, United States Code, as may be necessary to carry out the functions of the Office as provided in sections 4, 5, and 6 of this Act.

CENTRAL RESEARCH FACILITY

SEC. 8. (a) The Administrator shall develop a plan for the purchase or construction of a Central Energy Research Facility (hereinafter referred to as the "central facility") consisting of a central laboratory, research facility, research and testing site, housing for employees of the Energy Research and Development Administration employed at the central facility and their families, and such other special-purpose structures, facilities, or real property as the Administrator deems to be necessary. The Administrator may revise the unexecuted portions of the plan from time to time in accordance with changes in national energy requirements and scientific and technical advances.

(b) The Administrator shall conduct such tests, demonstrations, and pilot programs and may construct such facilities as may be necessary for the evaluation of the effects of alternative energy policies and strategies on the various sectors of the economy and society, and the effectiveness of proposed conservation measures.

(c) All Federal energy research relating to any of the goals set forth in paragraphs (1) through (5) section 5 shall be carried out at the central facility, unless the Director and the Administrator specifically authorize such research to be undertaken at some other facility because of conditions requiring the use of such other facility. The Administrator shall transmit notice of any such determination in writing to the Chairman of the Committee on Government Operations of the Senate, the Chairman of the Committee on Government Operations of the House of Representatives, the Secretary of the Interior, and to the Secretary of Labor.

(d) The central facility shall be established at that location, recommended by the site selection board established by section 9, in the continental United States in an area which meets the site selection criteria which reflects a broad cross-section of the Nation's demographic and economic configuration, and includes the availability of a full range of nearby industrial, residential, and commercial communities which may be used to evaluate the effects of alternative energy policies and strategies on various sectors of society and the economy and the effectiveness of proposed conservation measures.

SITE SELECTION BOARD

SEC. 9. (a) There is hereby established as an independent organization within the Administration a Central Energy Research Facility Site Selection Board (hereinafter referred to as the "Board") which shall be composed of three individuals appointed by the President by and with the advice and consent of the Senate.

(b) A member of the Board who is not an officer or employee of the Federal Government shall receive compensation at the rate of $200 for each day he is engaged in the performance of duties of the Board.

(c) All members of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Board.

(d) The Board shall transmit to the President, the President pro tempore of the Senate, and the Speaker of the House of Representatives a report containing its site selection together with a justification of such recommendation.

REPORTS

SEC. 10. The Administrator and the Director shall submit a joint report to the Congress at the end of each calendar quarter covering the progress of the various stages of planning, design, and construction, of the central facility and, upon completion of construction, shall submit reports semiannually covering the programs of research at the central facility and the progress of other programs undertaken there.

ANNUAL CONTRIBUTIONS FOR SUPPORT OF THE CENTRAL ENERGY RESEARCH FACILITY

SEC. 11. (a) The Administrator may make annual contributions to the municipal, county, or State government which has jurisdiction of the location at which the central facility is established. Contributions payable annually under this section shall not exceed such amounts as the Administrator determines are required to compensate any municipal, county, or State government for the provision of such services as are necessary to accommodate the increased demands on municipal, county, and State services caused by the presence of the central facility. The Administrator shall enter in a contract with the municipality, county, and State governments which contains provisions for such annual contributions in order to guarantee their payment, subject to the availability of funds. For purposes of making payments under this section, the Administrator shall establish standards for the cost of such services, taking into account the character and location of the services required.

(b) Every contract under subsection (a) shall provide that no annual contributions by the Administrator shall be made to the government which is a party to the contract unless such central facility is exempt from all real and personal property taxes levied or imposed by that government. If the central facility is not exempt from such real and personal property taxes, the contract shall provide, in lieu of the requirement for tax exemption and payemnts in lieu of taxes, that no annual contributions by the Administrator will be made.

AUTHORIZATION OF APPROPRIATIONS

SEC. 12. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. KENNEDY (for himself and Mr. BROOKE):

S. 440. A bill to amend the Cape Cod National Seashore Act, as amended, to provide additional authority to the Secretary of Interior to carry out the purposes of the act, to provide a reserve fund, and for other purposes; to the Committee on Interior and Insular Affairs.

CAPE COD NATIONAL SEASHORE

Mr. KENNEDY. Mr. President, on August 7, 1961, President Kennedy signed into law the Cape Cod National Seashore Act, a new, innovative, and unprecedented approach to the problems of preservation and conservation in a populated area. President Kennedy when he was in the Senate, with the distinguished Senator Leverett Saltonstall and Congressman BOLAND, O'NEILL, Philbin, BURKE, and Keith had worked for 4 years on the Cape Cod Seashore legislation to assure that the remarkably beautiful cape would be protected against overdevelopment while at the same time assuring that the rights of property owners within the seashore boundaries would be recognized.

Working with State and local elected officials, the Interior Committees of the Senate and House, and the residents of Cape Cod, they settled on a formula which would prohibit industrial and commercial development within the seashore with the exception of those cottage trades which are indigenous to the cape; would prohibit all development in the most fragile areas; and would impose a regulatory scheme on residential development which would assure that the unique qualities of the cape were not devastated by profit-hungry developers.

The Cape Cod National Seashore Act has accomplished its major preservation goals. The forecast of what lay ahead for the cape if the legislation were not enacted permeates the legislative history of this act. I quote from the Senate report of June 20, 1961:

> The need for conservation and protection is urgent. House lots and cottages, which have already blanketed the south shore and left only isolated areas for public enjoyment, are fast converging on the outer Cape. . . . New residential units mean more roads, destruction of native flora and range for wildlife, and stark intrusions on the natural landscape. . . . The manmade modifications that are taking place are severe and continuing. Although these changes may seem harmless individually, collectively, they will soon destroy much of the cape's natural appeal. . . . The increasing popularity of Cape Cod is jeopardizing its natural values. The charms of the area are being obliterated by developments. . . . Without immediate preservation of the Cape's natural features, however, there is great danger that the recreational qualities which have drawn insoon be lost for all time, consumed by commercialization and real estate subdivisions.

These dire predictions did not come to pass because the Congress acted quickly to avert the devastation by overwhelmingly approving the establishment of the Cape Cod National Seashore.

Anyone who has visited the Cape Cod Seashore in the recent past has had the opportunity to appreciate its striking beauty, participate in the recreational facilities made available to the public, and come to an understanding of the history and character of the cape which has charmed visitors for 200 years.

But I report with great sadness to my colleagues, that a few selfish and profit-

eering individuals have managed to skirt the intent of the Congress and obliterate the values of the cape by development which is neither consistent with the Cape Cod National Seashore Act nor helpful in attaining the preservation goals which the taxpayers of the United States have paid to realize.

We in the Congress owe an enormous debt of gratitude to the Cape Codder and its outstanding journalists, particularly Greg O'Brien and Charles Robb, for investigating and reporting a series of abuses which have disturbed and saddened all of us who love the cape. Those abuses fall into two general categories:

First, the acquisition of improvements constructed after the 1959 cutoff date with the granting of use and occupancy rights to the owners; and

Second, the number and type of alterations, remodeling, and expansions to improved property within the seashore.

I ask unanimous consent to have printed in the RECORD at this point an editorial from the Cape Codder of October 14, 1976 highlighting the disturbing trends in development which appear clearly at cross purposes with the goals of the Cape Cod National Seashore legislation.

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

[From the Cape Codder, Oct. 14, 1976]

THE SEASHORE: WHAT HAS HAPPENED TO "THE SPIRIT AND INTENT"?

The Cape Codder in its past three issues has been presenting a documented picture of tolerated development within the boundaries of the Cape Cod National Seashore which clearly breaches the "spirit and intent" of those who conceived it as the conservation and preservation of some 27,000 acres of Cape Cod and of the Congress which legislated it into existence.

No one could have read the series of three stories without agreeing with the conclusion that a serious breach of propriety has occurred. Readers could and probably are asking the valid question: How come this has been going on for years without our knowing about it? The answer is that it has happened in bits and pieces, an exception granted here and another there, without anyone taking the trouble to look at the whole picture. For this failure we are as guilty as anyone else.

Two outstanding US Senators, John F. Kennedy and Leverett Saltonstall, and an earnest if skeptical Congressman, Hastings Keith, drafted the creative piece of enabling legislation for the Cape Cod National Seashore. It had to be creative because the proposal was unique in National Park Service experience in that the boundaries of the proposed Park encompassed many private residences. The Cape Cod project was made politically possible by creating a precedent: all existing residences were exempted from federal taking and only open land could be subject to condemnation. The residences were to be under strict zoning controls as to change of use or alteration. And a very wise and necessary cut-off date of September 1, 1959 was announced early on to avoid an abuse of the residence provision before the Seashore could be established. It was made very clear that any building started after the cut-off date was done at the peril of the builder.

The spirit and intent, expressed and implied, of the good men who drafted the legislation which was approved by the Congress and accepted as a trust by the National Park Service was to keep the area within the 27,000 acre perimeter as it was, certainly without any further development, and even with the prospect of returning parcels to their natural state as the Seashore acquired homes which the owners decided to sell to the government. The operative phrase in the enabling act is, "in order that the seashore shall be permanently preserved in its present state."

The Cape Codder series has shown the extent to which this "spirit and intent" has been subverted. At least 85 dwellings were constructed within the Seashore after the 1959 cutoff date. Far from turning out to have been at the peril of the owners who decided to take the risk of building anyway, it was the taxpayers who were imperiled financially. The government has paid the owners of 68 of those peril-fraught properties $2,071,308 and the Seashore has given the owners tenancy rights for periods of years to boot. It is estimated that the total cost to the taxpayers for all 85 properties is close to $3 million.

In addition, our series of articles show instance after instance where owners of existing and legal residences have been permitted "alterations" which have turned shacks into palatial summer homes going far beyond the liberal guidelines set by the Seashore. At least one entirely new large house was allowed to be built.

So much for seeing to it that "the seashore shall be permanently preserved in its present state."

To put it bluntly, we do not believe the public treasury was intended to be used, nor should have been used, to establish park-like surroundings for a few well-off property owners. To build big year round homes, at substantial expense, with or without Park knowledge or consent, in an area taken by the federal government to save it from exploitation is to exploit the taxpayers, in our view of the matter.

We think the Park Service has slipped into laxness in defending the area from such exploitation. And we think that those who built after the cut-off date or who altered properties beyond recognition were defying or ignoring what all the rest of us assumed would be a National Park, not a private park.

Some of those whose identities have been made public in these stories are reported to be miffed at the publicity. We regret their displeasure and possible embarrassment but would point out that we are not the cause of it. The facts are the cause of it. Our intent was not to embarrass but to publish; just as their intent was not to go public but to make a nice place for themselves.

In any case, our focus is not on individuals at all but on a practice which has been going on in the Seashore that we think needed airing. The suggestion has been made that a Congressional investigative hearing should be held on the situation. We agree that Congress should take a good look to see whether the spirit and intent of what it created has indeed been breached.

Mr. KENNEDY. Mr. President, following that series of articles, Senator BROOKE and I requested a complete report from the Department of Interior on the management of property within the seashore. That report was furnished to us December 15, and unfortunately it raised more questions than it answered. The Department of Interior concludes that its mandate to preserve the seashore "in its present state" has been met and "given that legislative mandate and the existing zoning standards, my review of the management of improved properties within the seashore leads me to conclude that the spirit and intent of the legislation has not been violated."

I would like to take a brief period of time here to discuss in some detail the analysis by the Department of Interior which leads to their conclusion that the intent of the Cape Code National Seashore legislation has not been violated.

Interior's report concedes that "a review of the existing zoning standards needs to take place," that the "Park and the Advisory Commission are currently reviewing those standards," and that "should clarification be necessary, we will take administrative action to promulgate new or amended standards." The likelihood that improved standards will result is undercut by a later statement in the report:

> An effective counter argument to very rigid standards can be made, however, given the clear intent of the original legislation to preserve private property within the boundaries of the Seashore. Rigid and detailed standards could be construed as diminishing "for its owners or occupants the value or enjoyment of any improved property located within the Seashore."

The Department of Interior points out that the zoning standards that have been promulgated "lack clear and specific definition of either the character of; that is, style, design, architecture, or extent to which; that is, size of addition, improvement or alteration relative to the size of the original structure, an owner may enlarge, remodel, or otherwise alter an existing dwelling. Furthermore, the standards lack a definition of a "studio" or "guest house," each of which has generally been accepted as a permissible accessory structure on "improved property," and fail to specify the maximum number of accessory structures that may be allowed on "improved property."

Yet the Department's response to the gross alterations taking place within the seashore conveys no sense of urgency. We are told "the matter" was placed on the agenda of the Advisory Commission on November 7, 1975, and as of this date over 1 year later, no recommendation has been made. And the Secretary has taken no action.

In dealing with those property owners who constructed homes after the 1959 cutoff date, but prior to the time the Park Service acquired the properties, the Department of Interior reports:

> . . . the National Park Service concluded that it was reasonable to grant use and occupancy rights to owners of such properties just as such rights were guaranteed by the Act to the owners of "improved property."

There is nothing in the Cape Cod National Seashore Act, nothing, which required the Park Service to grant occupancy rights to those who chose to build after the cutoff date. In other words, the best and most profitable course for property owners was to quickly begin construction before the Park Service was in a position to acquire the property, then have the improved property acquired at taxpayer expense, receive the fair market value of the property, and then be allowed to continue living in the home. There is no provision in the act, nothing in the legislative history to suggest this was the proper course; and there was

never an inquiry from the Department of Interior to the Congress or its committees on the propriety of such action.

The legislation we introduce today in the Senate and Congressman STUDDS is introducing in the House attempts to correct the abuses which have marred the wishes of the American taxpayers, the hopes of the drafters of the seashore legislation, the intent of the Congress, and the dreams of Cape Cod residents This amendment to the Cape Cod Seashore Act includes the following provisions:

First. Under no condition will use and occupancy privileges be granted in the future to property owners who have constructed homes during a period of suspension of the Secretary's authority to acquire by condemnation.

Second. Size and design requirements must be included in new standards issued by the Secretary of Interior for zoning bylaws.

Third. Within 6 months of passage of this legislation, the Secretary of Interior must complete a review of all existing zoning bylaws to determine if they are consistent with the new standards.

Fourth. Within 30 days of that review, the Secretary of Interior must report to the Senate Interior Committee and the House Interior and Insular Affairs Committee a list of the required amendments to existing bylaws and his recommendations for appropriate Federal, State, and local government action to see that the purposes of the Cape Cod Seashore Act are carried out.

Fifth. If the Advisory Commission is unable to make a recommendation to the Secretary within 45 days on any matter presented to it relating to the seashore, the Secretary shall act without further delay.

Sixth. Ten million dollars is authorized to complete acquisition within the seashore and an additional $5 million is set aside in a reserve fund for emergency use by the Secretary to acquire property threatened with immediate development.

Mr. President, I ask unanimous consent that the complete text of the bill be printed at the conclusion of my remarks.

We look forward to working with the new Secretary of Interior to assure that the legislation we have introduced gives him the authority he needs to assure that the management of the Cape Cod National Seashore measures up to the goals outlined in the original legislation. And we look forward to testimonv during congressional hearings on this bill from the Advisory Commission, the elected officials from the seashore towns, and the residents of the seashore to guarantee that we have the most effective amendment for protecting the unique resources of the Cape Cod seashore.

President Kennedy said on September 3, 1959 in introducing the Cape Cod National Seashore Act:

We are confident that as a result of the protections which are clearly written into the law and the spirit which we know animated both the authors of the original proposal and of this legislation, that it will be possible to establish a great national park in an area which may otherwise be increasingly blighted by the relentless and sweeping advance of commercial development. If a park of this nature is not established on Cape Cod, there is every danger that much of the Cape will become a mere extension of the suburban civilization which typifies so many of our lives. If we act sensibly now, while the opportunity remains, we shall have preserved for America and for our people a priceless heritage to be enjoyed many times over, not only by this generation but by those which follow.

We act today to assure that the dream which President Kennedy and Senator Saltonstall shared with the residents of the Cape will be renewed and protected against those few who have sought to destroy it.

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

S. 440

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

SEC. 2. Section 4(a) of the Cape Code National Seashore Act, as amended, is amended by adding a new paragraph (9) at the end thereof to read as follows:

"(9) In any instance in which the Secretary acquires by condemnation a property upon which construction of a new building has begun after January 25, 1977, or with respect to which he has terminated the suspension of his authority to acquire by condemnation in accordance with the provisions of section 5(c) of this Act because of any variance issued or use begun after January 25, 1977, the beneficial owner or owners shall not be entitled to any privileges otherwise granted to them by paragraphs (1), (2), or (4) of this subsection."

SEC. 3. (a) Section 5 of the Cape Cod National Seashore Act, as amended, is amended by deleting from the last sentence of Subsection (a) the words "as approved" and inserting in lieu thereof, "unless amended by the Secretary's action pursuant to the authority granted to him in subsection (f) of this Section."

(b) Section 5(b) is amended by inserting in lieu thereof the following:

(b) The standards specified in such regulations and amended regulations for approval of any zoning bylaw or zoning bylaw amendment shall contribute to the effect of (1) prohibiting the commercial and industrial use, other than any commercial or industrial use which is permitted by the Secretary, of all property within the boundaries of the seashore which is situated within the town adopting such bylaw; (2) promoting the preservation and development in accordance with the purposes of this Act, of the area comprising the seashore, by means of acreage, frontage, setback, size, and design requirements and other provisions which may be required by such regulations to be included in a zoning bylaw consistent with the laws of Massachusetts.

(c) Section 5 is further amended by adding new subsections (e) and (f) as follows:

(e) In order to insure that the purposes of this Act are carried out, the Secretary shall, within 180 days complete a review of all existing zoning bylaws and zoning bylaw amendments in order to insure that they are consistent with new regulations issued under his authority in Section 5(b)(2) of this Act.

(f) The Secretary shall forward to the Interior Committee of the Senate and the Interior and Insular Affairs Committee of the House of Representatives within 30 days of the review completed under subsection (e) of this Act, a report which includes the required amendments to existing zoning bylaws and zoning bylaw amendments, his recommendations for appropriate legislative and administrative federal, state, and local government action to assure that the purposes of this Act are carried out, and his recommendations for relief if he has determined that actions have occurred which violate the provisions of this Act.

SEC. 4. Subsection (f) of Section 8 of this Act is amended by adding the following sentence:

If the Secretary or his designee the Superintendent of the Cape Cod National Seashore determines that the Advisory Commission is unable to make a recommendation within 45 days on any matter presented to the Advisory Commission for its consideration with respect to carrying out the provisions of this Act, the Secretary shall act without the advice of the Advisory Commission.

SEC. 5. Section of this Act, as amended, by adding the following:

There are authorized to be appropriated $10,000,000 to carry out the provisions of this Act for the acquisition of land and waters and improvements thereon, and interests therein, and incidental costs relating thereto, in accordance with the provisions of this Act. In addition, there shall be authorized to be appropriated and set aside in the Treasury of the United States, a reserve fund of $5,000,000 for use by the Secretary when he shall determine that existing funds are inadequate to purchase those rights and interests which are necessary to assure that the purposes of this Act are carried out.

Mr. BROOKE. Mr. President, I am cosponsoring the legislation Senator KENNEDY is filing today to change certain procedures with respect to the administration of the Cape Cod National Seashore. As a result of investigation by a local newspaper, the Cape Codder, we have discovered that a number of private landowners who still have holdings in the seashore have become substantially wealthier as a result of the vague regulatory mechanism established by the Secretary for managing private lands in the seashore. While some of these inconsistencies with the original intent of the act could be remedied by executive action we feel that it is so important that the management of these lands be reviewed and revised that we are filing legislation to provide a clear mandate to the Secretary of the Interior to do so. I have sent a detailed letter to the Secretary of the Interior outlining my perception of what has gone wrong at the seashore and the steps that need to be taken to remedy the situation. I ask unanimous consent that a copy of this letter be printed in the RECORD following my remarks. I also ask unanimous consent that a copy of the editorial from the Cape Codder entitled "The Seashore Problem" and a copy of the news analysis entitled "NPS Report" of the Cape Cod National Seashore's report on these problems which was also printed in the Cape Codder both be printed in the RECORD following my remarks and the letter to Secretary Cecil Andrus.

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

WASHINGTON, D.C.,
January 24, 1977.

HON. CECIL ANDRUS,
Secretary of the Interior, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: The National Park Service has prepared a detailed report on its policies toward acquisition of privately held properties in the Cape Cod National Seashore. I and my colleague, Senator Kennedy had requested this report following a local news-

paper series containing well-documented evidence that substantive residential development had taken place on some private lots after 1959 without their having been acquired by the Park Service or with a significant cost being imposed on the taxpayer because of the value added to those properties which were acquired. Senator Kennedy and I inquired into both the facts in these cases and into the general question of whether Park Service policy violated the spirit and intent of the 1961 Act establishing the Cape Cod Seashore.

The Park Service response, dated December 15, indicates to me that some fundamental changes in land management policies at the Cape Cod Seashore should be implemented without delay. While there is no indication of any wrongdoing in the report, it does nevertheless indicate that unnecessary regulatory ambiguity has been tolerated for many years. The failure to set clear standards for evaluating development on private lands in the Park has created a climate in which many development decisions were resolved in favor of private parties at some substantial cost to the public both in financial terms and in terms of forfeited natural resources.

I am cosponsoring legislation with Senator Kennedy which mandates changes in the way the Secretary's discretionary authority to promulgate land use standards is exercised. But I am convinced that the main provisions in our legislation could be entirely carried out by you without further action by Congress under the general authority provided in the 1961 Act. It is only because the Department has not moved in the past, during the fifteen years in which we have had insufficiently clear standards, that we have come to the point where the Congress is forced to act.

In its report, the Park Service points out quite correctly that the two-fold purposes of the original Act, namely the preservation of the Seashore and the continuing protection of most existing private property rights can lead to conflicting pressures in individual cases and that the Act itself is general with respect to resolving those tensions. But the Secretary is, in Section 5 of the Act, given the responsibility for promulgating standards by which town zoning bylaws affecting post-1959 development are to be judged. Those standards should set forth, with particularity, the Park Service's concept of reasonable accessory uses, nonconforming uses, permissible special permit review standards, and such precise traditional limitations as intensity of use restrictions, site planning and layout, height, setback and bulk. But while a need for such unequivocal standards became obvious to all those involved in managing the Seashore, no changes to the vague standards presently in effect were made.

The Park Service makes the entirely legitimate point that without acquisition funds, no violators' properties could be acquired in any case. But the Park Service did not come to the Congress in a timely fashion for new monies. And it is my firm belief that even without immediately available funds for acquisition, a clear finding against certain proposed building plans made explicit new standards might well have deterred some of the development which did occur and for which the taxpayer will ultimately pay.

Furthermore, the adoption of the policy that builders of improvements after 1959 were to be given the same terms of purchase, including extended occupancy rights, may have itself created incentives for new building. Although the policy was clearly designed to lower acquisition costs, the virtual guarantee to the owner of a generation of an enjoyment of the new resort home may well be counterproductive. I hope you will re-examine this policy, also.

I would urge you not only to promulgate specific new standards but also to reconsider the way similar decisions are made at all our national parks. First, the Seashore has been slow to recommend action after the problems were first realized. Second, the fact the Seashore lacks certain basic information on some of the developments studied leads me to believe we need a new and more rigorous system of documentation, reporting and inspection prior to, during and after any construction.

Third, and most puzzling is the apparent role of the Seashore's Agvisory Commission as a policy making body. For one, this body has on occasion been unable to reach any decision on important cases put to it, and it has been charged for over a year with proposing new standards for the Secretary which are not yet ready. But the real problem is that the Park Service is placing responsibilities on this body which go far beyond its mandate or capacities. It is the Secretary, or in some cases the Superintendent of the Seashore, who is responsible for policymaking. While he or she should clearly be responsive to any initiatives proposed by the knowledgeable citizens on this Commission, an absence of action by the Advisory Commission in no way relieves the official in charge of responsibility for identifying problems and making decisions. The provisions in our bill to encourage prompt action by the Commission and the Park Service are, again, an expression of deep concern over current practices which could be reformed without legislation if the Department so chooses.

As a member of the Senate Appropriations Committee, I am eagerly awaiting the supplemental budget request by the Park Service which will include the estimate of the funds needed to complete acquisition of private lands in the Seashore. You may be sure I shall work for its prompt appropriation as soon as it is received in the Congress.

In closing, I would like to reiterate that I believe the problems at the Seashore can in no way be attributed to any individual or individuals acting improperly or in a covert manner. Rather, these relationships between private interests and the federal government have never been directly addressed during the fifteen years the Park has existed. I trust you will not only act promptly to change practices at this park but that you will review the management of acquistions at all recently created federal recreation and conservation areas for similar problems.

I look forward to your early response to these difficulties and to their prompt resolution.

Sincerely,

EDWARD W. BROOKE.

[From the Cape Codder, Jan. 6, 1977]

THE SEASHORE PROBLEM CANNOT BE EXORCISED

The Cape Cod National Seashore has issued the report requested by Senators Edward Brooke and Edward Kennedy on the building which has been going on within the Park boundaries brought to public attention in a series of articles in The Cape Codder. We are sorry to say that the report is long on words and short on clarity. The result is obtuseness and evasion where frank and open discussion of an obvious problem is called for.

This unfortunate tone starts in the introduction. "The Cape Codder articles raise the general issue of the spirit and intent of the act creating the Cape Cod National Seashore," the report says. "The mandate given to the National Park Service was to preserve the Seashore permanently 'in its present state'." This is followed immediately, in the second paragraph, by the assertion, "my review of the management of improved properties within the Seashore leads me to conclude that the spirit and intent of the legislation has not been violated."

This is nonsense! And it is rather insulting nonsense to deliver this type of material to the brother of one of the drafters of the legislation creating the Cape Cod National Seashore.

The full operative clause in the legislation passed in 1961 is: "In order that the seashore shall be permanently preserved in its present state, no development or plan for the convenience of visitors shall be undertaken therein which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing . . ."

This is about as clear as the English language can be. The spirit and intent of the legislative fathers was that the owners of existing homes within the Seashore should enjoy them as long as they wished, basically in their existing state. And they placed a cut-off date on this protection of September 1, 1959, after which any construction would breach the law's spirit and intent.

The Seashore itself reveals that 88 houses have been built within its boundaries since the cut-off date in 1959. If language is to mean anything, there is no other way to describe this construction than as a violation of the law's spirit and intent. Of course, there are reasons why the construction has been allowed, mainly the lack of condemnation funds to be used before the construction started. But there is no question that the existence of these buildings violates what the bill's drafters intended.

We have presented case after case in which "improvements" to the existing legitimate buildings within the Park have abused the Seashore's own original and liberal guidelines. What has happened is that owners of small shacks have been allowed to "alter" them into palatial and expensive summer homes. These property owners thus have succeeded in capitalizing on the remoteness and protection of the Seashore which they themselves have breached. We even found and reported the example of one property which was "altered" from a small studio on one part of the property to an entirely new, large and luxurious house on a completely new location.

The effect of all this has been to create special conditions for the favored wealthy to develop leisure homes while protecting the Seashore only from the less fortunate who could afford to enjoy only more modest seaside subdivisions which are unavailable.

There is no way that Park Service spokesmen can now convince anyone that this sort of thing doesn't violate the hell out of any interpretation whatsoever of "spirit and intent".

What the Senators have been given by the Park Service report is casuistry and speciousness. This bit of reasoning, for example: "An effective counter argument to very rigid standards can be made, however, given the clear intent of the original legislation to preserve private property within the boundaries of the Seashore. Rigid and detailed standards could be construed as diminishing 'for its owners or occupants the value or enjoyment of any improved property located within the Seashore'."

No one is asking for rigid standards, of course. All that has been suggested is adherence to the very simple principle that property within the Seashore be kept "permanently preserved in its present state" as stated in the law.

The simple and undeniable fact is that land which has been taken by the Federal government on behalf of the people to save it from exploitation has been exploited for the benefit of certain landowners. To add salt to the wounds, the people as U.S. taxpayers have had to pay for valuable properties and see the owners enjoying long occupation leases from the government. Building supposedly undertaken at the owner's risk has turned out to be only at the risk of the taxpayer.

The National Park Service has not presided over this unfortunate record out of any sense of evil intent or of deliberateness. It has indeed been denied the funds to acquire properties by condemnation, funds which could

have been applied before the bulldozer blade dug in. But neither have we seen any real leadership coming out of the Interior Department to convince the Congress of the crying need.

We pointed out editorially back in August, 1961 the mischief that has indeed developed from a crucial decision in Congress on the National Seashore legislation. At the insistence of the House conferees, the so-called contract authority was dropped from the Senate version of the bill. This authority would have enabled the Park Service to negotiate contracts for land purchases on the Cape before appropriations were approved by Congress. Perhaps the Congress should now reconsider some form of contract authority to take away any further Park Service excuse for violating the spirit and intent of the act.

In the meantime, the very least we should expect from Park officials is frank acknowledgment of a situation which threatens the good work and clear intentions of John F. Kennedy, Leverett Saltonstall and then-Director Conrad Wirth of the National Park Service.

[From the Cape Codder, Jan. 6, 1977]

NPS Report Backs Park Management Blames Development on $$ Shortage

(By Charles C. Robb)

Following a request by Senators Brooke and Kennedy, the National Park Service has completed a report on the handling of private property development within the National Seashore Park.

The report generally defends the Park's management of private development, but it concedes that unwanted development has taken place. It blames the Park's inability fully to limit private development to a lack of funds for acquisition of property and to vagueness of zoning standards.

The two Senators had demanded the report last October, in response to a series of articles in The Cape Codder which disclosed that a large number of new homes had been built in the park after a 1959 cutoff date for new buildings. The Cape Codder series also revealed that a number of property owners had converted small summer cottages into substantial year-round homes.

In addition to an accounting of its management policies, the two Senators asked the Park Service to explain each case of property development that had been cited in the Cape Codder series.

The report was prepared largely by the staff at the Seashore Park headquarters in Wellfleet. It was reviewed by the Park Service's regional office in Boston and went to the Senators just before Christmas, under the signature of Regional Director Jack E. Stark.

"NOT VIOLATED"

The principal conclusion was that development in the Park has not violated the 1961 Seashore Act's mandate that the Park preserve the seashore permanently "in its present state," develop public use consistent with that purpose, and do both without diminishing use of enjoyment of existing private property.

"Given that legislative mandate and the existing zoning standards," said Mr. Stark in an introduction to the report, "my review of the management of improved properties within the Seashore leads me to conclude that the spirit and intent of the legislation has not been violated."

Despite this conclusion, however, the report acknowledged that new construction had occurred in the Park when funds were not available to acquire the properties. It also stated that some existing properties had been added to and "substantially altered."

"In some instances these alterations have been extreme," the report said. However, it added, "They do not violate the existing zoning standards."

The report proposed two remedies. First, it was suggested, new funding by Congress is needed to replenish the Park's presently empty treasury for acquisition of properties on which development is planned or has already taken place improperly. Second, the report said, a review of zoning standards is needed to put precise limits on the extent to which existing properties may be enlarged.

Some qualification of the claim that the "spirit and intent" of the Seashore Act had not been violated was provided this week by Dennis Galvin, the Park Service's assistant regional director and one of the report's authors. Mr. Galvin told The Cape Codder it was not intended to claim that no change had occurred in the park's "present state" as of 1961.

"Our feeling of the spirit and intent was that if you were to build after 1959 you would be subject to condemnation," he said.

Mr. Galvin pointed out that properties had been condemned and acquired, in the spirit of the act, although the acquisition program had been limited by shortage of funds.

"Ideally, if funds are available, the minute a building permit appears on the desk, a property can be acquired," he said. "It's unfortunate that funds have not always been available, and people did build."

THE ACT

Under the 1961 act, any single-family residence on which construction had started prior to Sept. 1, 1959 could remain in private ownership and could be expanded or altered as long as the changes complied with existing zoning regulations. These were defined as "improved properties." Any dwelling built after the cutoff date, or any pre-1959 "improved property" altered in violation of zoning standards, was made subject to condemnation.

The law authorized $16 million for acquisition of property. Initially the Park concentrated on buying up open space, rather than developed property, and did not move to curb the building that continued after the 1959 cutoff. By 1968 the initial $16 million was spent, and the acquisition program ceased.

In 1970, an additional $17.5 million was authorized by Congress, and the park resumed acquisition and moved at last against the post-1959 properties. The Park had a list of 89 such dwelling, all but five of which had been built in 1959–62, around the time the Park was created. Condemnations were completed in 1973 and 1974 of 88 of the properties, at a total cost of $2,845,821. The single remaining dwelling is one of the problem cases which was reported in the Cape Codder series.

In most cases, owners of condemned properties were granted occupancy rights for periods from 10 to 25 years, with 25 years being the usual time. They were paid the appraised market value of the properties, less one percent for each year of permitted occupancy.

The report stated the Park Service concluded it was "reasonable" to grant use and occupancy rights to owners of these condemned properties, just as such rights were guaranteed to owners of pre-1959 properties acquired by the Park. The formula for payment "has long been accepted and applied in the land acquisition programs at many National Park System areas," the report said.

In June, 1974, the acquisition program ceased again, when all available funds had been expended, except for $2.5 million required to cover final court judgments on pending condemnation cases. The Park Service intends to ask the new Congress for enough new funds to complete the acquisition program.

MAJOR PROBLEM

At present, the report indicated, the major problem is how to deal with pre-1959 "improved properties" that have been altered or expanded. Such properties made up the majority of the 13 specific cases cited in The Cape Codder series.

"The Cape Codder articles," said the report, "suggest that the changes that have occurred over time on 'improved properties' are generally contrary to, if not a subversion of, the purposes of the Act. That view can be sustained only by a finding that the Seashore management and town officials consistently have acted without reference to either the Seashore Act or the town zoning bylaws enacted subsequent to and in accordance with it in evaluating building construction proposals on 'improved property.'"

The report continued: "Neither the Seashore Act nor the zoning standards define an appropriate limitation on the extent to which an existing dwelling may be enlarged by additions and remodellings."

The Seashore Act provided that renovation of existing dwellings in the Park may be permitted under zoning bylaws of the separate towns, with the proviso that the town bylaws must conform to zoning standards set by the National Park Service.

The Park Service's current standards state that "the distinctive Cape Cod character of existing residential structures will be maintained."

The standards require that enlargement of a dwelling must meet certain setback requirements. They also provide that "other uses" may be permitted, "provided such other uses are traditional to these seashore communities, are customarily incidental to the principal residential use and do not alter the essential character of the dwelling and premises as a private residence."

NOT CLEAR

The report pointed out that the zoning standards "lack clear and specific definition" of the extent to which an owner may enlarge or remodel a dwelling. Further, the report states, "the standards lack a definition of a 'studio' or 'guest house,' each of which has generally been accepted as a permissible accessory structure on 'improved property, and fail to specify the maximum number of accessory structures that may be allowed on 'improved property.'"

"This is the nub of the problem," said Park Superintendent Lawrence Hadley, in commenting on the report this week.

Mr. Hadley, who is charged with monitoring the alterations Park residents make to their properties, said that he and his staff review building permits relayed for approval by town building inspectors. From 1973 through 1976, according to the report, 83 such permits were submitted by the towns for review.

This process leads to problems, Mr. Hadley said. First, there is the difficulty of determining whether a permit which appears proper under a town zoning bylaw might involve enlargement of a property beyond what would be appropriate under the Seashore Act. Second, there is the question whether the actual construction follows the building permit.

In several cases cited by The Cape Codder series, property owners enlarged their dwellings beyond what was indicated in building plans on which permits were issued.

The report to the senators noted that this problem came sharply to the attention of the park staff in September, 1975, "as a result of the remodelling and enlarging of a relatively modest cottage by Mr. Ancil Chasteen in a manner seemingly wholly different from that depicted in plans reviewed and approved by the National Park Service."

Mr. Hadley and James Killian, the park's land use specialist, brought the matter to the attention of the Seashore Advisory Commission at a meeting Nov. 7, 1975. As The Cape Codder reported at that time, Mr. Killian told the Commission he had investigated complaints from neighbors about Mr. Chas-

teen's construction and had found that none of the material from the original cottage was being used in the new house. He said he told Mr. Chasteen that unless the new structure was an enlargement of the old, it might be subject to condemnation by the park.

The part officials asked the Advisory Commission to study and draft precise standards to control such cases, but the Commission could not reach consensus whether the Chasteen case was a violation. Mr. Hadley repeated his request at the Advisory Commission's meeting last April 16, at which he said there were a number of similar cases that could not be settled until precise standards were set.

The Advisory Commission finally took up the issue at its meeting last Oct. 8, when a three-member subcommittee was assigned to study the problem.

THE CASES

The other cases referred to by Mr. Hadley were among those cited by The Cape Codder, and each of them was discussed in the report to the Senators.

Of the 13 cases, five, according to the report, are regarded as undecided and subject to the review by the Advisory Commission. In addition to Mr. Chasteen, these involve the following property owners:

Dr. Robert J. Lifton, whose renovation of a one-room cottage into a five-bedroom house with separate studio was said "to substantially enlarge the modest structure which existed on the property." The construction took place in 1965 and was approved by the park. "Despite the Superintendent's expressed concern for the size of the addition, the structure would, and has, continued in use as a single-family dwelling," the report said. "The record in this case may permit an interpretation that the property does not meet the definition of 'improved property' in that construction of the dwelling post dates Sept. 1, 1959 as specified in the Act," the report adds.

Ann Peters, who in 1973 renovated a small, one-story cottage by adding bedroom and kitchen wings with basement. According to the report, Miss Peters was advised that the original dwelling should be retained and incorporated into the new structure. "Our records, including file photographs, suggest that the Seashore's advice was not heeded regarding the retention of the original structure," the report said. "If such be the case, it may be found that the property no longer qualifies as 'improved property' and is therefore subject to condemnation."

John C. Phillips, who in 1971 constructed a four-room "studio" as an accessory to a dwelling, despite advice by the Park Service's regional solicitor that the new construction ". . . had the effect of subjecting the property to possible condemnation . . ." According to the report, "Consideration whether to proceed to acquire the property will not be made until acquisition funds become available."

Donald R. Giles, who in 1973 enlarged a three-room cottage without heat to a "substantial" two-story year-round house. "Seashore records indicate that the finished dwelling does not contain ready visual evidence of the original structure," the report said. "Despite the fact that the property contains one single-family dwelling in conformance with provisions of the Seashore Act, there is basis for question whether the property may qualify as a 'post-1959 property' if the selling is of wholly new construction dating from 1973."

Four other cases cited in The Cape Codder series had been reviewed by park officials and deemed to be acceptable. These, according to the report, involved the following property owners:

Lee S. Halprin, who expanded his Truro residence twice: first in 1963, when a living room, bedroom and bath were added, and again in 1973, when a second-floor bedroom and bath were built. Of the second addition, the report stated, "The Seashore voiced no objection as the proposed work was judged to be in conformance with town zoning bylaws for the Seashore District."

John David Cist, who in 1972 enlarged his residence after modifying the design to meet the advice of park officials that the new structure should incorporate the old. "Although the present dwelling is considerably modified in size and appearance from the original, the use continues as a single-family dwelling and there is no basis for acquisition by the National Park Service," the report stated.

Joseph Jay and Catherine Deiss, who made three improvements to their home in Wellfleet: a garage in 1931, a "studio-bedroom" in 1972, and a two-stall horse shed in 1974. All were approved by the park. According to the report, in December, 1975, a neighbor phoned the park office to complain that the studio-bedroom at the Deiss residence constituted separate living quarters and was therefore in violation of zoning. The Wellfleet building inspector was asked to inspect the property. "He reported that all construction had been properly approved by the town and that the use of the property was considered in keeping with the zoning for the Seashore District."

Charles Alexander Jencks, who last August and September built a one-room studio with toilet and sink on the back of his lot in Truro. According to the report, a neighbor phoned the Park to protest that the new building would intrude on the caller's privacy. Two letters of protest were received also. However, the Park found that the building was permitted under zoning bylaws, provided no kitchen or other facilities were added which would make the studio a second residence.

OTHER CASES

Three cases cited in The Cape Codder series concerned properties acquired by the Park. They involved these owners:

Dr. and Mrs. Martin Peretz, who in 1971 had purchased a home in Truro which had been built in 1961, after the cutoff date. The report said that on Sept. 1, 1971, Dr. Peretz was notified his property was subject to condemnation. Negotiations were started, and on May 4, 1973, Dr. and Mrs. Peretz signed an agreement to sell the property for $37,875, with the right of 25-year occupancy. Subsequently, Dr. Peretz offered to donate the property to the Park, in return for a life occupancy for himself and his wife. The Park rejected the offer, on grounds the agreement to sell was binding and that occupancy could not be granted for more than 25 years. Title passed to the Park on July 30, 1974.

Charles and Evelyn Tanis, owners of a parcel in Wellfleet, on which they intended to build a new dwelling. According to the report, the Park advised that since a house already existed on the property, the second dwelling would be subject to condemnation. The Tanises, however, contended the parcel comprised two lots, and a building permit was issued by the town of Wellfleet on Jan. 8, 1975. On the same day, Park Superintendent Hadley requested the regional office to proceed immediately to condemnation. The property passed to the Park on July 11, 1975.

Felix S. Vecchione, who in July, 1969, purchased a parcel in Eastham with the expressed purpose of building a cottage. The report said that Mr. Vecchione was advised the property would be subject to acquisition. On Dec. 3, 1969, the Eastham Board of Appeals granted a building code variance to allow the building, which was then built. On Dec. 16, 1969, Mr. Vecchione was notified by the Park that the property would be acquired as soon as funds were available. Acquisition was completed on Feb. 1, 1974, for $19,338, with occupancy rights for 15 years.

Another case cited in The Cape Codder series involved a dwelling known by the Park to have been built after the 1959 cutoff date but not yet acquired. The explanation of this lapse is not altogether clear.

The report stated that the house, owned by Hayden Walling, is one of two on separate tracts owned by Mr. Walling, the other house having been built in 1959. "Mr. and Mrs. Walling separated, and Mr. Walling retained the structure he says was built in 1959, whereas his wife retained the structure built in 1961." That statement seems clear enough, but the report goes on to suggest there is some confusion as to which of the two houses is the 1961 dwelling subject to condemnation. "We will conduct further investigations as to the date of construction of the various structures," the report adds.

By Mr. PACKWOOD (for himself and Mr. HATFIELD):

S. 441. A bill to amend Public Law 566, Watershed Protection and Flood Prevention Act, as amended, to raise the limitation of any single loan or advancement for watershed works of improvement; to the Committee on Agriculture and Forestry.

S. 442. A bill to amend title III of the Bankhead-Jones Farm Tenant Act, as amended, to increase the amount of any loan for which funds may be appropriated without prior approval of such loan by congressional committees; to the Committee on Agriculture and Forestry.

Mr. PACKWOOD. Mr. President, the continued health and vitality of our agricultural community depends, in part, on the health of vitality of the laws governing land and water conservation projects. The Senate found those laws to be in disrepair last year and passed two bills of immediate importance to these projects, S. 2484 and S. 2485.

The first of these bills would have removed the $5 million dollar limitation on any single loan or advancement for watershed projects under the Watershed Protection and Flood Prevention Act, and replaced it with a $10 million dollar limitation. Increasing this maximum limitation on the amount of a loan is absolutely required since the cost of these projects has increased so tremendously over the past few years. Watershed improvement plans have been brought to a virtual standstill because of a restrictive $5 million limitation.

The second, prohibits appropriations for any Resource Conservation and Development Loans in excess of $500,000—presently $250,000—under the Bankhead-Jones Farm Tenant Act, without prior approval of the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. In addition it extends the loan-making power of the Secretary of Agriculture to include loans for the conservation, development, and utilization of water for agricultural purposes. Generally, the increase of this limitation would also facilitate conservation and development loans since it would not require smaller projects to meet specific prior approval by the respective Committees on Agriculture.

I commend the Senate for passing these bills last year, and hope they receive similar consideration at an early time in the 95th Congress.

By Mr. CHILES (for himself, Mr. STONE and Mr. MCCLURE):

S. 443. A bill to prohibit travel at Government expense outside the United States by Members of Congress who are not reelected to the succeeding Congress; to the Commitee on Government Operations.

Mr. CHILES. Mr. President, during the 94th Congress I introduced a bill which would prohibit travel at Government expense outside the United States by Members of Congress who will not be members of the next Congress. Unfortunately no action was taken on this bill.

Every 2 years we bear witness to the familiar mass exodus of lameduck Congressmen on trips abroad, and it is in an effort to bring a halt to this unwarranted expenditure of public funds that I am introducing this bill again today.

As you are well aware, Mr. President, our Nation is currently going through a period of severe economic strain. We are facing the combined threats of inflation, recession, and unemployment. Prices are on the rise and at the same time assembly lines are closing down.

In order to help weather this economic crisis we have called upon the American people to tighten their belts and make sacrifices where it hurts—in their pocketbooks. Under these circumstances, it is especially incumbent upon us in the Congress to set our own house in order.

This legislation is by no means intended to prevent Members of Congress from fulfilling their constitutional responsibilities. I am fully aware of the important benefits to the legislative process which can be derived from congressional travel. Senators and Congressmen can use these opportunities to gather valuable background information for their committee work, lay the foundation for new legislative initiatives, and exercise their investigative powers and responsibilities over programs which Congress has instituted. This bill is not meant to interfere in any way with the normal workings of this legislative process.

But it is hard to imagine what purpose is to be served by a trip of this nature when a man's term of office is about to expire and he is not returning to the new Congress. This is the area about which the public feels very uncomfortable and over which they have every right to hold us accountable.

Mr. President, it is imperative during this difficult economic period to set an example of prudence and self-restraint with respect to our own expenditures. This legislation I am reintroducing today represents a small, but hopefully an important step in that direction. I might add that it is my sincere hope that the executive branch will take note of this action, and that this effort on the part of the Congress to limit its own spending will serve as an example to other Government agencies to similarly curtail any superfluous travel by lameduck officials.

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

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

S. 443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, after the date on which any general election is held for election of Members of the House of Representatives and the Senate, no part of any appropriation and no local currency owned by the United States shall be available for payment of any expenses, nor shall transportation be provided by the United States, in connection with travel outside the fifty States and the District of Columbia of any individual who—

(1) is a Member of, or Delegate to, or Resident Commissioner in, the House of Representatives, or

(2) is a Member of the Senate whose term expires at noon on January 3 following the date of such general election,

unless such individual is reelected or elected as a Member of, or Delegate to, or Resident Commissioner in, the House of Representatives for the succeeding Congress, or is reelected or elected as a Member of the Senate for a term which begins at noon on January 3 following the date of such general election.

SEC. 2. The first section of this Act shall not apply with respect to utilization of funds for travel authorized by law for any Member of the House or Senate, or any Delegate to, or Resident Commissioner in the House, between the District of Columbia and the district, State, commonwealth, or possession which he represents.

By Mr. WILLIAMS:

S. 446. A bill to authorize the Secretaries of the military departments to reimburse nonappropriated fund instrumentalities located in the Ryukyu Islands and Daito Islands, Japan, for increased costs in severance pay entitlements of their Japanese employees incurred as a result of the reversion of those islands to Japan; to the Committee on Armed Services.

NONAPPROPRIATED FUND FACILITIES ON OKINAWA

Mr. WILLIAMS. Mr. President, I have become aware of a serious situation which is threatening the financial soundness of some of the PX facilities used by American service people in Japan. Apparently, the U.S. Government has forced the servicemen and women to pay substantially higher labor costs for the employees in nonappropriated fund facilities, but refuses to permit Japanese Government funds provided for this purpose to be used to reduce the onerous burden on our Armed Forces personnel. I am afraid that many will see this as a callous disregard by our Government for the welfare of those who serve in our armed services abroad.

Many people do not realize that a vast number of the activities which provide for the convenience and morale of our armed services are actually paid for by the troops themselves, not by the taxpayers. These include the service clubs, messes, and PX systems. It is a serious violation of our responsibilities to permit the imposition of an unreasonable, financial burden on these facilities and those who must support them; it is especially scandalous when we refuse to correct that injustice by merely authorizing the spending of money that the Japanese gave us for that purpose.

On May 15, 1972, control of the Ryukyu Islands and the Daito Islands, which had been under U.S. control since World War II, reverted to Japan. At the same time, the system governing employment of the approximately 20,000 Ryukyuan workers employed by the U.S. force on Okinawa changed. Previously, these workers had been directly employed by the various U.S. military commands and nonappropriated fund instrumentalities. But, on the date of reversion they became subject to the same indirect hire system under which local national workers of the U.S. forces were employed elsewhere in Japan.

There is a uniform system of employment conditions, pay, benefits and allowances applicable to all Japanese employees of the U.S. forces in that country, however, the pay and benefits of local national workers in Okinawa had been generally less than those prevailing in the rest of Japan. Conversion of the Okinawan employees to the Japanese system resulted in significant increases in pay and other benefits for most of them. Labor costs for the U.S. military commands and nonappropriated fund instrumentalities in Okinawa rose correspondingly.

The Japanese Government had insisted that Japanese employees of the U.S. forces on Okinawa be provided the same pay, benefits and allowances as those elsewhere in Japan. Since this would result in increased labor costs for the U.S. forces, Japan agreed to make cash payments of $74 million because of these increased labor costs.

Although the nonappropriated fund activities on Okinawa were burdened by the same increase in liabilities for severance pay as the U.S. forces employers there operating with appropriated funds, the former are now disadvantaged since they have had to rely on their own resources to satisfying this obligation. The sudden increase in the severance pay obligations of the various clubs, messes, PX's, and other nonappropriated fund activities on Okinawa, has created serious financial difficulties for many of them, and it may require curtailment of services rendered to U.S. military and civilian personnel and their dependents.

Since there is no specific authority, either in the reversion agreement or in any statute for the transfer of the Japanese funds from the U.S. Treasury, where the Japanese cash payments are deposited, to nonappropriated fund instrumentalities, the only way these facilities can obtain their proper share of the cash settlement provided by Japan for the increased severance pay costs is through legislation. The events which generated the need for this legislation were unique, and the proposed bill is not in any way to be considered as precedent-setting.

Mr. President, in recent years our military personnel have been subjected to repeated instances of threatened reductions in benefits. It is incumbent on us to meet faithfully the obligations which have been promised. But it is even more important that we do not inflict these unintended and unnecessary burdens on them.

I ask unanimous consent that 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. 446

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under such regulations as the Secretary of Defense may prescribe, the Secretary of a military department may, from appropriations made specifically available for the purpose, reimburse nonappropriated fund instrumentalities located in the Ryukyu Islands and Daito Islands, Japan, or their designated fiscal successor-in-interest accounts, for any increase in severance pay entitlement of Japanese employees who were employed by such instrumentalities on May 15, 1972, and whose severance pay computation formula was changed, effective on such date, as a result of the agreement entered into by the United States and Japan entitled "The Agreement Between the United States of America and Japan concerning the Ryukyu Islands and the Daito Islands" (signed at Washington, D.C. and Tokyo on June 17, 1971).

SEC. 2. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of the first section of this Act.

ADDITIONAL COSPONSORS

S. 15

At the request of Mr. JOHNSTON, the Senator from Minnesota (Mr. ANDERSON) was added as a cosponsor of S. 15, the Federal Election Campaign Act Amendments of 1977.

S. 21

At the request of Mr. DOMENICI, the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of S. 21, to amend the Occupational Safety and Health Act.

S. 92

At the request of Mr. WILLIAMS, the Senator from Idaho (Mr. CHURCH), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Indiana (Mr. BAYH), the Senator from Washington (Mr. JACKSON), and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 92, to amend and extend the Export Administration Act of 1969.

S. 107

At the request of Mr. PEARSON, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 107, a bill to avoid reductions in veterans' pensions concomitant with increases in social security benefits.

S. 121

At the request of Mr. BIDEN, the Senator from Minnesota (Mr. ANDERSON), the Senator from New York (Mr. JAVITS), and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 121, the Federal Oil Pollution Liability and Compensation Act of 1977.

S. 123

At the request of Mr. INOUYE, the Senator from Indiana (Mr. BAYH) and the Senator from New Hampshire (Mr. MCINTYRE) were added as cosponsors of S. 123 a bill to amend the Social Security Act.

S. 175

At the request of Mr. SCHWEIKER, the Senator from Alabama (Mr. SPARKMAN), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Mr. JOHNSTON) were added as cosponsors of S. 175, a bill to provide a special program of financial assistance to opportunities industrialization centers, and to other national community based organizations.

S. 182

At the request of Mr. KENNEDY, the Senator from Minnesota (Mr. ANDERSON), the Senator from Michigan (Mr. RIEGLE), the Senator from Maryland (Mr. SARBANES), and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 182, the Federal Tanker Safety and Marine Anti-Pollution Act of 1977.

S. 311

At the request of Mr. ROTH, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 311, a bill entitled the College Tuition Tax Relief Act of 1977.

S. 317

At the request of Mr. MCGOVERN, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 317, to provide service pensions to certain veterans of World War I.

S. 367

At the request of Mr. MCGOVERN, the Senator from North Dakota (Mr. YOUNG) was added as a cosponsor of S. 367, to authorize the Secretary of the Interior to guarantee certain bonds issued to finance water resource facilities.

S. 398

At the request of Mr. PEARSON, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 398, the Emergency Construction Trade Employment and Airport Development Act of 1977.

S. RES. 7, S. RES. 8, AND S. RES. 9

At the request of Mr. HATFIELD, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of Senate Resolution 7, Senate Resolution 8, and Senate Resolution 9, amending rule XXII of the Standing Rules of the Senate.

SENATE CONCURRENT RESOLUTION 6—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO THE PLACING OF A STATUE OF MARTIN LUTHER KING, JR., IN THE CAPITOL

(Referred to the Committee on Rules and Administration.)

Mr. BAYH. Mr. President, it is with great pleasure that I introduce today a resolution, introduced in the House by Representative JONATHAN BINGHAM and cosponsored by 157 Members of the House, including all members of the Black Congressional Caucus, to authorize the commissioning of a bust or statue of the Rev. Dr. Martin Luther King, Jr., for placement in the U.S. Capitol.

Evidence of the strong support this resolution has is indicated by the fact that last year it passed both Houses, falling short of final passage only because the House refused to accept a Senate amendment, and the 94th Congress adjourned before the two Houses could go to conference on the resolution.

It seems only fitting and proper that Congress pass this resolution as a gesture of our respect for a great American. Furthermore, I wholeheartedly agreed with my colleague from the other body, Mr. BINGHAM, when he so eloquently stated that the absence of any statue or portrait of a distinguished black American among the 681 statues and portraits in the Capitol is a disgrace to a nation striving to correct the legacy of 200 years of racial injustice. This resolution would not only be a mark of respect for the memory of the Rev. Dr. Martin Luther King, Jr., it would be a means of expressing our appreciation for the important role of black Americans in our Nation.

For too many years the history of the black American's accomplishments in this country have been ignored. Black children have been denied the proud pleasure of reading in the history books of the great accomplishments of their ancestors. Recently, many schools have attempted to remedy this unpardonable omission through the creation of black studies courses and through the inclusion of black Americans in the history books. Now it is time for the U.S. Congress to do the same. Black children must be able to feel the same kind of pride when they walk through the Halls of Congress as they do when they sit in a black studies class or read in the history books about the great deeds of Frederick Douglass, Harriett Tubman, Sojourner Truth, or Booker T. Washington. A bust or statue of Dr. King would be the first step in achieving such a feeling of pride among our black citizens when they visit their Nation's Capitol.

A cultural legacy is a key variable in any people's struggle for ethnic or racial identity. For this body not to pass this resolution, and thusly deny more than 22 million people the right to a feeling of their own racial pride, would be unjust. All Americans should and must share in the cultural heritage of America. A bust or statue of the Rev. Dr. Martin Luther King, Jr., certainly would represent a rich and rewarding symbol of what our country is all about. Such a gesture would furthermore move us closer to recognizing that black Americans have played a major role in the development of America. And finally, by placing a bust or statue of Dr. King here in the Capitol, we will help move our black citizens away from a feeling of alienation toward their country and their government, and closer to a feeling that their deeds shall not go unheeded as has too often been the case in the past. I urge prompt adoption of the resolution.

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

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

S. CON. RES. 6

Resolved by the Senate (the House of Representatives concurring), That the Joint Committee on the Library is authorized and directed to procure a bust or statue of Martin Luther King, Junior, and to cause such sculpture to be placed in a suitable location in the Capitol as determined by the Joint Committee on the Library.

SEC. 2. Expenses incurred by the Joint Committee on the Library in carrying out this concurrent resolution, which shall not

exceed $25,000, shall be paid out of the contingent fund of the Senate on vouchers approved by the chairman of the Joint Committee.

AMENDMENTS SUBMITTED FOR PRINTING

COMMITTEE SYSTEM REORGANIZATION AMENDMENTS OF 1977—S. RES. 4

AMENDMENT NO. 15

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN (for himself, Mr. DOLE, Mr. KENNEDY, Mr. JAVITS, Mr. PERCY, Mr. RIEGLE, Mr. ABOUREZK, Mr. CASE, Mr. HUMPHREY, and Mr. CHURCH) submitted an amendment intended to be proposed by them jointly to Senate Resolution 4, the Committee System Reorganization Amendments of 1977.

NOTICES OF HEARINGS

GOVERNMENT OPERATIONS COMMITTEE

Mr. GLENN. Mr. President, on December 13, 1976 I chaired oversight hearings in the Government Operations Committee on the licensing procedures for nuclear powerplants as carried out by the Nuclear Regulatory Commission. In my capacity as the chairman of the Ad Hoc Subcommittee on Nuclear Matters I would like to state that the hearing record shall be considered closed as of February 1, 1977.

SELECT COMMITTEE ON NUTRITION AND HUMAN NEEDS

Mr. McGOVERN. Mr. President, I wish to announce that the Senate Select Committee on Nutrition and Human Needs has scheduled 2 days of hearings on "Diet Related to Killer Diseases, II." The first of these will be held on Tuesday, February 1, 1977, at 9:30 a.m., in room 1202 of the Dirksen Senate Office Building, and will investigate the relationship between diet and cardiovascular disease. On Tuesday, February 2, at 9:30 a.m. in room 1114 of the Dirksen Senate Office Building, the committee will investigate the problems related to obesity.

SPECIAL COMMITTEE ON OFFICIAL CONDUCT

Mr. NELSON. Mr. President, for the information of the Senate, the Special Committee on Official Conduct held its first organizational meeting this morning. The committee has agreed to hold public hearings on February 1 and 2 and plans further hearings, if necessary, during the week of February 7.

It is our hope that Senators who are interested in offering testimony will be able to appear on February 1 or 2. Those Senators who do testify should address themselves specifically to the six areas of concern detailed in Senate Resolution 36.

Please contact me or Ira Shapiro of my staff at 45323 if you wish to submit testimony or be scheduled as a witness.

ADDITIONAL STATEMENTS

NO NEW DREAM

Mr. GOLDWATER. Mr. President, what I am about to say is no way a reflection on the speech that President Carter made at his inauguration. Frankly, I thought it was a good speech, made at the right time, a speech made in a general way to invite the people of our country to help him. There are those, however, who feel that there are answers to the challenges that face this country if we only have the courage and the farsightedness to get on with the job.

I think Robert Hotz expressed this feeling, the feeling that those of us who are greatly interested in science and technology have, in an editorial appearing in Aviation Week and Space Technology on January 24 of this year. There is no question that Mr. Hotz hit it when he talked about the breakthroughs of new energy sources, the full exploitation of space technology, and the development of the full spectrum of the technological frontier. These are challenges, and I think President Carter knows enough about them with his nuclear training background, his military background and his seeming insatiable desire for more knowledge, to really begin prodding his Democrat majority in the Congress to do something about it. We are literally on the verge of a new way of life, we are on the verge of new energy sources that can make oil literally useless or meaningless. But unless the Congress, controlled by his party, gets off its political duff and does something about these things, we can in 5 years suffer greatly because the President or the Congress didn't push hard enough. Again, this is not critical of the President's speech. I had hoped that he would have been more specific in these fields, but I guess I naturally would. I have had a long-time feeling that the United States is still the most technologically advanced country in the world, still a country with foresight, courage and ambition, and a country that can solve the immediate problems that face us today. It only takes the action of men. We in this chamber are but a few of them. The President is only one, but his challenge is to lead the rest of us, some 230 million of us, to get the job done. I ask unanimous consent that the editorial entitled "No New Dream" be printed in the RECORD.

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

NO NEW DREAM

(By Robert Hotz)

It was another of those bitterly cold, brilliant sunny days that seem to welcome new Democratic presidents to their office as Jimmy Carter laid his hand on his mother's Bible and took the oath of office as the first American President in this nation's third century. Much of the panoply was familiar to veteran inaugural reporters—the massed flags with battle streamers whipping in the chill wind, the blare of the bands, the booming cannon of the presidential salute and the solemn moment of drama as the departing President hears the fanfare of "Hail to the Chief" played for the last time in his honor and the ceremony ends with a new chief of state marching briskly to his destiny.

But there were some new notes sounded by President Jimmy Carter in his inaugural addresses delivered in the flat staccato phrases of what one student of the South terms the "red clay rhythm." One that struck us as particularly odd was his announcement that "I have no new dream to set forth today." The United States was built on dreams, many of them fulfilled beyond the wildest expectations and some of them still unfulfilled strivings toward a better future. There are a great many dreams that Americans should be dreaming as they start the third century of their national existence that has been a beacon of hope for the rest of the world, and we find it disconcerting that our new leader urges us to look backward not forward for the pattern of our third century.

Contrast startles

It was a startling contrast to that equally cold and brilliant day in January, 1961, when the late President John F. Kennedy flung out a challenge to his fellow citizens to abandon their smug complacency and get their nation moving again. We have the feeling that the huge audience on Capitol Hill and the millions of citizens watching television across the land were hoping for some new spark that would get this nation moving again after the twin traumas of Vietnam and Watergate.

During the presidential election campaign, we sensed that the tide that swept Jimmy Carter into the White House was stimulated by a feeling that he represented a new and fresh approach to national leadership. The citizens' rejection of incumbent Gerald Ford was based not so much on any policy or program he espoused as on the gut feeling that he represented the worn out traditional political game that had led to the tragedies of Vietnam and Watergate. If President Carter has any new and fresh approach or new spark with which to ignite national leadership, he did not share it with his fellow citizens on his inaugural day.

We hope he will rectify this omission in the days ahead as he outlines the policies of his new Administration. For there are many dreams that Americans should be dreaming in their third century to build on the foundations of their first two.

Among them are:

Breakthroughs in the field of new energy sources that will free the world from dependence on a diminishing finite supply of fossil fuels.

Full exploitation of space technology to improve further life on the planet earth and unravel the mysteries of the solar system.

Development of the full spectrum of the technological frontier to produce a more stimulating economy and a better life in harmony with the ecology the planet.

Genuine problems ahead

An inauguration day is only the beginning of a new Administration, but very often it portends the tone for what will follow and provides a broad feeling of how the new boys in town are going to tackle running the government. President Carter's inaugural fell a little flat—like a bottle of champagne left uncorked too long. The crowds were smaller and less enthusiastic than normal. If it was a "peoples' " inaugural, the peoples' response was only lukewarm. Applause was sparse, and even the traditional parade was much shorter.

The Carter Administration and this nation are facing a multitude of genuine problems. We are not among those who share the view that this nation has reached its zenith and now can look forward only to a slow decline and eventual inundation by the barbarian hordes from the steppes of Muscovy.

But to move into their third century with the vigor and perception required, we also think Americans need to dream new dreams and achieve new goals, not simply look backward on the precepts that served their forefathers.

OPEN MEETING RESOLUTION

Mr. STONE. Mr. President, I would like to add my comments to those of my colleague from Florida, Senator CHILES, who addressed the Senate last Tuesday, on the recent attempt to circumvent the open meeting resolution which the Senate unanimously passed last session.

On Friday, January 14, the distinguished chairman of the Rules Committee asked for a unanimous-consent request to enable the Rules Committee to meet in closed session while marking up the committee reorganization resolution. This request, to which I would have objected had I been present, had the effect of nullifying Senate rule 40 and Senate Resolution 9 of the 94th Congress for the consideration of this matter.

Mr. President, this request sets a very dangerous precedent. Last session the Senate approved a resolution which was intended to govern open meeting procedure in every instance. Very specific exceptions were set out which would allow a meeting to be closed. By no stretch of the imagination would any part of the discussion on the Stevenson proposals fall within any of the specific exceptions in Senate Resolution 9. And, in fact, nothing was discussed during the markup of the proposals which could not have been discussed in public. Fortunately, there were enough Members of the Rules Committee present who felt that the markup sessions should be open, to prevent it from being closed in this fashion.

Using unanimous-consent requests to destroy the intent of Senate Resolution 9 makes a mockery of our stand on openness last session. Senate Resolution 9 allows closed meetings for every legitimate reason that the committees might want them closed. Closing a meeting because some legislative decisions are difficult to make in the glare of the public eye is just what Senate Resolution 9 seeks to preclude. We cannot hide behind closed doors—we have to take responsibility for our actions. I thought we had accepted that responsibility last session.

I intend to object whenever I am present and such unanimous-consent requests are made. I hope that other Members who supported Senate Resolution 9 will be prepared to do the same.

MADAME CHIANG EXPOSES SOVIET AMBITIONS OF WORLD CONQUEST

Mr. GOLDWATER. Mr. President, recently, Madame Chiang Kai-shek disclosed several notable conversations which she had in 1926 with the Russian Communist, Mikhail Borodin, which exposed the blatant Soviet goal of world conquest. At that time, Mr. Borodin was serving in China as a representative of the U.S.S.R. Politburo and of the Third International. He had first come to China as an advisor to the Father of the Chinese Republic, Dr. Sun Yat-sen, who had issued a call for international assistance to China's national resurgence. That is, Mr. Borodin ostensibly was aiding the Chinese National Government, when in actuality he was working to build up a powerful Communist Party in China.

In this capacity, Mr. Borodin was unusually open in holding conversations with Madame Chiang when both were at Whuhan, the acronym for Hankow and Wuchung, the twin cities in eastern central China which were the sites of the Nationalist government and executive government offices. Madame Chiang explains that as children of a revolutionary family whose father was a close associate of Dr. Sun, she, her sisters and brother saw much of the Borodins, who were known to her family for all the years they were in China. Because of his acquaintance with the family and his zeal to enlist an important government family in his schemes, Borodin engaged in long and candid conversations with Madame Chiang and her family. These conversations, which were conducted in English and thus were unbroken by the impediment of an interpreter, give a rare glimpse into Russian aspirations for China and the world.

Fortunately for us today, Madame Chiang kept notes after each conversation and has been able to reconstruct the highlights of the discussions. It is distressing, however, that she felt a need to reveal these important conversations at this time in part because of her grave concern that the United States, the greatest resource of freedom in the world, is going through a period of decline in worldwide respect. Reading between the lines, I suspect that Madame Chiang published her recollection of the conversations she held with Borodin as a timely warning of the reality, and true nature, of Communist plans for the enslavement of the world under Soviet dominance.

For those Americans who believe that Soviet communism is guided by rational and humanitarian principles, Mikhail Borodin's open blue print of Russian global imperialism and strategems will come as a shock. To all who hold a faith in the Supreme Being, the Communist view of the religious teaching of forgiveness as being the single greatest enemy of Communism will be an eyeopener.

For those in America who advocate constantly swelling Federal budgets and taxes, and who view the central government as the cureall for every one of human kind's illnesses, the specific Russian Communist aim of subverting foreign societies by encouraging legislation with spend, spend, spend as the motto, by creating inflation and by accustoming the people to look to the government for solutions instead of to their own initiative, will also find much food for thought. And those idealists who view communism as seeking to bring equality and justice to the masses of people will be surprised at the cynical Russian view of the great majority of the people as being simple-minded and selfish sheep who need decisions made for them in all areas of human activity by a small group within the Communist leadership.

Mr. President, Madame Chiang's article is a devastating account of the preposterous and heinous propositions and justifications of Soviet communism. Using words that Madame Chiang uses in another context, I would ask how any sane person could read her article and accept the premise, as the Communists do, "that men are by nature vile and lowly and are content to remain servile with not a desire to exercise their will but would be content to remain as serfs to the new Communist aristocracy."

Mr. President, in order that the truly important message of Madame Chiang Kai-shek may be known to my colleagues and to more of the American people, I ask unanimous consent that the article by her, entitled "Conversations with Mikhail Borodin," be printed in the RECORD.

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

[From China News Special Supplement, Friday, October 29, 1976]

CONVERSATIONS WITH MIKHAIL BORODIN

(By Madame Chiang Kai-shek)

The year was 1926, a momentous year in the surge and sweep of evolutionary modern China. It was a landmark year in which the revolutionary Nationalist movement under the leadership broke away from the talons of Soviet Russia in her aim to vassalize China.

It was also the year in which I had several notable conversations—interestingly long and ingenuously revealing, on the nature of Communism with Mikhail Borodin. Thinking back and collating what was expounded by him in much detail, the technique of action has proven not only that it is the overall blue print of Russian Communist global imperium but how well and closely the U.S.S.R. and The Third International have achieved their aspirations thus far in their dominance, applying at times stark brute force, at other times a technique so deft in its vitiation that it is often imperceivable except to the practiced eye and mature judgment.

In this connection, let me recall to memory some idea of the Union of Soviet Socialist Republics' success in geographic expansion alone. An article in the U.S. News & World Report of March 29, 1976, with a pictogram graphically illustrating "Russia's Drive for a Global Empire" since 1939 reads:

"All told, the Soviet empire, run by Moscow, controls, dominates or has strong influence over 425,400,000 people—or 10.7% of the world's population. The area of 9,986,952 square miles in that empire represents 18.9% of the world's total land mass."

Since 1939, Russia has absorbed three whole countries as well as parts of six others in Europe and Asia. She controls six East European countries and Outer Mongolia, and has placed five Asian and African countries, besides Cuba, under strong Soviet influence. To put it in another way, from November of 1917 until the latest conquest of Laos in 1975, seventeen countries have been Sovietized or under Sovietizing over the years.

The Leninist-Stalinist brand of le bonheur commun with its alternating use of force, deceit cum cunning psychology upon individuals and upon people-en-masse, totaling up its results, is a phenomenal success.

WUHAN VISIT

In the winter of 1926 my mother, eldest sister, Madame K'ung, and I left Shanghai for Hankow to visit our brother T. V. and our other sister. Hankow and Wuchang, the twin cities in eastern Central China, often shortened to the acronym Wuhan, made ever famous in Chinese history and folklore by the tales of the Three Kingdoms, are situated on the opposite banks of the Yangtze River. Wuchang in that year became the provisional situs of the Nationalist Government while Hankow was where most of the executive

government offices were located. For those who were yet unborn or who are too young to remember or know much about that period, let me give you a little background on Mikhail Borodin—Borodin being his nom de guerre (surname Grutzenberg). Mr. Borodin was Dr. Sun Yat-sen's adviser-in-chief, sent by the U.S.S.R. after Joffe's famous meeting with Dr. Sun in Shanghai to help China unify herself and throw off the scourge of warlordism and the yoke of extraterritoriality which meant that foreign nationals in China were not governed by Chinese laws. Extraterritoriality meant enjoying special privileges through unequal treaties imposed upon China during the pre-revolutionary period under the Manchu Emperors. Upon Dr. Sun's passing in 1925 in Peking, Borodin who had come with the credentials of representing the U.S.S.R. Politbureau and as a high functionary of The Third International, became the chief adviser to the Nationalist Government in Canton, and in this capacity he virtually became Russia's pro-consul in Nationalist China.

Both Mr. and Mrs. Borodin were known to our family for all the years they were in China, and if I am not mistaken, Mrs. Borodin was related to the old-time Hollywood comedian Buster Keaton. For one who is unfamiliar with that era, one may well ask: How come that Mr. Borodin became Dr. Sun's adviser from Russia. The answer is, Russia was the only country which heeded Dr. Sun's call for China's national resurgence. All other countries turned a deaf ear to his call. As children of a revolutionary family whose father was a close associate of Dr. Sun, we saw much of the Borodins, be it in Peiping (then called Peking), during Dr. Sun's last illness in that Northern city or in Canton when it was the center of the Nationalist movement and government, or still later in Wuhan of which point in time I shall be writing.

GAPING CHASMS

It was in Wuhan where we spent some three months that the divergencies between our National policy and the policy of The Third International became most apparent. These cleavages soon developed into gaping chasms due to the pervasive excesses of Communist cadre when they preempted in knee-jerk fashion the functions of local governments from local functionaries by indiscriminate arrests, public lashings, illegal searches and seizures, kangaroo courts and executions, and the recruitment and the building up of their local private armies. The chaos purposely accelerated and exacerbated by the Communists over Nationalist controlled territory and the surfacing of the Communists within our Party to subvert the Kuomintang, and an overt seizure of power in spite of their earlier public avowal and oath to subsume Communism and abide by the discipline of the Kuomintang for the heartwhole re-building of China—these made the sunder all but irreparable.

This open parting of the ways came about When Russian advisers, military and political, under the guise of helping China in the completion of her revolution, were ordered by The Third International to surreptitiously hamper and hinder us wherever and whenever possible and at the same time organize armed insurrections to do their bidding. The quickened pace of alarm on the part of The Third International was prompted by events in that in a period of about nine months the Northern Expedition of the Nationalist Army under the leadership of its Generalissimo Chiang Kai-shek had traversed from Kwantung to Kiangsu province of China—where the first metropolis, Shanghai, is situated. Furthermore, the Nationalist forces had vanquished and disarrayed the main armies of the warlords in the most populous coastal provinces of China and arrived in Nanking, the designated capital-to-be of the National Government. This swiftness of accomplishment was too brilliantly executed to suit the Communist nonce. The time schedule of advance both surprised and dismayed the Russians. Even their military advisers had not counted on it in their most "generous" estimate. It was of a speed that not only would inhibit greatly their plans for the take-over of China by Communism in an overnight cou-de-main way when they were good and ready. Therefore they must proceed post-haste to reverse matters.

BROWN TUNICS

As I recollect, even now I can see Mr. Borodin in my mind's eye in his pearl grey, blue serge, green-magenta, light or dark brown Sun Yatsen tunics (now suddenly fashionably called Mao tunic by those who are doing their level best to please) on different occasions, pacing to and fro in my brother T.V.'s apartment living-room. (The building was formerly the Russo-Asiatic Bank of Hankow.) Ponderously or swiftly, slowly or quickly as his mood of discutation changed, he spoke with his inveterate cigarette dangling between his index and middle finger of his left hand, with the British-made Garrick or 555 brand cigarette smoke curling up to further stain his fingers as he proceeded to propound the Russian game plan for China and for world-wide Communism. Oftentimes his right hand would be gripped into a first close to his tunic chest buttons, moving downward heavily or quickly to stress the points he was making, or again lifting up his clenched fist swiftly and deftly suspending in air as a punctuation in time in preparation for his next downward movement of the first for emphasis. At intervals he would turn upward the palm of his left hand while still holding his cigarette and use the palm as a landing surface for his right first. Seldom would he sit down during his perorations for any length of time although now and then he would to chain-light another cigarette and dexterously permitted his cigarette ash to lengthen until it was almost ready to fall onto the floor when he would flick it away just in time into one of the several ash trays on his pacing route without giving the cigarette a glance. I mention this little portraiture of the man in that from these several tableaux of behaviorism in smoking it showed that his was the practiced mannerism of a man attuned over the years to talking, expounding, elucidating, guiding, evangelizing policies, strategy or tactics to the cadre before their being sent or returned to various stations and posts around the world. Furthermore, it mirrored a man who was accustomed to working under furtive pressure of surreptitious assemblage with floating meeting places, with the barest of tables, chairs and ashtrays, yet still glued to smoking cigarettes with neat habits. This behavioristic pattern contributes to an insight in gauging the measure of the man, for from early childhood I had heard and had occasions to observe with fascination how revolutionists instinctively behave from force of habit and, interestingly enough, Borodin fell into that certain modality.

LEONINE HEAD

In person he was of a tall, commanding presence with a leonine head, with a shock of neatly coifed, long, slightly wavy dark brown mane that came down to the nape of his neck, with an unexaggerated but ample moustache that French generals of that time feigned. He was rather heavyset with strong regular features. When he talked at times an officious serious mien would cross his face, at other times his eyes would have that certain bland look which I detected hid his dissembling words and masked his true thoughts most competently. Speaking in a resonantly deep, clear, unhurried, baritone voice of mid-America intonation without a trace of Russian accent, he lowered still more his voice into a slow basso profundo when emphasizing the importance of a certain point he was making. He was a man who gave the impression of great control and personal magnetism. But it was his unfolding of the Communist Weltanschauung, its plans of procedure and actions that were both so grippingly provocative and dispassionately revealing. No one could deny they were well thought out and obliquely educational, all be it Mephistophelian and savagely insensitive to humanity and human aspirations.

In my discussions with Borodin, he began to subvert quietly and negate subtly my political philosophy and beliefs by reviewing the Platonic definition of democracy as anarchy or polyarchy. Anarchy by definition signifies that there is no one element that is dominant in the governance of the state. It can also be polyarchy with many elements dominant simultaneously, which is equivalent to anarchy. Thus there is an inbuilt conflict in itself since dominance presumes the preeminence of one. Alternatively, it is a hydraheaded being that, when translated, because of its multi-headedness can only equate itself to anarchy. Democracy to Plato is like an embroidered robe "spangled with all manner of characters," "a medley of types," a bazaar of constitutions."

Plato, in his Republic, calls democracy the Third Corruption after Timocracy and Oligarchy. The better form of government is a Republic and democracy its degenerate form, and the best form of government is government of a philosopher-king. As for Aristotle, he too regards democracy as the perverted form of government which he calls "Polity."

For my part, I did not dispute with political theorists and historians that democracy was easier to function in Greek city-states because of its small population and its homogeneity with a simple life style and the shared common interests. True, in a city-state the people could discuss their communal business in the Agora or some other forum. However, this does not stand to reason that what is successful in microcosm will necessarily fail in macrocosm. Borodin continued by drawing attention to the fact that the Roman Republic which was proclaimed five centuries before the Christian era was possible only because it, too, was governmentally comparatively small and administratively uncomplicated. And that in the latter days of the Republic under Caesar and Pompey they saw to it that only those who voted as they directed should receive the corn dole. History proved that they had a political machine more efficient and corrupt than Tammany Hall during Boss Tweed's reign in New York city.

MAGNA CARTA

He continued by citing that the Magna Carta, often spoken of as one of the earlier exemplars for democracy, was no more than the coming to terms between John Lackland and the obstreperous and recalcitrant Barohs at Runnymede. The purpose of this compact was not to militate to the benefit of the common Englishman as it was to strengthen the bondage of the ordinary man to his liege lord. Even the much-touted gain of the right of juridical judgment by one's peers and the habeas corpus were intentioned primarily for the benefit of the aristocracy—the landed class. What redounded to the common man was happenstance, not by explicit design.

As regards the United States, he opined American history books taught at schools are replete with bold-faced prevarications of the truth. For in reality:

1. In 1776 half of the Americans in Pennsylvania, New York and New Jersey were loyal to George III. Independence to a vast majority of the colonists was regarded as a Presbyterian plot.

2. By 1776, although Americans were the

richest people in the world, they paid the lowest taxes in the Western World. Englishmen in England were required to pay the same taxes which the colonies refused to pay. Therefore the colonials' claim that they were mistreated was fabrication that suited the purpose of a few recalcitrant leaders who bore England a grudge.

3. The so-called Revolutionary War, fought almost entirely outside New England in the Middle Colonies and the South, was more of a civil war than a revolution in that at least half of the people were quite satisfied to be ruled by George III and the British Parliament.

HISTORICAL EPISODES

He continued to give off more historical facts: The Stamp Duty Act was levied for the defraying of costs of English troops stationed in the new world which the colonists requested for their own protection against the marauding Indians and the French in Canada. Yet demagoguery of the purposed called the revolt a rebellion against tyranny. The greatly dramatized Paul Revere ride from Cambridge to Lexington presumably to warn of the coming of the Red Coats (British soldiers of that day wore red coats, hence the name Red Lobsters or Red Coats.) that is taught in grade school textbooks was not successfully completed by Revere. The often quoted "shot heard around the world" as heralding the commencement of the American Revolution began in a desultory on-and-off fashion. The men of the famed Boston Tea Party who threw overboard the tea must have wished to put the onus on the innocent Indians by donning feathers, buckskins and war paint, and Patrick Henry, remembered for his memorable ringing words "Give me liberty or give me death,' was a successful dry goods merchant who found the British Customs imposts were cutting too deeply into his profits to his liking and therefore the mother country became intolerable. And Tom Paine, the pamphleteer, famed for his fiery rabble-rousing writings in "Common Sense" and "The Crisis," lacking in common sense to keep in order his own affairs, was a bankrupt. He did not do well in Lewes of his native England. Paine's original name was Pain and he was regarded by the loyalists as a real pain in the neck. His was a cantankerous nature which could get along with few people; besides, his own private reputation was far from savory. And Betty Ross who, legend has it, made the original flag of the Thirteen Colonies from her skirt, did nothing of the sort. It must be remembered there were also active protesters to independence. Initially it was John Dickenson of Pennsylvania who stood before the Second Continental Congress and made his last protest against the Declaration of Independence authored by Thomas Jefferson and at the time the document was only signed by John Hancock while others felt that discretion was the better part of valor, held back and only affixed their signatures much later in time to this "seditious document." Hancock had his good and sufficient reason to turn against the British Crown as he was caught smuggling a cargo of mederia with the seizure of the ship "Liberty" by the Colonial Customs.

As for Jefferson, Adams, Madison and others of the Pennsylvania House of Burgesses, while declaiming to high heaven the inalienable equal rights of all men as proclaimed in the concept of democracy, they were large plantation owners who found no contradiction and no pangs of conscience in keeping negroes in bondage as slaves to be bought and sold as chattel. Would it not be nearer the truth to label the Founding Fathers of America as real and great hypocrites?

AMERICAN REVOLT

Historians of repute on both sides of the Ocean have recorded that the revolt of the American Colonies was not inspired by a belief in certain political principles and social equality of persons although it ended with a form of government that took on the semblance of a republic and therefore its facade. For essentially the American Revolution was but the manifestation of the dissatisfaction of a comparative few of the haute bourgeoisie who became the leaders together with a sizeable number of the minority who followed the shepherds. It is also a matter of historic fact that many, very many, of the leaders had no faith in or belief in the principles of democracy and no love for its interfacial implications. Their attitude was that any instrument, be it material, theoretical, polemic or syllogistic, that came to hand was a good means to further their life style and ambience.

This is why Communism sees through the shards of hypocrisy and is amused at the little games those eighteenth century liberals played but later apotheosized in American history books. It would be nearer the truth for American children to be taught that American liberals as a breed were intellectually both corrupt and corruptors. They were corrupt in that they fantasized and manipulated ideas at will to suit their purpose of the moment. They corrupted themselves by justifying their thinking. They were corruptors when they influenced others to adopt their specious thinking. Enamored of themselves to different gradations of conceit, these eighteenth century liberals produced instant reasoning to attack or support a position, be it perverse or impractical. Their ideas could often be so paradoxical to their previous postulate that they could be in serious ideological conflict with or within themselves. Knowing this all too well, they mounted arguments either with colossal Jesuitical casuistry or by outright bold-faced denials or feigned misquotations or misunderstandings or by adopting the "propositional function" in logic of being neither true nor false. In other words, it was a denial of a material assertion—material in the sense of total relevancy since in the interplay of ideas, polemicists could fashion, distort or diminish true ideals and perspectives. But is talking, doing? Can talking be equated to tangible results of doing?

LONG DIATRIBE

A coup d'ceil, the above posits of close reasoning by Mr. Borodin were devastating indictments of the Founding Fathers and of eighteenth century democracy and its motivating forces of liberal socialism. I well understood his long diatribe was "put down" tactics with regard to nationalism and democracy as well as political salesmanship of an experienced mind. It is what is known in today's language as "phyching up" to make his points, and the facts he recounted were nothing new to me. Borodin on the other hand conceded to the essentiality of liberal participation in the Communist plan. He professed that were it not for historicity and the firmer and greater liberal influence and power in key parts of the world which were not Communist (as Communism then was aligned in most people's minds with the nihilistic extremes), and were it not for the intercession of the millionaire German Socialist Godfather Parvus (Alexander Helphand), the deus ex machina in the transforming of Vlademir Ilyich, the bedraggled, obscure expatriate and fugitive, into the great Lenin, the German General Staff in conjunction with Wilhem II and Zimmerman of the Foreign Office would not have sent Ulyanov alias Lenin and his associates in a sealed train to Russia via Sweden to take Russia out of the war and to alleviate the Russian hate sentiment for the Germans after the disastrous series of defeats Imperial Russia suffered from 1916 onwards. In 1917 in East Prussia alone, Germany captured one hundred thousand Mujiks as prisoners of war. Thanks to the bickering of the Kadets, (In Russian politics, members of the former Constitutional Democratic Party.) the Centralists, the other Socialists of the right and left, together with the various shades inbetween in the Duma, and above all, the vacillations of the various Soviets and the democratic qualms of Alexander Kerensky—"I shall not become the Marat of the Russian Revolution"—as well as the in-fighting at crucial moments among the Mensheviks, the minority who were really in the majority while the Bolsheviks, the majority, were in the minority. He admitted that had the Menshheviks succeeded with temporizations the "great Russian Revolution of Communism" would have been compromised.

He defended Lenin's New Economic Policy (NEP) which was in truth a policy of retreat and a compromise of his avowed policy, as re-grouping and consolidation in order to launch a yet greater advance. As Lenin said, the true revolutionaries are those willing to use all sorts of strategems, artifices, illegal methods, evasions and subterfuges. He added that historians interested in researching that period could rightfully ask: How is it that you who were in the minority call yourselves Bolsheviks? This was because we understood one sliver of human psychology of what is known as wishing-to-belong, to belong to the winning side. Except for those comparative few with strong and definite convictions, the world is full of ambivalents, the jump-on-the-wagonites. We accommodated them by becoming the real majority Bolsheviki) although we were numerically actually in the minority (Mensheviki).

WINNING SIDE

For those of us who were "all outers," being on the winning side was important but less important than maintaining our Communist principles. We believe that if we were fated to lose we might as well lose with our ideological passion intact. This is what martyrs are made of. This is a passion that ninety-nine per cent of intellectuals can rarely understand, much less suffer for it.

We were also quick in perceiving and adapting opportunities to our needs. When the Socialists under Kerensky cast off the hated Czarist secret police, the Okhrana, as if at last shedding some contagious disease, Lenin quickly took them into his fold with open arms to serve our purpose and used them more widely and effectively than before. They were permitted latitudes of which the Czars were so chary and queasy. Again, after the Treaty of Versailles when the Weimar Republic of Germany was disallowed to have an army of over one hundred thousand men, we had the foresight to invite over the German General Staff officers to collaborate with us in large-scale corps-size autumn maneuvers with our troops in Russia. We sent our staff officers to Germany for staff officer coordination training. New German weaponry which was not permitted to be manufactured and tested in their own country was given tests under simulated battle conditions of weather and efficacy in Russia. We recognized the Germans were better at planning, training and in warfare, therefore we did not let ideology stand in our way to affect our needs and our ends. We did not detest or hate the German General Staff mentality because they existed and we needed them and we made use of them.

Borodin noted too that within the Socialist confused and conglomerate ranks there have been many doctrinal turncoats in the world. The Socialist leaders of England, France, and other European countries with party appellations such as Socialists, Christian Socialists, Radical Socialists, were anything but Socialists. English Labor's Ramsey

Macdonald (Macdonald, when he became Prime Minister in 1924, exulted by saying, "Tomorrow all the Duchesses in England will want to kiss me,") and France's most eminent Socialist politician and leader of the time, Leon Blum, dressed, thought and lived a life style no different from dyed-in-the-wool capitalists. They gloried in being written up as aristocrats consorting or comporting with aristocracy. Even Mussolini with his Socialist beginnings soon turned against all the hallmarks of Socialism with a vengeance while the nascent stirrings of National Socialism in Germany which at core was Socialistic were beginning to show signs of anything but Socialism.

FACISM AND SOCIALISM

Although denouncing Fascism and incipient Hitlerian Socialism as betrayors of Socialism Borodin asserted that they who have turned their backs on Socialism have their well-founded and shrewd reasons. For even Socialism elsewhere in the world in the nineteen-twenties has become different from the Socialism of the Union of Socialist Soviet Republics. Men like Macdonald and Blum and generations of many other Socialists, together with the parties they lead and their own reputations would naturally enough not disavow the platforms and postulates which had brought them fame, leadership, success as well as titillation to their egos. Yet from what I (still Mr. Borodin speaking) come to see and know, the Socialists in their heart of hearts are well aware that their brand of Socialism in the long run is unworkable and will gradually and tangibly minimize and diminish their following and influence in the countries they rule. Only Mussolini with his exaggerated self-confidence and heightened sense of patriotism, inspired by the Garibaldean slap-dash adventurism, the amalgamating statesmanship of Cavour, his own instinct of the theatrical and militant make-up, decided upon a clean break from inane Socialism and became a twentieth century dictator with a flair of a poseur. It must be said that Socialists are not the only culprits, for Liberals are also corruptors in that capitalizing on human nature's insatiable avarice, they nurture these human frailties by turning it to their advantage for votes and more votes with promises and yet more promises to get themselves installed in power. By keeping alive the lorelei-like lure with attractive but impossible prolix of deceit the Socialists continue to fool the people. This is why, where and when Communism comes in to rectify the hypocrisies, dry rot, decadence and abuses of democracy.

The proof can be found in what Lenin wrote in Iskra (Spark) and Zarva (Dawn) in 1914: We desire a Great Russia, proud, republican, democratic, free and independent which, in her relations with her neighbors, will be based upon the human principle of equality, not on the feudal principle of privilege. But by 1917 Lenin was openly adjuring his followers in extremely positive writings and speeches to refuse support to the Provisional Government of Prince Lvov and later of Alexander Kerensky, his fellow provincial from Simbirsk. This presumed change in Lenin's thinking all came about within the period of three years. Lenin the "great ultimatist," the progressive revolutionary, became more and more convinced of the unworkability of democracy and pronounced his change of heart openly.

UNIVERSAL COMMUNISM

In order to achieve a reversal of the declension of peoples under Western Socialism and Liberalism, and to achieve universal Communism, our methods are to work with religious organizations and with men and women who are of the leftist bent. For they are least suspect and can best serve as our advance troops.

Much is made of our atheism. We are anti-religion not only because we are atheists but because religion prohibits people from what we fondly wish them to accomplish. The priests of the Russian Orthodox Church were especially obnoxious when they betrayed their trust by giving gathered from mothers and wives of revolutionaries—information from "Confessions" to the Czarist Secret Police. Many of our valued comrades were apprehended because of the unscrupulous behavior of the priests. Furthermore since we hold no brief of the fact that we do not believe in God, all religions in the world are against us, but fortunately, because of religious superficiality in belief, greed for money, hierarchical concept and worldly vanity, they were, are and will be ineffective in countering us and in time we shall overcome all religions from within. They will be our willing tools some day. We must in our zeal be an anti-God Jesuit order in dealing with the monolithic Catholic Church. As for the Protestant Churches, since they are divided into many denominations and not politically as sensitive or as active as the Catholic Church, they are much easier to cope with than the Vatican or Mecca. But what is really dangerous to Communism is not the Christian concept of love, for even the teaching "love thy enemy" is not potentially as dangerous because one can love and still be on the qui vive. Moreover, we Communists can also love, even love our enemies when necessity dictates. What we regard as truly dangerous is the teaching of "Forgiveness" in Christianity.

RELIGION, OPIUM

Marx said that religion is the opium of the people. This catch phrase in time could demolish religions, and people would come to look upon our Communism for spiritual comfort taking the place of religions. Under emotional stress people go for maudling sentimentalities, hence they draw spiritual strength and comfort from this nebulous something which supposedly has super and natural powers, namely religion. Therefore Forgiveness, from our Communist point of view, is a cursed spoiler.

Islam is less difficult to contend with because it is comparatively simplistic in composition and rigid in thought. As a religious influence, it is less important for many years to come. What is the urgent problem is that we must find ways and means to either deal with, neutralize or expose Judeo-Christian thought as a phony, a bogus belief designed to make people resign to their fates in life. Politically, Judeo-Christianity is dangerous because it governs much of the Western World and permeates the two great imperialist anti-Communist citadels, namely, the British Empire and the United States of America.

We must also work to extinguish the competitive instinct as well as the incentive bribery scheme in the capitalist world. We must terminate the highly industrialized and complex economic swindle system of banks, factoring institutions, savings and loans associations, stock and commodity exchanges, postal savings, and turn back to the street bazaars. This determination may sound drastic backwardation, but we think it is necessary to administer a strong purgative to a capitalist society in order to cleanse the inside of the putrid body polity of a democracy. We believe that capitalism in a democracy as in America is only encouraging people on the road of more sinister cupidity, and greater dishonesty.

SOCIALIST THINKING

We of the Communist Party in Russia now realize that after the clan of the short-lived Hungarian Communist experience of Bela Kun and the Spartacus League in Germany—and indeed Germany even before World War I was more advanced in Socialist thinking than all of Europe and America—Germany was regarded as the fountainhead of Socialist thinking and Russia was the most backward. Still it is extremely difficult for Communism to come within the next fifty or seventy-five years in Europe, especially in France and England; more so in France because of Gallic characteristics, unless due to some presently unseen turmoil or chance revolution.

Marx was correct in gauging England's ripeness for Communism not only because of her sweat shops and general conditions of despair of the working class, but because huge number of acreages in Great Britain are owned by the landed class—the aristocracy—who are very caste conscious as well as land conscious, while property ownership instinct is not strong among the proletariat or with the large blue-collar class in England. Ironically, England should have been fertile ground for Communism except that the characteristics of the people and the confluence of events dictated otherwise. The total physical exhaustion and the crushing spiritual defeat followed by despair suffered by us in World War I and the extremely active cellular Communist Party within the country and Lenin's clarion call of hope made us the first country to turn to Communism. In more ways than one Russia has become the pioneer in actual practice as well as the laboratory of the world for Marxian pragmatics.

In our giving cognizance of the difficulty of communizing the two staying bulwarks of England and France in Europe, we have devised seemingly innocuous yet potent measures to be instituted as opportunities afford themselves in the governments and societies of those countries. Through our Socialist and Liberal friends we have used the legislative route—Parliament—to turn the countries in the direction we wish them to go by encouraging more socialistic legislation with spend, spend, spend as the motto. This would enable the national economic policy of the country to be acclimated to deficit spending, thus benefitting the masses of people who would not have benefitted otherwise. True it will make them more dependent on hand-outs but it will achieve, three cardinal purposes: (1) By diluting the money we are taking away money from the rich and giving it to the poor; (2) By creating inflation, we create a climate favorable to our goal; (3) By accustoming the people to look to the government for solutions and not depend on their own initiative—the Horatio Alger complex, we accustom them to the use of government as a crutch.

In the private sector, again wherever possible, we encourage and help in the proliferation and growth of trade or workers' unions wherever we can. These need not be Communist affiliated or Communist motivated nor need the union officials feel beholden to us for our help. We encourage these organizations to demand higher and even higher wages and peripheral benefits and fewer and fewer working hours which is always welcome to all workers. We help them financially sub-rosa whenever we can so that they could strike and go on striking.

LOGICAL END

Throughout the ages and from our experience and associations with the Liberals around, we find that by and large because of their manifold ideas vectored in whichever direction, they cannot or will not follow a goal to a logical end. Call them fertile of mind, if you will, but having so many ideas they become self-contradictory in their thinking and the many goals they wish to achieve so that they are automatically and mutually self-destructing. Therefore in training our cadre we forewarn them of Liberal foibles.

Furthermore, Liberal intellectuals have the

fatal desire to individually outshine their confreres. They will irrepressibly carp, cavil, criticize, in a hair-splitting manner their comrades and associates. Yet more probably than not, they will miss the broad sweep of the momentous while entangled in niggling picayunes of irrelevance. In such a situation they invariably offer no contribution to a cause, let alone a constructive and workable solution.

We have also found that in our cooperation with Liberals all over the world they distort or diminish their effectiveness to a cause since they oftentimes in the spur of the moment wish to add to or subtract from a preagreed plan of operation. Yet let it not be misunderstood for a moment that Liberals are all clumsy blunderers and malapropits. In fact they are often very clever and ingenious; certainly they are necessary forward troops attired in camouflage to achieving success in world revolution. They are all-important, too, in (1) laying the ground work, and (2) clearing the mine fields, so to speak, and (3) generally softening-up resistance and prejudice against Communism. In the words of Lenin, Socialism is impossible without democracy. In other words, Liberalism must be made the spearhead for Communism. Witness again what Martov, Kerensky, the Liberals, the Mensheviks et al. did for us in the initial stages of completion of our Revolution internally in 1917. We are strongly convinced that the Liberals of the world are and will continue to be useful and even of greater use to us in the evolvement of World Revolution. Personally I (Borodin speaking) find them most attractive in their Hamlet-like equivocations and provocative intellectual gymnastics. I do not regard them as only good for the "elegant sneers" as most Leninists do.

COMMUNISM'S GOAL

Now the pursuivant question is: What follows after stating Communism's goal of World Revolution? The answer is action, fomenting first, discontent, cleavages in thought whenever and wherever opportunity affords. This is to be followed by small and large social upsets, demonstrations and the spreading of dissatisfaction and dissension on a nation-wide scale. This sounds futile and nihilistic, but it must be constantly realized that revolution means to revolute, to turn the wheel 360 degrees around, and anything that revolves 360 degrees to travel all the way from its original point of departure is by its very nature drastic. Being thoroughly drastic, it involves the purging of the whole body politic as well as whole society and its various stratum from top to bottom. Regrettable and paradoxical as it may seem, CHAOS is the key to revolution. For chaos brings purification and it is through chaos, the cleaning and rinsing processes, that Marxism-Leninism can bring order and sanity into society—a self-purification process. In other words, to build anew the new order in society requires a freedom to destruct, unfettered by past fetishes of stultifying mores and referrals to old traditionalism. The past is to be obliterated to make Russia a nation not of Nitzschean Supermen, but of Russian Communist Supermen. While remoulding our own country we will turn evangels in the world either through sending out our missionaries to preach the Communist Gospel, by making converts in the indigenous countries or by getting their people to come to Russia to be educated. This is not to say that we do not realize that our missionaries and converts of the first generation are all men of impeccable quality, zeal or convictions, but we plan to quickly improve with time. Secondly, we are not unaware that human nature, being ingrained with thousands of years of selfishness, avarice and conceptualized ways of thinking with their stunted petrified modus operandi, is all so antithetical to Communism. As the saying goes, Rome was not built in a day, and it will be far from easy to remould human nature, but we shall have all the courage and patience needed to guarantee that all humanity will turn into a Civitas Communismus—and that it will not turn into an Augustinian Civitas Dei—City of God (sec!)—which has proved to be representative of privileges for the comparative few and the oppression of imperialism to the conquered!

COMMUNIST NIRVANA

The next question that will surely come to mind is: How to achieve the Communist Nirvana on Earth? We must correct human weaknesses. They are: (1) gullibility, (2) emotionalism—at the wrong time or on the wrong issues, (3) apathy, (4) moral and/or physical cowardice, (5) excitement-seeking syndrome, (6) griping and dissatisfaction, (7) vain self-gratification, (8) competitive cruelty, (9) greed and intrigue, (10) jealousy, (11) a desire to belong, to the old order of things, (12) insecurity and anxiety, (13) a need of recognition of every success, and (14) vacillation. These are human instincts which are inborn and have been fostered by circumstances to varying degrees in all civilizations, cultures and subcultures. These frailties exist even among the cannibals and head-hunters in the remotest corners and jungles of the world. With these parameters of insight, we can correct these human deviations through Communism. Of these frailties, amazingly enough, the Intellectuals are the worst offenders to a high degree. However, in a larger sense, it must be said of Intellectuals, once they are committed to us, ninety-nine per cent stay committed for the very good reason that they are too proud or too intellectually fearful to admit that they want to back-track or that they were "intellectually bought" by Communism. The most obvious attribute among the other attributes of an Intellectual is his heavy investment in his own ego. The fact that he, an Intellectual, had come to espouse a faulty idea, let alone a dynamic doctrine such as Marxism, without going through a prolonged process of arduous and weighty thinking, would be tantamount to accusing him of most heinous crime of being a fake, a numbskull, or a confused intellectual nonentity. For him to own up to his mistake would be almost as agonizing as a tortured death itself. It is the gravest insult with which one could possibly accuse an Intellectual or a self-anointed Intellectual. It is also the cause of many a hatred-laden terrible denunciation and heated polemics that Intellectuals are embroiled in interminably. It poisons the air and engenders such venom which ironically oftentimes redounds to our advantage. It is interesting to watch on the sidelines the bulldog-like never-let-go fights with never-ending vituperations and insolent reciprocating accusations between two Intellectuals.

PROPAGANDA MACHINERY

Through the technique of propaganda first used to great advantage by the religions of the world, especially by the Catholic Church—the Congregation of Propaganda—from which came the best features we adopted eclectically for our use, we honed our own propaganda machinery accordingly. Propaganda, like bread or rice, serves the need of the people who throughout history want to be guided, solaced and led by the hand. We and we alone provide these needs

And it is in a democracy where free speech abounds that intellectualism flowers best with its many hues and subtle shadings and layers of nuances which are mostly self-serving or self-negating in their own circle, ideas which cancel out other ideas. In the meeting and melding with other streams of ideas that come splattering down helter-skelter into the torrents of the intellectual river, theirs are lost into a sea of ideological confusion even before reaching the end of their intellectual journey. As for example, after an attempt was made on Lenin's life on August 30, 1918, by a socialist revolutionary, Dora Kaplan, we used the opportunity to systematically ferret out and clean up sizable numbers of intellectuals and bourgeois of all types. Unfortunately, it was misunderstood and referred to abroad as the "reign of terror." From our point of view it was to serve notice to the whole world that this was necessary in order to stem all opposition to the work that Lenin and our comrades were accomplishing for Russia and laid out for the world.

To achieve the greatest possible dissemination of our ideology, we have to rely on the news media of the world. We gradually channel our sympathisers to think our way by first putting up with their inaccurate thinking, idiosyncracies and complexes, and then swiftly but gently through persuasion, quid pro quos, lead them to work with us for the common cause. We have observed happily that gradually the mass media of the press and the radio in Europe and in the United States are beginning to come around and become "us oriented." Some are even more openly radical, which is as it should be. But as Communists, what we must always beware of is when they start protecting their own pet little interests and turf. They often defend them with fierce rabidity, tooth and nail. This is taboo with us because it brings out to the fore selfish interest, and it develops into personal vendettas, losing sight of the great issues at stake. We do not want them to be feuding within our discipline. As to the postulate that basically most Intellectuals have an innate sense of intellectual honesty, we are on very moot ground.

FLEXIBLE PRINCIPLES

Let me say that I agree with you and say that intellectualism per se is wonderful as is preached and practiced in the civilized world today, but it has the formulation of the concept of immediacy, rooted in the uncertainty of changing, flexible opportunistic principles as contracted with the intellectualism of purpose and action in Marx, Plakhanov and Lenin. The parlour room Socialists talk endlessly often in brilliant phillipics without showing results while Marx is the only socio-economic-political prophet who systemized and defined parts to the whole and designated where each part played in the whole.

To put it in another way, Communism is the only doctrine which embraces completely politics, social phenomena and economics all integrated into the best possible system. Communism is the only doctrine which recognizes the importance of economic and social reforms. As Marx is inclusively integral in his doctrine, others are at best fractionated and mutually exclusive of sociopoliticoeconomic interactions. Plakhanov, the father of Russian Marxism, augured Lenin in proclaiming that it is explicit and implicit that every principle of liberty, individual rights, decency, democracy and justice should be subordinated to the Revolution, and it is along these lines that we have put maxim into action.

Here I would like to interject by saying that while Borodin continued on with his thinking-aloud soliloquy, in my mind I was not a little surprised that he had made no mention of the contribution of Gracchus Babeuf. Leon Trotsky at the Communist International of 1919 had hailed this French revolutionary leader and insurrectionist not Plakhanov nor Lenin, as one of the great founding fathers who had prepared the ground for the Bolshevik triumph in Russia and the imminent World Revolution. Some of Trotsky's paeans of Babeuf I had retained in my mind especially because at the time when I read it cursorily I thought of Trotsky as being

perhaps exaggeratingly horatory. Yet by Mr. Borodin's not mentioning Babeuf, by hindsight I wonder whether it was that like a good Communist bureaucrat, he already had sensed that Trotsky was on the skids, as were Zinoviev, Kamanev and Bukharin, who were in time labelled "October deserters," ("October deserters" were those who wavered or supposedly wavered at the time of the Revolution in October 1917—a serious crime of betrayal) or was it merely inadvertence or was he, too, an expert in survival?

GREAT LEADER

Mr. Borodin continued Lenin was not only the leader who made the Revolution of the proletariat come to pass but made it work by sensing that for the Revolution to endure in the face of British, French and Japanese allied military pressure both on the Eastern Front—Siberia—and on the Western Front, the Poles led by (the French General) Maxime Weygand, as well as the many-faceted civil war, internal opposition of Semenov, Kolchak, Denniken, Yudenich and Wrangel, he needed to temporize and dissemble for the moment. But he never lost sight of the ultimate goal he wanted to achieve.

Lenin's success in a backward, mainly agricultural country contrary to Marx's prognostication shows that Communism is flexible, and not at all rigid as some portray it to be. The New Economic Policy (New Economic Policy, known as N.E.P., in which Lenin slowed down the confiscation and communization of the land.) and Brest-Litovsk (The Treaty of Brest-Litovsk in which Lenin compromised with the Allies.) are examples par excellence of this flexibility. The Third International (Founded on March 2, 1919.) in instituting total World Revolution prepared individual game plans of action for various countries by first purchasing the services of the Intellectuals through various means, not necessarily with the material but by convincing them to work for the poor and the underprivileged, by buttering up to their pride, and flattering their idealism towards a better society through Communism, or by enrolling the help of the rich who have or are induced to have a guilt complex about their wealth or who are sympathetic to our pronounced aims in propitiation of their wastrel lives. By dwelling on their guilt feelings that their forebears had exploited and squeezed the poor, a feeling especially acute in those who had never known a day's honest work, or by making them probe their own inferiority or callow superiority complexes—complexes that are enlisted to insinuate into various callings and levels of society such as religious hierarchies and organizations, academe of middle and university levels, non-profit foundations large and small, mass communications media such as newspapers, publishing houses, radio stations, magazine, galleries, theatres, cinemas, lecture bureaux and most important, into all kinds of unions, etc., etc., etc., in a word, all visual and audio media—we awaken them to their former evil ways. All these methods must have certain definite objectives in mind, firstly to work up the necessary imagination and indignation synchronized to whatever theme or cause we espouse for the moment, and secondly to complicate facts, figures and events so that we shall decide for them right from wrong, what we want and do not want for our Party. Above all, they must be good soldiers. It is of great moment that various newspapers, magazines and radio news commentators are imbued with the correct notion that being a little left is chic but that being more left is more chic, and that for the dedicated, being an outright Communist left is to assume heroic proportions and stature.

If you will but notice in our propaganda paintings on the outside walls with murals of houses in China and in Russia, the soldiers, workers and farmers are all depicted with enormous muscular arms and hands, square shoulders, big craniums and an intense purposeful squint of the eyes. This is to give them the impressive larger-than-life look which impreses the ordinary man and woman.

We also realize the human wish for singular identity. By criticizing and arrogating faults to others, the critic immediately feels that he is free of those failings and instantly assumes a better-than-thou near-perfection mental attitude. He is above any of the faults of the person under criticism. Making use of this human trait, we go a step further by allowing the critic to criticize others and then gradually let it be veered on to the critic by slowly or suddenly leading him onto the path of self-criticism—self-flagellation if you will. It has proven to be a wonderful method of keeping our comrades on the straight and narrow and to instill humility in the tiny cadre as well as keeping in check the obstreperous.

In the United States free speech and free press are guaranteed by the First Amendment of the written Constitution while in England it is guaranteed by tradition—there is always the soap box in Hyde Park and one can declaim against the government and the established order of things. To the intellectually inclined and the Intellectuals, holding forth is to let off steam to their yearnings and frustrations, but to us, it must be realized that it is very unwise to set off emotions. People's emotions must be kept in check by various means. We came to succeed by this very road and we frown upon anything that incites our own people.

WORLD DICTATORSHIP

For our next objective, to achieve world dictatorship of the proletariat, we must dismantle first, the British Empire, and free all of the colonial peoples of the world. Britain as a colonial power has ruled on the whole with moderation and great wile. They have seemingly a gift to rule by their knowing political laissez faire, cunning and temperance. Britain is already remarkable in that it produced enough men with vision and talent in governance for almost five centuries, but her basic inbuilt weakness is her geographic insularity. Limited by her own small national territory composing of only the islands in the North Sea, ruling her huge empire is like a bob-tail wagging a huge mastiff. Russia wants India to be free not because we merely wish her to become another Communist state, but because we think she should not be exploited by England for her manpower to work the factories and dockyards, etc., in the event of war, nor do we think England should use Indian sepoys to garrison her Empire.

The continent of Africa should be set free instead of being mainly divided between England and France with little European countries such as Belgium and Portgual owning huge territories and exploiting for their own enrichment the mineral and natural wealth that do not belong to them and far in excess of their capability to use this wealth wisely. Africa should become as many countries as the various tribes wish so that they will achieve their native and tribal aspirations.

EUROPEAN EXPLOITERS

Moreover, all the wealth accumulated by those European exploiters not only does not elevate the livelihood of native Africans from whom it has been taken by force, nor has it basically benefitted the British, French, Belgian and Portuguese peoples except the few exploiting companies and their hangers-on. Naturally some wealth does trickle down to the lower levels but by and large the "goodies" go to the haute and petite bourgeoisies.

As I have said, the first urgent task for great world progress is to dismantle the "coolie power" of India from the British Empire, to be followed by the dissolution of English colonialism in other parts of Asia; next in Africa, where she plunders mercilessly. Once Britain is divested of her Colonial Empire. France's colonial power will wither quickly enough. Africa with its many tribes, different dialects, diverse traditions, animosities and sub-cultures should not and shall not be a source for coupon clippers ("Coupon clippers" are those who live in England but get a regular income in dividends from India.) to live high on the hog just because there is a propped-up artificial British Empire—artificial in the sense that she does not have the endemic where-withal to sustain her as an empire. She should be made ready for an awakening by her Socialists. And the U.S.S.R. will contribute much towards the great days of emancipation of the oppressed peoples from British colonialism.

In retrospect, anyone can see how carefully The Third International studied and researched in its carefully laid plans for the truncation of Africa into many fractioned and fractious countries, presumably to whet the political appetite of the many tribes but in actuality to render Communist domination and take-over so much easier in the future.

To return to Borodin: But for the World Revolution to reach its zenith and most meaningful conclusion, we must address the United States, the strongest bastion of capitalism and of free enterprise—in other words, the greatest obstacle to overcome in our reaching the goal of World Communism.

TROUBLESOME IMPEDIMENT

France is a relatively troublesome impediment to Communism. Basically the Frenchman is self-centered and is leary of team spirit and views the world with a cynical if not too jaundiced an eye. The French make-up is a man enamored of property, movable or immovable, with a tremendous desire for ownership of all types of material things, be it gold or silver, yet frugal and careful in ministering what he has. Evasion of taxes is a great sport in France and almost no stigma is attached to it. In fact it is very much a national pastime. The concept of tax evasion is entirely divorced from the French concept of French honor. But French poetry, literature and history are built around French glory and grandeur—of the Maid of Orleans, Rouget de l'Isle and Napoleon.

Through her thrifty and saving habits France has developed a very large class of highly property-conscious bourgeoisie and petit bourgeoisie from its working classes, be it white or blue-collared. Thus it would be more difficult to turn France communistic than it is to turn England, for the middle and lower class Englishmen do not seem to hold the same keen personal acquisitive instincts of the French.

LENINIST PRAXIS

With the United States, the task of fostering the Leninist praxis of dictatorship of the proletariat is even more difficult—"a truly tough nut to crack"—in that the petit bourgeoisie and the upper middle class are proportionately even of greater wealth and number and are on an ever-increasing higher standard of living. Until we are capable of excinding ultimately this baneful capitalistic system of the bourgeoisie, its philosophy of the toxic free enterprise system and the illusion that everyone can clamber up the ladder of success as far as his luck and brain power would permit him, the United States will present immeasurable problems. Fortunately she is a country without ethnic homogeneity. People had gone to the United States mostly because of the fabled streets of gold. Due to her wealth and pretensions to inno-

cence, she is called the land of opportunities—yes, opportunities for the carpetbaggers and the unscrupulous.

For example, Custer's last stand at Little Big Horn gave the impression that he and his cavalry were massacred by Sitting Bull's Indians while carrying out pacification of the marauding Sioux war parties. Actually the massacre was the direct result of the whites who encroached on the Indian Reservation of the Black Hills, a reservation guaranteed by a treaty concluded and sanctified by the U.S. Government with the Indians. And the reason why the white man had broken the Treaty was gold. Gold was found in "them thar hills" in the Indian Reservation that needed pacification. American history books lied to justify the treatment dealt to the Indians that it was to teach them a lesson.

There are examples after examples of the general meanness of the white man, the intolerance of the bourgeoisie be they of the haute bourgeois or the petit bourgeois mentalities. They share a common sin—avarice, the touch-stone of all their points of departure in the approach to any and every motivation of their activity. Were it not for the premeditated imperialistic expansionism of the United States against Mexico much of the State of California would still belong to Mexico. And whenever Texas is mentioned Sam Houston, San Juan Hill, General Santa Ana come to mind. Should one talk to Mexicans and to American historians of true metier, they would agree that California, at least Southern California which includes Los Angeles, is in Mexico.

The United States because of her greater wealth and the greater number who are in the ranks of the middle class, the well-spring and bulwark of bourgeoisie thinking and life style, must be expunged and made amenable to Commnism. Only then will Communism be safe from the pernicious influence of bourgeois mentality in America.

As I (Borodin) have previously stated, it is because of the short-comings of human nature which are bred, encouraged and perpetuated by capitalism into human misery that Marxism comes to radicalize this great evil. Marx has mapped out and advocated a system of government and livelihood for the common people whereby all facilities, all wealth should be concentrated in the hands of the state and apportioned out by the state so that all would share and share alike. In order to achieve this equality the government should be the disciplinarian and administrator of such an egalitarian policy, carrying out the program without fear or favor. Stringent dispositions must be made through the anxiety of otherwise inevitable consequence.

GOOD THINGS

But it as it may, we Communists are also realistic enough to know that the better and good things of life are yet at a premium. Therefore we have to reserve a judicious portion to the deserving—our managerial cadre. The cadre and the leaders of our revolutionary movement unhappily must have the better things given to them for their toil for the proleteriat, not because they are of another class such as the n'er-do-well aristocrats who were the parasites and incubuses—the blood-suckers of society. What rhyme or reason is there for the aristocracies of wealth in the capitalistic system to be permitted to enjoy the fat of the land while in truth it should be our Communist cadre that should enjoy the good things of life so that they can be preserved from generation to generation to work for the well-being of Communist society. It is we who are for the common good of the common people.

Again unfortunately, the important task and sacred responsibility should and can only rest in the hands of a relatively small group of a proven few—the leadership and the cadre. It can never rest in the hands of the populace as the hypocritical concept of democracy wishes to impart. Moreover, we do expose, through and through, the fallacy of the concept of the rule of the majority. For since when has there been majority rule anywhere in the world except for the postage stamp sized Greek city-states which we know were experiments in failures of democracy? True, there are many examples of minority rule cloaked in the guise of majority rule, but they are shams. To achieve the aim of turning a country into a happy Communist state, the following steps must be taken:

We Communists must act as the indispensible leavener (1) to forment a sensitivity and a consciousness of discontent within a country; (2) to permit our-so-called "agents provocateur" to commit calculated indiscretions to establish confidence for the advancement of Communism; (3) to occasion the camouflage of our real purpose whenever needed and whenever possible; (4) to design anti-Communist behavior and action even to the point of expendability and regard our comrades as sacrifices for the cause in order to augment our power structure from within; (5) to propagate and create sympathetic and humane ideas in our adversary countries with the aim of spending the country into greater yet greater national deficits—over a period of years or decades—if at all possible, funnelled through power groups and social institutions; (6) to expose wherever possible the Achilles' heel, malfeasance and embezzlements in a country, wherever and whenever we find them; (7) to exploit to the fullest cultural and social dichotomies wherever they exist within a geographic area, such as differences of patois, customs, racial prejudices in a given area; (8) to create or take to the fullest advantage political scandals as well as exposing them so as to undermine public confidence in known personages or regimes; (9) to bare social scandals in order to show up politicians and the idle rich who are no better than parasites living off of the toiling proletariat; (10) to heighten, foment and influence sentiment thinking at political, social or policy-making levels; (11) to engender public opinion through greater activities among the various minorities. first by raising the anxiety of insecurity among the minorities through rumors and fabrication and exploiting innate conflicts by pamphleteering, demonstrations, writings, theaters and radio broadcasting, etc. In short, to formulate and bring into the forefront a sense of scute awareness of uncertainty. insecurity. indeterminacy peculiar to the various minorities and situations; (12) to justify unjustifiable obvious mistakes or simply repeated non-admission of mistakes.

PERENNIAL LIARS

As the saying goes, the great lie—such as religion, becomes the great truth. This again is not because we Communists prevaricate easily or are perennial liars but because it is for a higher ethic and a higher cause. And for this high ethic and cause we cannot afford to admit mistakes, for admitting mistakes undermines confidence. Why should we admit to the kind of mistakes made by the liberal intellectuals who have oftener than not presented our high aims badly, wrongly or unwisely to the capitalist democratic world? In a democracy whatever its shade, when opposition to and advocation of a political policy is proven wrong, the men responsible are not held to account unless in the case of flagrant dereliction. With us we do not tolerate opposition to our policy any more than we tolerate a wrong policy. A wrong policy connotes definite lack of understanding of correct analyses of a problem and therefore a wrong approach. Hence it signifies that not enough care, attention and time are given to studying the problem. This is irresponsibility. And we do not hold brief for nor do we permit irresponsibility. With this policy we have been able to eradicate greatly irresponsible policy-making and behavior amongst our comrades. We have also made our comrades more dedicated, more conscientious, and more responsible.

READY INSTRUMENTS

Liberals, liberal-intellectuals and intellectuals are all ready instruments to be used for the advancement of our beliefs and cause. From what we read and hear, modern day Liberals of all shades and nuances pre-empt our theories in parroting us. But they distort or diminish them in substance. This is because Liberals as intellectuals manipulatively play with doctrines and political theories. Thus their beliefs cannot be consistent. Their premises cannot but be contradictory to their conclusion. Therefore they oftentimes do not stand up to sustained analyses. In our revolutionary experience which spanned three decades (Borodin dates it from May of 1887 when Lenin's brother Sasha-Alexander Ulyanov was hanged.) before the Revolution of October 1917, except for the few anarchists who had no comprehensive plan of action to follow through other than resorting to occasional bomb throwing and assassinations as a means of registering protest, we were doers while the Liberals could only talk away. They have been most disappointing, as talk to them is action, and talk is result. In times of crises we find Liberals to be unreliable fellow travellers with every tendency to desert when events go badly. Our jails were filled with "October deserters" of many hues. They function only under ideal, controlled conditions such as in the democracies. Leadership demands unfortunately the stomach to withstand reverses and dangers. Intellectual doctrinal apostacy will never do.

RED LEADERSHIP

True, Communist leadership requires a total imperviousness to assaults and opprobrious invectives by others. We do not quail before bitter criticisms and verbal attacks by Rightists, Liberals and Intellectuals of any color. On the contrary, from attacks we gather strength and grow stronger for we realize that ultimately, if not sooner, the whole world will come to adulate us and pay us homage. Democracy on the other hand just does not have the staunchness of purpose and robustness of spirit since democracy is malleable to criticisms and swayed by pressure. To be otherwise is to betray the ideals of democracy.

Marx and Lenin in their wisdom in breaking down autocracy knew democracy in theory and in actuality—pronunciamentoes and actual practice are miles apart. Democracy in practice is a figment because (1) politicians in their pretense are forever vainly calling upon the people; (2) open politics as in open diplomacy are not workable in that they reveal to friend and foe alike. Oftentimes, indiscreet, premature or inopportune disclosure can be harmful; (3) the naive assumption that a group, let alone a whole nation, can keep a secret is a bad joke; (4) in a democracy 50.1% can constitute a majority which means that 49.9% can be ruled by the majority against their will and they are as ineffectual politically as they are in political limbo; (5) the phraseology, consultation with the people, is another farce of democracy; (6) only the capitalists, the organized unions, guilds and groups, the vociferous, be it only a minute minority or the majority of one as the writers of editorials in prestigious newspapers, presume unto themselves to be "public opinion." It is those few who wield great influence and power by

paying glib lip-service to democracy—who are the true rulers of democracy.

MOUNTAIN GOATS

Liberal intellectuals can be intellectually as freely obstreperous and cantankerous as mountain goats when the political climate is like that in England and the United States. Others take to liberalism as if they were going through a gold plating bath—a thin veneer with base metal inside, yet they fancy themselves to be made of pure gold—intractible and obdurate Liberal Intellectuals.

Lenin, indebted to his years of bitter experience with Liberals while in and out of Russia, entertained his boundless loathing, hatred and contempt for them; he vented and expostulated his scorn in his utterances and letters. Many among our comrades who had experience with Liberals look upon them with pathological curiosity. I personally find them oftentimes stimulatingly amusing and interesting as intellectual jousting companions but not to be taken too seriously and to be borne in mind that they are fair weather friends.

Therefore to our Communist comrades, to achieve our world goal we must not only insist on exposing the pretense of the capitalist world, we must also expose the vacillating liberal flunkies who actually are exploiting Communism, growing fat and insolent in the process by appropriating our thoughts and accomplishments and acting on our behalf as if they are really bleeding hearts for the poor oppressed masses in the capitalist societies. As to the riposte that we Communists are also hypocrits because of our well-founded, sensible tents let it be understood that we have always openly and guilessly said that our means justify our end. Can it be expressed in plainer language? And if the Liberals still persist in being supportive of us, can it be said fairly by our enemies that it was our Cyrene songs that enticed them? Can we be made culpable when Liberals do harm until liberalism? We Communists know that for liberalism to stay alive, let alone flourish, it needs the Anglo Saxon type of conditioned hot-housed jurisprudence. What did Thoreau's Civil Disobedience achieve in bettering the United States capitalistic system? Capitalism in the United States was as mercenary and greedy as ever after Walden Pond appeared. This is the sort of pampering and coddling we Communists do not expect and can ill afford. Fortunately for our Party, Communism thrives and grows best in the soil of capitalistic chaos—"chaos and cold night" as the saying goes, and not in a controlled ideal climate.

LAW AND ORDER

To us there is no more fertile ground for revolutionary growth than the reversal of the odious "law and order" cant so endearing to the imperialistic and capitalistic world of the West. Freedom in democracy both implicit and explicit gives it the right to success as well as the right to failure. Democracy is failing while Communism does not choose to fail. For those who sing the praise of democracy let me recall for you the recent experience of Portugal. In 1910 Portugal wanted to be politically chic by essaying democracy. Between that year and this year, an elapse of approximately fifteen years, the economy is in ruins and politically there have been forty-odd (Actually between 1910 and 1926 there were 45 cabinets until Salazar came to power in that year. He was in power until 1968.) cabinet changes!

Much as we decry Fascism, Mussolini—the Socialist foxy turncoat—knew that in order to govern half efficiently he had to turn his back from the parlor games that Liberals play. We understand his shrewd reasons for rejecting Socialistic Liberalism. One need but go to Southern Italy to see for oneself the poverty and misery of people living in caves to know that they are ripe for Communism yet because of Mussolini and Fascism, Communism will be delayed in Italy.

I want to emphasize we are not bigots. We are not ghouls. We only choose what is best for the people and for our Party. We can be very openminded in being eclectic. But we Communists cannot permit vacillation and ambivalence in our Revolution. Our is an ism which goes forward and must pervade the whole world just as capitalism will decline and eventually fall as had been presaged for the future by its own intense rivary and propensity for self-devourment. It does not mean, however, that we are blind to the fact that some people are not gullible, emotionally immature, politically ignorant and cannot be easily manipulated. It is our duty to be prepared to lead them to a happier life.

Apart from people's discipline, as a matter of fact, in our own Revolution, for a time we were able to put to good use many of the so-called an-idea-a-minute Intellectuals to reach the people. They were of every shade, from the Turgenev nihilists on the extreme left to the Constitutional Royalists or to the erstwhile dyed-in-the-wool Royalists of the extreme right.

RED STRIVINGS

On our part we Communists were never neutral, although in our strivings to reach our goal we may zig or zag, but we always advance. We have strict norms of right or wrong. We promulgate and propagate our ideas through logic so that our political ism alone will inherit the earth. We recruit youth who are inexperienced but bubbling with enthusiasm, attractive in their very spirit of restlessness and rich with the imagination for daring and adventure. They are precious to us because they can always be like selected sturdy seeds that would yield manifold at harvest time. They know instinctively that we know best and that we can do all the thinking for them and by casting their lot with us they are following the path of glory. Theirs will be the greatest reward in the knowledge that they have served our common Communist cause well.

Much has been made of the fact that Communists are atheists. One of the many reasons given is because of the repressive measures of the police everywhere in the world when we wish to stoke up resistance against oppressive governments. It is true that anti-repressiveness is something to which the common man can naturally and fully relate. The real motive of our atheism resides on a loftier plane. It is because of a litle word, Forgiveness. The Christian doctrine of Forgiveness, so little practiced, yet so often preached and seemingly so innocuous, is the single greatest enemy to the dissemination of Communism. We too are capable of love for those who follow our tenets and discipline. But forgiveness is not love, it embraces love, hope, faith, charity, and all other human foibles of penitence; therefore, with forgiveness forever troubling the being of a person it could not make a truly new and unblemished Communist man. Forgiveness throughout the ages has proven to be the ready-made excuse for sloth, sloppy wilfulness and compromise which incidentally also exist in the Confucian teachings of Chung-she. It counters and negates all that we wish to instill in the people. The debilitating germ must be quickly and terminally purged—decimated—so that the moulding of the paradigmatic man can go forward apace without let or hindrance. Lenin has taught us that we build with one purpose in mind and it is our hope that within half a century it will have converted much of the world. If not the whole world steadily if not stealthily, and if possible without much proportionate blood-letting.

By that time the hemophilia of capitalism and imperialism, if not entirely eradicated, will have hemorrhaged enough for us to tackle the last bastion of this craven system—the archenemy of the dictatorship of the proletariat, the United States of America. In view of this great task ahead of us, the U.S.S.R. has dedicated itself to helping China so that our two peoples will work together for the coming completion of the Revolution of the world. Sic!

THREE PRINCIPLES

With regard to Dr. Sun's Three Principles (San Min Chu I) we readily agree with one: People's Livelihood. As to the other two, Nationalism and the Power of the People, they are not in congruence with Marxist-Leninist doctrine. For Nationalism evokes ethnicity and emotions of native soil and country while we are for international proletarianism—the breaking down of narrow compartmentalized national states and the alliance of the world of the proletariat. Dr. Sun's nationalism advocates a sense of love of country which is antithetical to internationalism of the proletariat.

To advocate nationalism is to intentionally advocate apartness. On the principle that power rests with the people, I (Borodin) again go back to what I initially called attention to with regard to the Greek city-states. They were the dreams of impractical idealists. It is the proletariat dictatorship which was an effective vehicle that made the gift of Communism to the Russian people. But perhaps (still Borodin speaking) for a period of time Dr. Sun's Three Principles will be good and purposeful in unifying China, as the Chinese people, led by the literati, feel the frustration and humiliation of extra-territoriality and foreign domination ever since they were made captive by the Western type of capitalistic nationalism. The Chinese people having suffered under corrupt and inept central, regional and local governments and having gone through tremendous devastating and traumatic rebellions and the indignities of Western imperialism, are chafing at the bit for a change as was with Russia under the backward Czarist regime for a different set of corrupt reasons. The Chinese Revolution was something new, something exciting, something vibrant and not really on the whole understood by the people. The Chinese people went along with revolution without really understanding revolution, just as the Russian peasants did not understand our Revolution. It took one small Communist Party, our Party, to make what Russia is today and what Russia of the future will be.

The above are the salients of the evocative game plan of The Third International for China first and for the rest of the world to follow as was expatiated upon in the conversations with Borodin in 1926.

It is superfluous to say that my nature and instinct, in effect my whole being, and my convictions were revulsed and repelled by what Mr. Borodin propounded. His calmly postulated propositions were mostly preposterous and his justifications were outrageous. If democracy with its shortcomings was deceiving as a system of governing, what was presented by Communism had a never-never land scenario and ethos to it. If anything, Communism as delineated by our subject was a mirror of abject human intellectual despair and the harbinger of total despondency. Over the many years, it has crossed my mind innumerable times how could a sane, mature, well-read man, wise in the ways of the world, like Borodin and his ilk, accept the premiss that men are by nature vile and lowly and are content to remain servile with not a desire to exercise their will but would be content to remain as serfs to the new Communist aristocracy.

SPIRIT OF QUEST

Schooled in academic broadmindedness, a spirit of quest made me a tolerably tolerant listener to the ventilating of much venal humbuggery of double-tongued doctrines.

Communism as stridently enunciated by Lenin, specially after 1917 in Soldatskaya Pravda and in Pravda, really takes the cake in literally dripping vitriolic venom. At times it was hard to keep a straight face and not smile at the willfulness of blatant oratorical moonshine. At other times I felt the gradual elevation of my pulse as it quickened to the beat because of its out-and-out reprehension. Borodin's denigration of the United States was no surprise. To me he was merely reciting facts that the founding fathers as human beings were imperfect. Many of the facts I had long before already known. What was important to me was that in spite of their infirmities, they were achievers, be they imperfect achievers in elevating human dignity and the concept of freedom. They at least did something about them.

Our conversation began on a basis of China's future prospects in the world after the passing of colonialism and of Russia's real motivations in her professions of altruism in helping weaker countries to liberate themselves from imperialism. As our conversation progressed with time, I could perceive that our subject had a purpose that was interesting in its format but eclectically informative in revealing its content.

To be sure, I was disturbed in what he had told me. For had it been practiced in any other prevenance it would be denounced as cold-blooded, arrant, inhuman cruelty on a massive scale. What went through my mind was, could what he was recounting be quietly accepted as the necessary terrible ordeal that a whole people must go through in order to enjoy the ultimate Marxian Utopia of the "withering away of the state?" The revelations troubled me because of Russian Communism's unconscionably devastating approach to human problems it professes to solve by ensconcing them in deliberately flagrant lies and perverted reasoning based on tendentious premises. It reminded me so much of the so-called "spiel" of the proverbial medicine men of the American West when they sold snake oil or some such elixir that promised to be the panacea—the all-time cure.

INTELLECTUAL INTEREST

In retrospect, any dispassionate intellectual interest evinced in hearing out the Comintern's processional plan was very worthwhile in that first, I had gained the greater actual insight from a more than "usually reliable source" into the sub-rosa purpose of "proletarian internationalism."

It meant that substantively we should ask ourselves, do we want Soviet imperialism in exchange for English and French and other forms of Western imperialism from which we were trying to extricate ourselves? To hear directly from a responsible and high Comintern official in China their apologetics an their reasons to "save us as well as the rest of humanity" (sic!), I need not say that this imperialism is more embracive, more insidious and more quidit than all the imperialisms that went before in our history.

Fifty years have passed. Euro-Communists, headed by Italy's Sr. Enrico Berlinguer, France's M. Georges Marchais and Spain's still exiled Communist leader, Sr. Santiago Carillo, are saying in substance, "The only sensible way to progress toward Socialism and Communism is by a gradual multiparty and progressive system." To some people this meant that Russia was at long last told off. In answer, Mr. Brezhnev in the more recently convened East Berlin Communist summit has ostensibly made concessions to this erstwhile heresy of the Euro-Communists. Yet should we pause and refresh our memory, it must be remembered that since World War II the Russian Communist Empire has geographically grown larger, ever larger, in the world. It also means she has more manpower to do her bidding. In power both overt and covert and in influence also both overt and covert, Russia globally today is greater than she ever was under generations of expansionist Czars; yet Communist political and territorial ambitions remain insatiable.

Evans and Novak in the New York Post of Thursday, July 29 of this year report: The Soviet Admiral of the Fleet Sergei Gorshkov, known as the father of the modern Soviet Navy, wrote in the "Sea Power of the State" that Soviet naval power is to be used effectively around ". . . World Ocean in the interest of building Communism." Mr. Brezhnev puts it rather well when in toasting French President Giscard d'Estaing he said, "Relaxation of international tension in no way cancels out the struggle of ideas." Translated into the more mundane language of his predecessor, Nikita Khrushchev, "Do not believe we have forgotten Marx, Engels and Lenin. They will not be forgotten until shrimp learn to sing."

Anyone reading this piece of recall aided by my notes will have valid reason to ask: Since a conversation is a colloquy, why is it not in that form? My reasons are threefold:

QUESTIONS AND ANSWERS

One: The conversations took place some fifty years ago. They were conversations brought on as much by my queries as by Borodin's purpose to "sell" Communism. Our revulsions to imperialism, no matter what the brand, made Russia's Third International reprehensibly obnoxious, if not more so because of the guise it took and its callous and insensate regard for human life. But it allowed that The Third International's external cloak of imperialism is more subdued and with a finer cut, their method is more sophisticated than the unadorned gunboat policy or the stark and brutal force of the imperialistic brand as practiced by the West of those years. Allowing that democracy is in many aspects hyprocritical yet how much more deceiving when the wolf is in sheep's clothing.

Two: Unlike a question and answer seance, it was an outwardly congenial conversation mostly by two people, with my elder sister Madame K'ung listening to the conversations and occasionally remarking (Time and space do not permit me to include what my sister said in this article.) while my brother T.V. literally commuted between his study and the living room whenever matters needing his attention slowed down, permitting him to join us to listen in. We three and Borodin were poles apart basically in thinking—the goals of Dr. Sun's Three Principles for a better life versus Communism's pie in the sky nebulous promises. No notes were taken at the time of the conversations. It was only after each conversation that I made exegetical jottings, some days in greater detail than other days when the demand on time with other matters of that day was not as great. I took down such notes that I regarded as interesting in sparse fashion, only recording what struck me on that day as outstanding, extensive, portentous, pretentious, gross or inhumane or what I thought was an induced arbitrary value of right or wrong as well as the illogic logicality in its enormity in crassitude.

CONVERSATION HIGHLIGHTS

Three: Half a century has elapsed. I readily say that it is impossible for me to recall the catented sequence of questions and answers in its proper time frame as they were asked and answered. Refreshed and fortified by my notes in which were occasional direct quotes and the enumerated pointers, I am able to recall much and reconstruct as faithfully as possible the highlights that are still vivid in my memory. Should I have erred, I have erred in understating rather than overstating the matter-of-fact, across-the-board Communist disregard for human life and The Third International's maniacal zeal to communize the world.

The reader will also wonder as to why only until now, after such a considerable time had elapsed before my committing down on paper the conversations. Again there are three reasons. First, I believe there are not many people living anywhere in the world today who will have known Mr. Borodin of that day. Still fewer people who are "outsiders," let alone those of the "opposite camp," would have perhaps heard him expound so candidly and in English (unbroken by the irritant yet unavoidable impediment of an interpreter when no common vehicle of communication between the communicants is available) on Russian aspirations for China and the world. Second, by assessing Communism-in-action with historical remove, one cannot but be struck by the near identity of Soviet philosophical behavior and action since those years after 1917 to what Borodin outlined in 1926. Third, for those who might ask as to why I did not make known before now The Third International grand design for world conquest, especially since I have been working, writing and speaking on the dangers of Communism these many years, I can only give a simple answer. The notes were put away with some of my many other papers and were not found until quite recently.

To the peripatetic on the move and to one who is constantly preoccupied and occupied with the flow of matters of the day, together with what one has to do to keep up with current as well as with contemporary affairs, voluminous number of pieces of paper and documents of the day of a more recent vintage are all that one can contend. And without the notes, rough as they were, I could scarcely put together faithfully and accurately the expositions as they were related. Even so, I have avoided possibly direct quotes (when quotation marks were missing) with what I had committed to paper even though the terminology and expression used could but be from the responder.

EDUCATED MAN

And, to be equanimous to Mr. Borodin, I must say that he personally was a brilliant, deep-thinking (but not profound) and well-educated man, not at all like what Lenin said of Stalin or what Svetlana wrote of her father—a rude and uncouth person. He was capable, able, shrewd if entirely cynical, perhaps "with ice water in his veins," to use today's parlance. He could see cruelty, injustice and degradation committed with detached coolness. He acted out his misguided role as the instrument of The Third International with aplomb and with dedication.

That he had failed in his surreptitious mission on behalf of Moscow was an irrefutable fact, yet to attribute Borodin's failure as a personal failure in leadership would be extremely simplistic and an extremely naive assessment. He was a very complex and complicated man. The Third International, gauging from afar in Moscow how Communism in China should come about and how the Kucmintang was to be subverted, decided upon the technique of seizure of power through the labor unions and the workers in the cities (that were already infiltrated by the Communists)—the orthodox road traveled by the Communists in Russia in 1917 and onwards. It failed due to the timely excision of the cancerous growth at the time.

In order to get a better idea of 1926, let me give you the general atmosphere prevailing in Hankow. During our sojourn in the twin cities we stayed at my brother's apartment at the Central Bank building, at one time the Czarist Russo-Asiatic Bank in Hankow situated on the Bund of the former Russian Concession. Never a week passed when there was no demonstration of thousands upon thousands of Communist union controlled workers shouting slogans of down

with such and such a person, some tradition or mores, or some imperialistic country. It was usually down with English imperialism, while the trade unionists and workers militia in uniforms of indenthren dark blue cordoned off traffic or protected the marching columns. For hours on end one could hear the deafening shouting of thousands reach a crescendo as each unit marched past the Bank building led by a group leader with a megaphone. The cacophony of noise made by bugles, drums, gongs and brass cymbals was drowning. It was a time when the Communists controlled unions all over Nationalist-controlled territories, and surreptitiously in yet to be liberated warlord-controlled cities. They set up kangaroo courts and ran the local governments, replacing or interfering at will county or district magistrates in the Naionalist-controlled central provinces of our mainland. One can best imagine the chaos in East Central and South China provinces in 1926 by visualizing the chaos of the Paris Commune of 1793 of which much has been written.

PREVIOUS ORDERS

Borodin's previous orders from The Third International were for a more quiet imperceptible erosion and gradual diminishment until extinguishment of the Nationalist Party (the Kuomintang) and the take-over of territories under the control of the Nationalist Government. What so alarmed them was the unenvisioned swift advance of the Nationalist Army under its Generalissimo, Chiang Kai-shek, an advance much sooner than their minimal educated guess of time needed to complete the defeat of the warlords' armies.

It was as startling to the Russian military advisory group as it was to the Russian political advisers who took pride in their prognoses of situations. In Russia herself even with the political commissars presumably in full control, the Naval mutiny of Kronstadt which broke out in February of 1921—a full three years after Lenin had built up supremacy from November 7 of 1917—was put down with much bloodshed and great difficulty. The fact is that Kronstadt had happened. Anti-Russian imperialism in China also happened.

The precipitousness of the Nationalist advance alarmed Trotsky, Radek et al and disconcerted Moscow greatly. They hurriedly gave Borodin instructions to hasten the time schedule of Communist takeover. Abruptly he was told the smiling mask of cooperation and bonhomie was to be discarded soonest possible. It was just at this juncture in time when we arrived in Hankow. And for arcane reasons best known to Mr. Borodin, he was very much interested in talking at length on Communism and China's part in this grandiose task to members of our family. Often he would say that the Soongs should become more involved and take a more active part in the government by giving our service and whatever talent we are ascribed to have for "the cause." To make his point, he spoke of the crucial part and contributions that some women played in the Russian Revolution. He particularly mentioned Krupskaya (Nadezhda Krupskaya, often referred to as Nedya, was Lenin's wife.), Stasova (Elena Stasova was Party Secretary until Jacob Sverdlov took over the Party post. She then became Lenin's principal assistant.), Kamenev (Olga Kamenev was the sister of Trotsky.), Bonch-Brueviches (Vera Bonch-Brueviches had been among the twenty-two people who formed the nucleus of Lenin's Bolshevik faction in Geneva after the 1903 split.), Sumenson (Eugenia Sumenson was Lenin's conduit and link to the Germans.), Armand (Inessa Armand was French by birth. She was fluent in five languages and translated many of Lenin's writings, mostly from Russian to French and German. She was also sent on secret missions by Lenin from Switzerland to various destinations.) and a host of others.

Borodin never tired of repeating that there was a dearth of the right kind of revolutionary spirit and talent in the world. He knew of my interest in the working conditions of factory workers. I had spent much time in visiting various factories in Shanghai and was repelled at the long hours (12 hours each shift) and poor working conditions of women and children in the so-called International (but mainly run by the British) Concession of Shanghai. The sanitation was appalling, and little babies were lying in the aisle as their mothers worked on the machines. In the silk factories, the women's hands were purplish-red and often blistered by having to work with hot vapor issuing forth from open vats.

The Shanghai Municipal Council invited me to be a member of the Child Labor Commission. In our conversation he referred to workers reforms per se with a great circular wave of his arm as "futile, futile." His reasoning was whatever laws could be enacted could be as easily neutralized or nullified by other laws in a democratic system. To be occupied in reform was time ill spent. The best and only real permanent cure was Communism. He would far better wish to see me use my talent in reaching more people and awakening them to the blessings of egalitarian Socialism—his euphemism on this occasion for Marxist-Leninism.

CLOSE RELATIONS

Aside from sermonizing us, he was of course on close working relations with my elder brother T. V. and was forever dinning into him the importance of his remaining as Minister of Finance. He made it very plain that now with Shanghai in Nationalist hands and unification of China within the foreseeable future, the Nationalist Government (Borodic meant the government in Wuhan) would need more than ever modern minds who understood the Western mind, and in the realm of finance the need for proficient minds to deal not only with the complexities of the center of finance and economy of China, Shanghai, but in other fields as well. He knew from his own observations, reports from Hankew banking circles and from foreign banking assessments that T. V. Soong would be invaluable to the Nationalist Government as Finance Minister. He repeated the pedestrian that the most crucial organs of any government are finance, the armed forces and administrative personnel. While reserving relicence in his instructions from Moscow he discussed with us extensively his concern of China's paucity in modern talent not only in finance but talent in other callings.

It was only months later that the Russian frantic alarm signals to Borodin and the precipitation of their time table came to light when the opportunist Wang Ching-wei, who went specially to Iiankow to cooperate with Borodin and the Chinese Communists, found out that the Communists were intriguing to "do away" with him and General Tang Shen-chi once they were through using them. Wang Ching-wei and Tang Shen-chi's (whose troops Borodin had counted on to buttress his intrigue) honeymoon with The Third International quickly soured and ended. Contemporaneously, Communist quickened tempo ran rampant. Communist kangaroo courts in those provinces where they held sway were putting on mock trials and executing the indigenous squirarchy and literati indiscriminately. The much fevered scholar Yih Teh-hui of Changsha, Huran with myriads of others were tortured and killed because they dared to dispraise the Communists and in fact scoffed at and reviled them as animals of the most scurrilous breed. The "open trials" of landlords, officials and even of their kith and kin such as their mothers—we Chinese have a special niche in filial piety reserved for our mothers—all these committed grotesqueries induced common anger. Should anyone doubt that such things could have happened fifty years ago, let me remind you that all this again happened in the nineteen-fifties and sixties when the Communists took over the mainland and when children were encouraged to snitch on their elders and parents and report to the Communist authorities.

VALID AND COGENT

I recall I was incensed as well as amazed many a time during the conversations by Borodin's ingenuousness. I thought it valid and cogent to ask of him: Why had he (Borodin) been so categorically forthright not only with his views and thinking of Communism but also in revealing the Politbureau and The Third International's dark and crepuscular plan for the world? He denied the plan was ebon and benighted and said that on the contrary, proletarian internationalism was and would be the greatest blessing for the common man. Time and time again, he repeatedly said that it is the bedrock Communist belief that the real and ultimate need of the common man is a full stomach, job security, guidance and a spiritual haven—all of which, even the spiritual need, the Party can well provide.

He emphasized that history attests to the fight against hunger as the greatest need of mankind. It is only the firebrands, the slick shysters who for their self-serving and petty purposes use the fanciful shibboleths of political democracy, and the folderol that freedom is the victual the people crave. People do not need the hocuspocus, the abracadabra of religion, for religion is superstition which has no substantive or intellectual basis. It is only the true historian who can bring into focus the past, and the intellectuals who twist facts to show their forensic brilliance, to justify a cause they may wish to play with or espouse.

As to the reality of Communist amibitions of world conquest, he gave candid answers. They were:

One, we Communists have never attempted to hide our call to world revolution. If the capitalists and liberals do not choose to believe what we say so often and so openly and interpret us as they wish to see us, it is their doing not ours.

Two, we believe that it is "necessitous policy" as well as good strategy not to deceive on matters of high policy to certain intelligent people who are not of our persuasion. For "camouflaging" our aim, even should it succeed for a time, will only make them turn against us with ferocity. Hiding our goal is only for people-at-large, as they do not wish to or cannot understand the intricacies of politics. Therefore it is kinder that they should not be burdened with them. All these people need are simple slogans to chirrup and direct targets to assault. Moreover should we dissemble on high policy as differentiated from day-to-day policy, we would lose the respect and credibility of foes and comrades alike—respect of our foes and credibility with our comrades.

Three, it has been our experience on innumerable occasions that when we bare our hopes and goals, we have found the non-Communist intellectuals, unless they are out-and-out anti-Communist, in sympathy with us, oftentimes explaining away intricacies and bottlenecks encountered with more eloquence than many of our own comrades could. Be that as it may, our standing caveat to our own is beware of their doctrinal and intellectual duality as well as their long-term untrustworthiness, which we despise.

The behavior and ideas of the Intellectuals which many Communists call "a goulash"—a mish-mash of ideas—were something which Borodin found both amusing at

times and impossible to fathom at other times. He relegates these Intellectuals into the realm of emotional orphans, since they were unwanted by the left and were anathema to the right, yet they take on the pose as being in total rapport with Russian Communism and even fighting spiritedly against the right as if they were truly in one with the Communists but actually exprobated and expugned by the left.

In this sense, they have been aptly called the hermaphrodites of the intellectual world. Swallowing the bitter tears of humiliation in relative silence whilst still putting up a haughty front for the benefit of the unknowing, such is their pitiful plight.

For the non-Communist we might get some understanding and insight into the undeserved contempt most Liberal Intellectuals had earned for themselves. The Italian critic Nicola Chiaromonte writing on what Communism means to Italian Intellectuals says that Communism offers to the Intellectuals a substitute for social conscience without any testing or criticism of ideas, a new conformism, a way of putting oneself in the service of progress, the history of the proletariat, yet without making the slightest change in one's way of living or thinking. Like the critical arm-chair strategist, Intellectual Liberals aspire to be leftist and fashionable as our subject quoting Lenin typified them without having to suffer the ordeal by fire—Communist fire.

COMMUNIST PURVIEW

It is according to the Communist purview of human shortcomings that there is no formula in which the fulfillment of a need can elicit repletion without soon spawning another need. And by its very repletion it creates a sentence of self-defeating disappointment-in-paradox unless another need or needs yearned for are forthcoming. This penumbral as well as distrustful view of mankind runs through the whole gamut of Lenin's and Stalin's thinking as to become now a universal silent phobia in the Communist world. We see it in Russia, in the repression of Communist Hungary, Poland, Czecho-Slovakia, East Germany, North Korea, Cambodia, Laos, Indo-China, mainland China. We see it behind the Iron Curtain time and time again in the same dreary common pattern whenever uprisings or dissatisfaction occur. Yet the inordinately taut rein is always clothed in impressive lofty rhetoric of "eternal vigilance against imperialism," vigilance against the agent provocateurs of the imperialist capitalist West. It is also always interesting to note it is the U.S.S.R. which is the aggressed, not the aggressor. Curiously or perhaps uncuriously, Communist regard for man is quite akin to the Nazi view. Martin Heidegger in his often perceptive (although not always optimistic) book BEING AND TIME (ZEIN UND ZEIT), so lauded by the Nazis at the time of its publication, writes interestingly: "Massenmensch" is so entrenched in banalities of every day life that he is doomed to mediocrity and will never understand the real roots of his Being.

It is a rare person who can sustain even a fleeting insight into himself long enough to make a difference in his life. Heidegger, the thinker in substance, is saying that since very few men can know themselves—again strong shades of the Nitzschean superman seem to emerge!—they should follow a rare person who can sustain some insight, fleeting though it may be, since a degraded man cannot even hope to rise above mediocrity, let alone capturing a moment to know himself. It stands to reason that a common mind would be better off to have a superior mind do his thinking and guide him! What a cynically misanthropic philosophy of human nature! Does leadership encourage mediocrity and knavery so that it can rule the roost?

NAZISM AND COMMUNISM

As I have noted in the above paragraph, there is deep similarity between Nazi thinking and Communist thinking. Only Communist policy is dressed more enticingly and more appealingly, and therefore easier for the common man to understand or be hypotized by it. Yet, ironically, classless Communism is itself an elitist concept of exclusivity in that it composes of one class—proletariat—whereas Nazism is a racist club which appertain presumably only to those of Nordic Germanic blood. Were such two philosophies of governance the only philosophies it would be consigning all human hope forever to the limbo of the damned. In connection with this thought there is much wisdom in the succinct Chinese saying: No sadness is greater than the death of the heart.

Should International Communism ordain for time everlasting a moribund heart for the world, will it not be proof enough that retrorevolutionary is not progress but retrogression into another Dark Age?

I should recall for you also that Communism in the writings and instructions of Lenin and Stalin condemned profusely bureaucracy and its bane, yet the fact is that Lenin and Stalin themselves were the greatest culprits, since it was they who established and proliferated in the best tradition of bureaucracy the most swollen, arcane and stultifying bureaucracy in the world, on the other hand, as for the total dissolution of bureaucracy as perceived by Marx, it could mean one of two things: One, that people would be so well trained that they would all know instinctively exactly what to do, how to act, and what is expected of them, and to accomplish their tasks symbiotically and in toto at a given point in time so that not even a simple coordination function need exist—a true "withering away of the state", two, it could mean total and utter confusion would come into being in the absence of a bureaucracy. This ideal non-bureaucratic concept could exist only in theory, for no matter how tiny a society, to corroborate and regulate the flow of production to the consumer ugly bureaucracy must come to exist. Therein we find the example par excellence—the duplicity through rhetoric to deceive by Russia's two most well-known Soviet leaders—Lenin and Stalin.

TOTAL CONTROL

Communism in the personification of the state arrogates unto itself total control over the implex diversities of human activity as well as the inter-relationships between individuals. Thus, Communist pronouncements and actions, theory and practice, more often than not do not and cannot coincide. It condemns Fascism, yet it is more Fascist in its malevolence than Fascist Italy was and just as infernally sordid as Nazi Germany was. It calls itself a Union of Soviet Socialist Republics; but in fact it is neither a union nor socialistic nor a republic. It pays lip-service to democracy, yet it has no iota of democracy within her political thought, system and practice. It has the temerity to have East Germany, her puppet, call the Berlin Wall erected under Russion instigation the anti-Fascist Wall as if West Germany were Fascist and they in essence not.

All Russia's spiritual, social and cultural areas of human activity are regulated to a fault. It still wears the facade in its Constitution that every individual is free and is protected by law but in fact every one of the common people stays in his assigned slot, and they cannot travel without specific permission. The ruling class, the new nobility supported by the privileged cadre which constitutes the minor nobility enjoy special privileges in Protean guise and are in effect the self-appointed protectors of the people—the new peons—the people under Communist control. Time has proven their proficiency in working for the people. Russia with Communism governing the country some sixty years has not been able to solve the most fundamental problem—food—food to feed herself. From year to year in recent years Russian has had to buy wheat from Canada, Australia and the United States, from countries she in the same breath condemns as capitalistic and exploiting societies—a trenchantly disillusioning commentary on Russian Communism and practicing facsimile of all Communistic states.

Marxism-Leninism has been able to sell itself well because it took recurring ills of the time to diagnoses in greater minutiae and projected them as prognoses, and many unthinkingly took diagnoses as prognoses and fell into step with the pied pipers. Marx and Lenin played on the all too common assumption that since the premis-in-fact is correct, it follows that the conclusion must also be correct.

By using adroitly mass communication to serve their case-by-case specific purpose, and by touching the tender exposed nerves of society or by using constantly imputations, denunciations and imprecations in their plan of repeated attacks, Lenin and his followers built up enough credibility quickly or gradually as the situation demanded. Repeated onslaughts on the psyche had made inroad on a segment of the vulnerable public. By marinating the Liberal elite in cupfuls of cajolery and smarm or by shock treatment, they manipulate the thinking-to-capture and tilt it in the desired direction. With the advent of relatively inexpensive availability of electronics in the form of telephone, telegram, radio and television, cheap newsprint and cheap inflammable reading materials, it has made the conversion task by far easier and the amenability of emotional eclat so much more formidable.

STRENGTH AND WEALTH

Admittedly the United States having the endemic strength and wealth within her continental confines possesses the spiritual, technological, economic and mineral resources which are the necessary components that have made her the great power she is. Yet it must be borne in mind that the threshold of the United States to withstand constant abuse and spiritual debility, however high, has its "ceiling"—a point in tolerance which it must not pass.

Mr. Carl Rowan the columnist, writing in the New York Post of June 9th of America's Bicentennial Year in connection with racial discrimination in the U.S. Marine Corps, quotes the noted Finnish foreign affairs analyst, Colonel Wolf H. Halsti: "I am a military man and I may have a military bias, but it takes no military expertise to see that the effectiveness of the United States conventional forces is very low. An army that murders its officers and counts its deserters by the tens of thousands, an army whose men refuse to go into battle and get away with it—well, can that random collection of men still be called an army?

"I would not have thought so; I would call it a rabble, and anyone who relies on it for his protection does so at his own peril."

Let me give you another commonly held view so well expressed by Mr. W. R. Keevers in the open editorial page, June 30, 1976, of the New York Times. He cites the malaise that now confronts the United States externally. In the past, because America would not put up with any "guff" and stood up for her rights, she was respected in the world. He continues to say:

"Today, its different. Americans are no longer respected. Everybody pushes us around. Our ambassadors and diplomats are brutally murdered by selfness dissidents of doubtful ancestry, in little countries, where these hostile actions will draw no retaliation from the big knuckle-headed boob, that Uncle Sam has become. Murder an Israeli,

and you'll have swift, punishing retribution, kill an American or two, the State Department says 'forget it. They're only Americans.'

WORLDWIDE RESPECT

"Most of our loss in worldwide respect lies with a cowardly Congress. Our elected representatives have only one thing in mind: their own reelection. When an arrogant little nation slaps us in the face we run for cover, Congress says: 'Remember Vietnam.' It should be saying: 'Remember Valley Forge and Yorktown and Iwo Jima. . .'

"To our shame, we let outlaws in Lebanon murder our Ambassador and his aide. We even let them fire on our refugee train, without retaliation. They wouldn't fire on the British knowing full well that British troops would wipe out this stateless vermin . . .

"American nationals have been murdered or kidnapped in other places. Our American strength, moral character, our national fiber has deteriorated. This is not 1776. Uncle Sam is a tranquil weakling, interested only in appeasement. An arrogant Marxist military dictator in pygmy Panama tweaks our nose with insulting, pipsqueak threats to throw us out by force . . ."

I quote the article in great length so that the reader can judge the extent of its veracity. In contrast, no Russian diplomat is killed, for most countries in the Third World and the Free World as well as the terrorists realize the heavy consequences they have to pay should they incur the wrath of the big Communist countries.

As Mr. Patrick J. Buchanan writes in the New York Times: "The psychological defeat of the U.S. intellectual establishment and the growing isolation of the American people were established facts"—a sad but correct comment of the middle sixties up to the middle seventies.

But recently there are brighter aspects and happier phenomena afoot, for men of high public morality and courage are once more speaking out and setting the patriotic tone and pace by their meaningful warnings. A few quotations will suffice. Mr. Max Lerner in his article on April 7, 1976, of the New York Post quotes Norman Podhoretz in the Current Commentary in which he lashes out in many directions, mainly with scorn, Liberal intellectuals and politicians who leave America's allies open to Soviet expansionism.

Henry Fairlie, famed as the coiner of the phrase "the establishment" in his treatise on America, said: "The Spoiled Child of the Western World" has come to honor such men as Jefferson and the philosopher Dewey and dismisses gurus such as Galbraith, Mailer and Vonnegut. He is unequivocal in his view that the U.S. is being betrayed by its leading intellectuals through their "outlandish advocations."

Ambassador Daniel Patrick Moynihan, some months ago U.S. Ambassador to the United Nations, doughtily warned that the U.S. has lost confidence in its foreign policy occasioned by the Vietnam war and that "democracy is fading," while Professor Sidney Hook in his article in the New York Times of May 1, 1976, reminds us that from de Toqueville to Walter Lippman, democracies have been faulted for their inability to conduct timely and intelligently foreign policies. We should take especially the erstwhile doyen of leftist intellectuals Mr. Lippman's mots juste to heart. The receding tide of democracies all over the world as well as the cross currents and undertow since World War II bespeak the cogency and urgency the future differentiae hold.

OUTSTANDING COURAGE

Writings and protestations in action in recent years by such men of outstanding moral and physical courage in the persons of Pasternak, Solzhenitsyn, Sakharov, Sinyavsky, Daniel, Bogatyryov, Rilke, Amalrik, Marazim, Maximov, and the host of other Samizdat writers without and within Russia, demonstrate once more that while the human spirit of freedom can be diminshed for a time it can never ever be extinguished for good.

During each of the many long colloquies, I queried or with animus disagreed, where by Mr. Boridin expatiated and in turn took a dichotomous view from mine as to the designs which The Third International had meticulous.y laid out to a nicety not only for China but universal in scope. To make his point as authoritatively as possible as object lessons for revolutionaries, he kept on asseverating and reasserverating Lenin's preachment that the true revolutionaries are those who are willing to resort to all sorts of strategems, illegal methods, * * * evasions and subterfuges, and that the Communist end justifies the Communist means. For in opening up of opportunity brought about by cataclysmic happenings, the Communist revolutionary must be ready and able to grasp, seduce and exploit to the fullest all such major occasions offered by events. Forcefully and repeatedly, untiringly, Lenin again and again exhorted in his writings a need for obliteration of scruples and moral inhibition. No doubt his was a pragmatic philosophy of duplicity, violence and destruction. Yet ironically, Communism hiding behind its own immortal driving motivation turns around to accuse democracy with a moral judgment.

But above all else Communism makes it brazenly clear its extreme aspersiveness towards established human values by its altogether caitiff disregard of human dignity and life. It is this dastardly cynicism that the G.P.U., the Russian Secret Police (now changed to the acronym NKVD), became the self-appointed professional "enquirers of souls," and killed off thirty thousand victims in the Red Army and Navy alone. It was said that Stalin was duped by the Germans in 1937 that the Russian Generals were plotting a coup against him. The Nazis forged documents for Stalin's benefit, and the much vaunted G.P.U. was outsmarted by the Gestapo. The German General Staff in conjunction with Hitler wanted Russia to be stripped of experienced officers before the Fuhrer invaded Russia, and Stalin the tyrant always quaking in fear of coups swallowed the bait hook, line and sinker.

Marshall Tukhachevsky, Generals Yakir, Kork, Eideman, Feldman, Primakov, Putna and Uboreviche, all well-known "heroes of the civil war," all decorated with the Order of the Red Flag, all partisans of Stalin against Trotsky, to mention but a few, were tried in camera without witness or defence and quickly executed within forty-eight hours. So was Blucher (Galen, who was previously in China during the Northern Expedition), as the incumbent Commander-in-Chief of the Soviet Army in the Far East, Shot. He was suspected without proof of collusion with the Japanese.

PROMINENT MEN

With regard to the prominent men of the Communist Party that were sent to China, Joffe, Leminadze (Stalin's special personal agent in China) committed suicide while the well-known diplomat of that day Karakhan, who never belonged to any opposition, was executed. Borodin, one of the last important survivors of The Third International, disappeared. Tens of thousands were executed for having committed so-called "professional errors." To give the reader an idea of what professional error meant, as was related to me, Dr. Sun Fo who was sent to Russia by our Government in 1939 inquired about Bogomolov (Soviet Ambassador to China prior to his recall in 1937). Stalin repeated the name several times as if attempting to recall who the person was until Dr. Sun Fo identified Bogomolov. With a sudden look of recollection. Stalin answered in a matter-of-fact voice that: Ah, he was shot! When asked why, Stalin countered that he (Bogomolov) reported that you (China) would not fight Japan. How truly said that the Communists devour their own!! Liu Shao Chi, Peng Cheng, Chen Pai Ta,, to mention but a few, came to mind.

The same barbaric method was adopted internally to stimulate production when Molotov reported that production fell off in food, steel and cast iron to below pre-World War I level after the Bolshevik take-over, that elicited Stalin to utter his famous epigram, ". . . blood-letting is a necessary part of political doctoring." Stalin believed that punishment of the harshest form is the best cure to inspire leading personnel with leadership in industry. What a macabre and bloody cure it is! Again to give you some idea of the fastasticity of crassitude and of violence, Balitsky, head of the G.P.U. in the Ukraine, estimated eight to nine million died in the Ukraine alone in the nineteen-thirties, not to mention those who died of starvation in the Urals, Trans-Volga and Eastern Sibera.

SLAVES AND DOGS

In the concentration camps prisoners were made to work like slaves and whipped like dogs. Such was Russia under Stalin's "classless society." Let, excepting a few, most Liberals and Intellectuals for reasons best known to their conscience, maintain deep and censcrious silence over the years.

As Thomas G. Marsaryk, the first President of Czechoslovakia after World War I who had intimate knowledge of Communism noted. "The Bolshevik half-culture is worse than the absence of all culture."

There is a procrustean* (Procrustes was a brigand who put his victims on his iron bed. He would cut off any length that protruded from his bed.) philosophy that people must be cut down to size and constantly supervised living under what is euphemistically called "structured lives," for their own good. In juxtaposition to the duplicitous yet idealistic theory of the "withering away of the state," it is the catechism of practicing Communism that there should be ever more control of the individual by the state to insure its survival. To proselytize that people can function with a minimum of guidance is rank heresy.

By demographic liquidation through starvation and with the instituting of Goulags dotted over Russia complemented by wholesale executions, Stalin believed he could pour into the image of his making new generations of youth who would be the new Stalinist youth unrelated to the past. This electrifying notion of the new Stalinist youth sprung from the statistical report to the Congress of Soviets in 1936 that forty-three per cent of the population had been born since the Revolution of 1917. It meant also that each year there was an increase of nearly three million births—equivalent to the whole population of Finland that could be moulded to the great father Stalin's liking.

But alas! "the ultimatist" Stalin's innovatively sinister notion of doing away with the older generation through his particular type of generation renewal—genocide—produced two antithetical and disappointing types (1) The "Soviet Youth" has turned out to be uniformed of the real outside world, crass, avaricious boastful and parrot-like in his utterances. His is a head filled with dessicated sloganeerings as fed to him. (2) The pseudo-Soviet youth on the other hand is non-conformist, dissatisfied with the present yet hides his true opinions on politics. He avoids official influence while keeping up appearances. Neither type fulfills Stalin's fond dream of the new Soviet man. For by allowing both the serious-minded youth as well as the imitators to become imbued with primitive sophism, schematic idiocies and ni-

dehissent group experience, they produced divergent types of sterile automators. Thus the richness of the human spirit, the creativity in ideas, and cultivation of thought and talent by all logic shall have been made barren for generations to come.

IRONY AND TRAGEDY

In relation to the ideals upon which the United States was founded, it is the greatest of irony and tragedy that those forebears, who fled Europe to a new land primarily in search of freedom of person and thought as well as freedom in religious worship, should have descendants that are working perhaps unwittingly to diminish those very freedoms which their forefathers through undergoing hardship had gained and paid for so dearly in misery and sorrow. It makes one wonder why the illogicality of this "Sampson complex" for self-destruction.

A year-and-a-half ago, in putting down my observations "We Do Beschrei It," I wrote in a tentative and sombre mood of the ills of our time. I could not but be cognizant of three malaise that afflicted us in the Free World. True, many did speak out, albeit in sotto voce their anxiety in the loss of faith in the Free World especially the United States. I must say this loss of faith was not confined to the countries of Southeast Asia, for too many countries in the democratic column were ready to consign the buttresses of the Free World to the Tarpeian rock of perdition.

It seems Yeats' hexametric words applied to the sixties and the seventies were certainly most appropos

"Things fall apart; the center cannot hold;
Mere anarchy is loosed upon the world. . . .
The best lack all conviction, while the worst,
Are full of passionate intensity."

The Chinese dictum of one-on-one human relationship mirrors the truth that only with the fullness of admiration will the people willingly follow the leadership. This is surely the direct opposite of what Communism is.

However flawed and cumbersome democracy is, the essence of progress of human beings and human society, to use Walter Bagehot's words, after all still resides in "the policy of discussion.

TRIBUTE TO GEN. JOHN R. DEANE, JR.

Mr. McCLELLAN. Mr. President, I take this opportunity to pay tribute to a most distinguished gentleman and military leader, the Commanding General of the U.S. Army Materiel Development and Readiness Command, Gen. John R. Deane, Jr. General Deane will retire at the end of this month after serving faithfully and honorably for 35 years in the Army.

From the time he enlisted in 1937, he relentlessly pursued a long and outstanding career in service to his country. He was educated at the U.S. Military Academy, at the senior military schools, and at George Washington University. He held positions of great importance during three major conflicts in which the United States was involved. He has served in peace and he has served in war. He was the Commanding General, 173d Airborne Brigade, U.S. Army, in Vietnam, Commanding General, 82d Airborne Division, Fort Bragg, N.C., and held high staff positions in the Departments of Defense and Army. General Deane assumed command of the U.S. Army Materiel Development and Readiness Command in February 1975 after serving as Deputy Chief of Staff for Research, Development and Acquisition, Department of the Army, Washington, D.C.

As chairman of the Senate Committee on Appropriations I have witnessed on many occasions General Deane's great leadership and management capabilities. During his current tour of duty he was charged with the massive and complex effort of reorganizing and streamlining the U.S. Army Materiel Development and Readiness Command. He has successfully completed the major part of this reorganization and established the plans for those actions yet to be completed. These changes will result in major economies and increased effectiveness for our fighting men of the Army.

I applaud General Deane for his long, loyal, and brilliant career and salute him as a distinguished military officer of the U.S. Army.

AGRICULTURAL INDEBTEDNESS

Mr. HUMPHREY. Mr. President, I wish to share with my colleagues an article in the Sunday Pioneer Press of December 12, 1976, entitled "Farmers' Debts Setting Records," and a January 1977 Farm Journal article, entitled "You're Welcome at the Bank in '77."

These two articles highlight the increasing importance and volume of credit in agriculture today. The total assets held by farmers are likely to reach $634 billion this year, up 8.3 percent from last year.

At the same time, farm indebtedness rose $11 billion during the past year from $90.6 billion on January 1, 1976.

These basic facts indicate the trends which have been developing in agriculture. Farmers have been consolidating their operations and using larger and more costly machinery. Many of our older farmers who were without debt for many years are now heavily mortgaged as a result of these recent trends.

For our younger farmers, who have acquired land and machinery recently and have major debts, recent trends on crop and livestock prices pose major problems. For many of my farmers in the drought belt, continuing to service their outstanding debt is a major problem. Some farmers are convinced that banks are willing to lend them credit even if it ultimately means that the bank may take over the farm.

This is a problem to which we need to give close attention. Obviously, the "debt to asset ratio" will need to be followed carefully.

Mr. President, I ask unanimous consent that these two informative articles be printed in the RECORD.

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

FARMERS' DEBTS SETTING RECORDS

(By Don Kendall)

WASHINGTON.—By Jan. 1, 1977 the amount of money owed by the nation's farmers is expected to total a record $101.5 billion, a gain of 12.1 per cent from last Jan. 1 and the sharpest one-year increase in three years.

But Agriculture Department analysts say total assets held by farmers—their land, buildings, bank deposits and other property—also will be up to a record $634 billion, an 8.3 per cent increase from last Jan. 1.

Put another way, farm debt rose about $11 billion this year from $90.6 billion last Jan. 1, while the value of farm assets climbed about $49 billion.

One of the significant points, however, involves a so-called "debt-to-assist ratio" used by USDA to measure how much farmers owe against the value of their assets. This increased slightly in 1976 to about 16 per cent.

Last Jan. 1 when farm assets totaled $585.4 billion, farmers owed about $90.6 billion. Thus, the debt-to-asset ratio was 15.5 per cent. It was 15.7 per cent at the start of 1975; and 15.6 per cent in 1974.

Economists say the rise in the ratio this year is not in itself cause for alarm since, for about a decade, the amount of money farmers owe has been a fairly stable percentage of assets.

But there have been some interesting changes over the years' involving the ratio and how assets and debts have increased.

For example, on Jan. 1, 1961, farm assets were about $204.7 billion—less than one-third of what they are today—and debts totaled $26.2 billion, about one-fourth of their present level. The ratio was 12.8 per cent.

During the four years 1969 through 1972, farm debt climbed faster than assets and put the ratio at more than 17 per cent in each of those years.

But soaring farmland values helped offset spiraling costs after Jan. 1, 1972—when the debt-asset ratio was 17.2 per cent—and helped cool things off. Higher-priced land was a main factor in the soaring value of farm assets the past five years, and USDA specialists say this helped inflate total debt.

"These higher-valued assets are sometimes used by land owners to obtain additional financing, and the continued rise in values has encouraged lenders to provide additional loan funds," the department's Economic Research Service said last week.

Still another measure is a "debt-to-equity ratio" which measures how much farmers actually own outright of their total assets.

For example, in 1961 when assets were about $204.7 billion, farmers owned an equity of $178.6 billion, leaving a debt of about $26.2 billion. Thus, the debt-equity ratio was 12.8 per cent.

This ratio grew to a peak of 20.9 per cent on Jan. 1, 1970 and again to that mark at the start of 1972. Last January it was down to 18.3 per cent.

But by the first of next month the debt-to-equity ratio will rise to about 19.1 per cent, reflecting farmers' owned equity of $532.5 billion out of total assets of $634 billion.

Looking ahead to next year, department analysts expect farm real estate values to continue to rise, but at a slower rate than in 1976. Thus, there will be a smaller increase in 1977 farm assets.

Meanwhile, farm debts also will rise again next year at a faster pace and that will put the balance sheet farther in the red.

By Jan. 1, 1978, USDA says, farm debts probably will rise by nearly 11 per cent to $112.6 billion. Meanwhile, farm assets are expected to gain only about 7.1 per cent to a projected $679.3 billion by Jan. 1, 1978.

That will mean a further increase in the debt-to-asset ratio to 16.6 per cent and a further boost in the debt-to-equity ratio to 19.9 per cent, according to USDA calculations.

Despite the rise in farm debt and the slight climb in the ratios used to measure it against total assets, it appears that farmers generally have been much better off in terms of ready money and other financial assets than they ever have been.

According to USDA analysts, farmers on Jan. 1, 1977 will have an estimated $16.1 billion in commercial bank deposits and currency, compared with $15.6 billion available last Jan. 1.

Other financial assets, which include U.S. savings bonds and investments in farmer co-ops, total another $17.3 billion, against $16.1 billion last Jan. 1.

YOU'RE WELCOME AT THE BANK IN '77

DON'T BE SURPRISED TO FIND LENDERS BIDDING FOR YOUR BUSINESS. THEY HAVE AMPLE FUNDS, STRONG COMPETITION AND THERE ARE SOME NEW ENTRANTS IN FARM LENDING

(By Joe Dan Boyd)

The New Year shapes up as one in which to dust off conservative game plans that have proved workable in good times and bad.

That was the mood at the American Bankers Association's (ABA) 25th national ag conference, held recently in New Orleans, La.

A Federal Reserve economist pegs the U.S. in an economic slowdown or "pause," at least temporarily.

But lenders are not stragged for cash to loan and will actually be out beating the bushes for farm business.

Outstanding farm loans were expected to be about 13% higher than a year ago on the first of this year.

"The fact that the American economy is in trouble should come as no surprise to anyone here," declared Sheldon Stahl, Federal Reserve Bank economist based in Kansas City.

Still, he does not necessarily see a return to such economic headaches as recession or double-digit inflation over the next year or two. "Anyone who predicts double-digit inflation and a recession in 1978 has a lot more courage than I do," he says.

Stahl suggests keeping an eye on developments such as oil price increases by the OPEC countries for the first solid clue. "That could affect our economy more than the switch to a Democratic Administration," he told the bankers.

For instance, an oil price increase closer to 20% than, say 10%, could put another brake on economies in Western Europe, dampening our export prospects there while cost of our own oil imports would also zoom.

"Look for a tenuous balance during 1977 and into 1978," he says.

Tenuous?

"Hard to sustain," he explains.

But it won't be hard to get farm credit if you're a good risk. In fact, unless you're already loaned "up to your limit" or having trouble paying off 1976 notes, don't be surprised to see several lenders make a bid for your bsuiness.

Expect to pay about the same interest rates that you got in '76. Competition for ag loan business could make it worth your while to dicker a bit on interest rates, and shop around to find the best deal.

"Almost all the chain banks are competing aggressively to lend money to agriculture," admits Walter Minger, Bank of America vice president in San Francisco, Calif.

Minger says that most of his borrowers' loans are "tied to prime" in some manner: "So our production loan interest rates are down moderately now—ranging from 7¾% to 9%," he explains.

Small country banks aren't as likely to tie rates to the going prime interest quote by the big "money centers," a figure that was down to 6½% during the New Orleans session. In fact, unless you bring it up yourself, chances are that prime won't even be mentioned at many banks.

"I don't see money center prime having any effect on our loan rates," explains C. P. "Buck" Moore, president of Northwestern National Bank of Sioux Falls, S.D. "By the same token, however, we didn't push our interest rates up in '72–'73 when prime went unusually high."

Moore points out that his bank has a high percentage of time money deposits which translates to a relatively fixed cost for available loan funds.

"Time certificates are also the basis for establishing our loan rates," agrees Charles Finson, president of the National Bank of Monticello at Monticello, Ill. "We try to develop a margin of profit of not more than 1%," he explains.

But, some bankers—like Leslie Peterson, president of Farmers State Bank at Trimont, Minn.—concede their interest rates could take a dip later if the reduction holds firm for money center prime—or continues to go down.

"Big city prime reductions could mean farm loan interest rates under 9%, compared with our present range of 9% to 10%," agrees T. E. Hankins, vice-president of the Bank of Dixie at Lake Providence, La.

"Actually, the Farm Credit System (FCS) tends to set rates," contends California banker Minger, who recalls that banks have been competing "nose to nose" with Production Credit Associations since he has been in the business. "But, with increased interest in agriculture by all lenders, we have to offer better terms to a shrinking base." What's more, Production Credit Associations and Federal Intermediate Credit Banks can reflect interest rate changes faster than banks because their funding structure is different, contends Minnesota Banker Peterson.

The 1977 outlook seems to boil down to this: "Plenty of competent farmers will have a choice of funds available to them," says Illinois banker Finson. "There's good fund availability from banks and FCS."

"But, bankers supply over 50% of the money for production agriculture, and the demand for farm loans is still very strong," Peterson maintains. However, he cautions that more borrowers than usual may already be loaned up to their practical debt loads, partly because many Midwest farmers are still holding substantial volumes of farm commodities in storage.

Loan demand isn't overly brisk right now in the area served by South Dakota banker Moore, who reminded us that drouth has resulted in a light grain crop and heavy movement of cattle to feed in Nebraska, Missouri and other points.

"But they'll come back when it rains. Bank funds are already committed to those farmers and ranchers when they're ready," he says.

Moore emphasizes that not everyone in his area is in trouble. "In fact, a high percentage of our customers didn't need to borrow money at all this year and may not need to in '77."

Bankers can cite a long list of reasons for all the competition for loan funds for agriculture. Minger nails down one of the most important:

"Agriculture is one of the least leveraged businesses in the country," he contends. "The national farm average is only $19 in liabilities for every $100 in assets."

That could be one reason for another credit source that's gaining ground: "Life insurance companies are making a new commitment to agriculture," observes Peterson. "But they're more interested in long-term and good-sized loans."

You may be able to capitalize on the competitive farm loan atmosphere by combining some of the available credit sources.

Joint loans through bank-FCS agencies aren't exactly new, but appear to be gaining ground with innovative bankers.

And new legislation during 1976 opens up yet another approach: You can now apply through your bank for a loan guaranteed by the Small Business Administration (SBA). This program—unlike Farmers Home Administration (FmHA)—is available not only to individuals, but also to farm partnerships and to family farm corporations. The SBA loan limits are higher than FmHA.

"Both SBA and FmHA are working closely to avoid any overlap, and the banking industry has pledged to help make the new SBA program work," explains Minnesota banker Peterson, who expects highly concentrated livestock loans to be among the first processed under the new program. "Custom feeding operations would be likely candidates," he speculates.

THE NATURAL GAS SHORTAGE

Mr. JAVITS. Mr. President, here in Washington we have witnessed the cause of what may turn out to be the most severe natural gas shortages in the Nation's history. The abnormally severe cold weather that is gripping the entire north central and northeast sections of the country is making demands on our limited natural gas supplies that simply cannot be met. Schools and factories are closing, businesses are cutting back their hours of operation, and residential users are being asked to turn their thermostats down to 55 degrees. In what I believe is an unprecedented action by the Federal Power Commission, pipelines have been told that interruptions to homes will be allowed.

As many in this Chamber will recall, we faced a very similar situation 1 and even 2 years ago. Last year, in response to considerably less severe shortages, the Senate passed an emergency natural gas supply bill that would have permitted pipelines to secure temporary emergency supplies by going directly into the intrastate market and purchasing gas at unregulated prices. I supported that concept and believe we must take similar action now if we are to have any chance to ease the situation this winter and prevent another, and possible worse, shortage next year.

Unfortunately, the emergency provisions became entangled last year with the debate over permanent natural gas pricing. Despite efforts by myself and others, we could not separate the emergency from the permanent provisions, with the result that the entire bill became deadlocked and no useful measure was enacted.

I hope we have learned that lesson. We cannot continue to let the controversy over natural gas deregulation become the cause of further natural gas shortages.

Senator RANDOLPH has introduced a bill, S. 271, very similar to the one adopted last year, that could help greatly during this emergency period. I urge that bill be used in an effort to move directly and quickly on this problem—not to embroil ourselves over the pricing issue until after we have legislated some partial solution to the present emergency.

On a parallel track, I want to reaffirm my commitment to the concept of tax credits for residential energy conservation efforts by homeowners and apartment owners. Last year, in the tax reform bill, we passed provisions for such conservation incentives. Unfortunately, they were stricken from the bill in conference. Chairman LONG promised to

take action separately, and a bill was reported, H.R. 6860, to grant tax credit incentives for many energy conservation measures, but the bill never reached the floor.

We must move quickly on this issue again this year. Senator GRIFFIN has introduced a bill (S. 198) that not only provides these incentives to homeowners but also provides additional incentives to utilities to market insulation materials to their customers. I believe the entire residential conservation effort depends on the active involvement of the utilities and the fuel oil marketers, and until they are given reason to sell conservation materials, we may be doomed to failure.

I believe that the assurances provided to utilities in S. 198 will spur their involvement in conservation and save us millions of cubic feet of natural gas and many thousands of barrels of oil. Each is precious and we should do all that is feasible to preserve and conserve them.

GAO REPORTS ON COST OVERRUNS FOR CIVILIAN AND MILITARY PROJECTS

Mr. PROXMIRE. Mr. President, the General Accounting Office has concluded an audit of 753 major civilian and military projects which shows an almost unbelievable cost overrun of $176 billion—64 percent more than original estimates.

The GAO figures show that these 753 projects were expected to cost $276 billion but have ended up with a price tag of $452 billion. The difference is enough to fund the entire Agriculture budget for over 13 years.

A total of 148 civilian projects had cost overruns of over 100 percent. The agency with the highest total of 100 percent overrun projects was the Army Corps of Engineers with 83. The corps received my "Golden Fleece of the Year" award last December for just that reason.

Of the $176 billion in cost overruns, the Defense Department represents $74 billion, followed closely by the Federal Highway Administration at $60.6 billion and then the Army Corps of Engineers at $14 billion.

One thing about cost overruns—they are common to just about every Government agency. The new figures show the Washington Metropolitan Area Transit Authority with an overrun of $3 billion. The Tennessee Valley Authority has a $2.9 billion cost growth problem on its hands. The Energy Research and Development Administration has $3 billion in cost overruns, and the Bureau of Reclamation of the Department of the Interior comes in with $5.5 billion. The extension of the Dirksen Office Building is up 78 percent to $85 million.

In fairness to all these agencies, inflation has played a role in the increased costs. But inflation is by no means the only culprit. When the GAO examined the reasons behind the projects averaging over 100 percent increases, they found inflation accounted for 47 percent. This left plenty of room for unanticipated development difficulties, faulty planning, poor management and underestimating.

The message of the GAO report is that cost overruns have become a way of life for the Federal Government.

These figures show just how badly the Congress and the taxpayer have been taken in by low estimates and promises of efficient operations. If we started saying no to projects with dramatic cost overruns, we would not only save money but also encourage proper management.

DR. MARTIN LUTHER KING, JR.

Mr. BROOKE. Mr. President, I am pleased to enter in the RECORD the remarks delivered by Senator EDWARD KENNEDY during ecumenical services in the Ebenezer Baptist Church of Atlanta, Ga., on January 15, 1977.

Senator KENNEDY's remarks fully describe the magnificence of Dr. King by explaining how this extraordinary man contributed so very much to this country.

As a cosponsor of Senate Joint Resolution 9, Senator Kennedy is one of over 50 Senators who support the effort to establish January 15, Dr. King's birthday, as a national day of commemoration in honor of this great American.

I ask unanimous consent that Senator KENNEDY's remarks be printed in the RECORD.

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

STATEMENT BY SENATOR EDWARD M. KENNEDY

It is a distinguished honor for me to stand in the pulpit of the Ebenezer Baptist Church on the 48th anniversary of the birth of Dr. Martin Luther King, Jr. It is with a feeling of humility that I take part in this ecumenical service. For we worship in the House of the Lord and we commemorate the extraordinary life of the man who believed that the crises that divide Americans are not nearly as important as the qualities that unite us.

This day recalls the ancient verse from the book of Psalms: "They shall abundantly utter the memory of thy great goodness and shall sing of thy righteousness." He was a righteous man and a good man who refused to "accept the view that mankind is so tragically bound to the starless midnight of racism and war that the bright daybreak of peace and brotherhood can never become a reality."

This year, we must pledge to rekindle the spirit of peace and justice that is the enduring legacy of Dr. Martin Luther King, Jr.

For Dr. King awakened America. He was the heart of a mighty engine that moved this country toward a new revival of spirit and hope. He was the center of a stirring panorama that included names and symbols of a remarkable movement.

Brown v. Board of Education and Little Rock; Rosa Parks, Charlayne Hunter, Autherine Lucy; the Freedom Rides; Albany, Georgia; Orangeburg State College; John and Robert Kennedy and John Doar; Frank Johnson and Medgar Evers; the Edmund Pettus Bridge at Selma; Schwerner, Goodman and Cheney; Earl Warren, Whitney Young and Philip Hart; the Lincoln Memorial in 1963; Adam Clayton Powell and Andy Young; James Meredith, Watts and Resurrection City; CORE and SNCC; the NAACP and the leadership conference on Civil Rights.

And among these symbols of Civil Rights, there is Martin Luther King, Jr. his name leads all the rest.

His dream guided us when our vision dimmed. His courage inspired us when the sacrifices seemed too great. His ideas guided us when our footsteps faltered. His memory summons us again to action. It sounds the trumpet for new battles, for fresh assaults on the walls of racism and discrimination.

That trumpet reaches through the silence of the past eight years. Those who had shared his dream—and they were black and white, Christian and Jew, Northern and Southerner—they mourned for the man and for themselves. The oppressed throughout this land saw their dream shattered into thousands of tiny, personal nightmares.

And we heard the words of Langston Hughes, "what happens to a dream deferred? Does it dry up like a raisin in the sun? . Maybe it just sags like a heavy load. Or does it explode?"

Dr. King believed that the most powerful explosion was the force of nonviolence. That it was not sterile but a powerful force that could transform America.

He believed that "in a dark, confused world the kingdom of God may yet reign in the hearts of men."

But, at his death, official America began with a heavy hand to write an epitaph for black Americans. It was at a time when the words of Dr. King went unheeded

Dr. King preached that " I have the audacity to believe that peoples everywhere can have three meals a day for their bodies. education and culture for their minds, and dignity, equality and freedom for their spirits."

In a nation where we can explore the frontiers of space, surely, we can bring hope to the inner cities.

In a land that can produce food for millions around the world, surely we can end hunger around the next corner.

In a country that can produce machines to sustain life, surely we can provide basic care to every sick child whether he lives in Georgia or Massachusetts.

Dr. King believed we could do that. He called for an end to racism, for a new commitment in our inner cities, for new jobs for our young people and for new hope for the poor in our midst. But that call remains unanswered.

He wanted the black child to have the same chance to enter the best colleges as the white child, but that cause remains unfulfilled. He asked that a sick child have the same chance for quality care whether he lives in a tenement or in a luxury tower. But that too remains undone.

Even his call against the war remains incomplete. Dr. King sounded America's early warning signal, that the war in Vietnam was unjust, immoral and corrupt. He was in the vanguard for justice at home and peace in Indochina.

We have ended the fighting. We must keep faith with his call and end the divisiveness that lingers, with amnesty and pardon for draft evaders and deserters, with full benefits for the veterans, and compassion for those who received less than honorable discharges and carry a weight on their future For all of those let us hear the words of reconciliation.

From this pulpit, on this morning, I call out to America to begin a new revival. On this anniversary of Dr. King's birth it is fitting for us to begin again the work that Dr. King initiated.

Just 20 years ago blacks and whites would not have worshipped together in this very church.

Fifteen years ago, blacks in this State could not have gone to the polls to put Andy Young in the Congress or to put Jimmy Carter in the White House.

Even five years ago, the citizens of Boston—black and white—had not yet seen their constitutional rights protected.

As America begins its third century, we have a fresher understanding of the challenges before us. The Bicentennial Year has given all of us a new and deeper awareness of our heritage and history. Our task in the final quarter of this century is to breathe new life into the American Revolution, and breathe new meaning into the timeless principles by which America was born.

Both of these sons of Georgia have felt the greatness that our country can attain.

Both of these sons of the State of Georgia refused to accept things as they were.

When he was inaugurated as governor of this great State—President-elect Carter said, "The time for racial discrimination is over . . . no poor, rural, weak or black person should ever have to bear the additional burden of being deprived of the opportunity of an education, a job or simple justice."

Those are the words to bring to every State in this Nation, not just for the next four years or the next eight years, but for all time.

Frederick Douglas said it well: "If there is no struggle, there is no progress. Those who profess to favor freedom and yet deprecate agitation are men who want crops without plowing up the ground. They want the rain without thunder and lightning. They want the ocean without the awful roar of her mighty waters. Power concedes nothing without a demand. It never has and it never will."

Martin Luther King, Jr., during his lifetime, plowed up the ground of injustice and discrimination. He instilled in his followers a faith that made their voices roar like thunder and lightning in a clamor to be set free.

Despite the gloom of these past years, let our voices sound once more like thunder. Let our hands join to build a new order for a new age, and let us reach once more into the soul of America and find our future together in the words of Martin Luther King, Jr.:

". . . when the blazing light of truth is focused on this marvelous age in which we live—men and women will know and children will be taught that we have a finer land, a better people, a more noble civilization—because these humble children of God were willing to suffer for righteousness sake."

JACK CAVANAUGH EULOGY

Mr. ZORINSKY. Mr. President, at this time I would like the Senate to note the death of Mr. Jack Cavanaugh, father of Representative JOHN CAVANAUGH and a distinguished citizen of the State of Nebraska. Mr. Cavanaugh died of a heart attack Saturday at his home in Omaha. Mr. Cavanaugh made a tremendous contribution to good government in Douglas County, Nebr., as a member of its board of commissioners for 18 years until his retirement in 1974.

Mr. Cavanaugh instilled in his family the highest respect for representative government. He ran unsuccessfully for the seat in the House of Representatives that his son now holds. His dream, however, was realized on January 4 when he watched from the House Gallery as his son was sworn in as a Member of the 95th Congress. Jack Cavanaugh was a man, who through a lifetime of hard work, left this world a better place than when he entered it 56 years ago. He will be missed.

WHAT THE GENOCIDE TREATY WILL NOT DO

Mr. PROXMIRE. Mr. President, since 1967 I have stood almost daily before this distinguished body and urged its Members to ratify the Genocide Convention of 1948. During that time I have heard every conceivable argument which could be used against ratification and not one has proved convincing.

The Genocide Convention is purely and simply an initial attempt by the international body of man to outlaw a most heinous crime, that of mass murder of a specific racial, political, or cultural group.

This fact stands in sharp contrast to any of the arguments posed by the opponents of the Genocide Convention.

Contrary to the dissenters' opinions, the Genocide Convention does not hinder the right of free speech in this country. That is a right which can only be affected by our own Nation's courts, as the Supreme Court has shown time and time again.

Contrary to the arguments of the treaty's opponents, the Genocide Convention will not allow individual Americans to be harassed in other countries. Those persons or groups which are motivated to harass Americans in foreign countries will find the means to do so, with or without this body's ratification of the Genocide Convention.

And contrary to the argument made by some of the Convention's foes, ratification of the Genocide Treaty does not violate any of our Nation's constitutional processes. Even the American Bar Association has dropped that argument and its opposition to the treaty's ratification.

In summary, Mr. President, none of these arguments are, by any stretch of the imagination, applicable to the Genocide Convention or its ratification by this body. There is nothing standing in the way of our taking our responsible place among the world's nations by ratifying the Genocide Treaty. I urge that we take action immediately.

NATIONAL ORGANIZATIONS CALL FOR 1 MILLION JOBS FOR YOUTHS

Mr. HUMPHREY. Mr. President, early this month a group of prominent, national youth-serving organizations sent President Carter a position paper on youth employment calling for the creation of 1 million service jobs for the Nation's unemployed youths.

The organizations—including the National Child Labor Committee, the National Urban League, the National Boards of the YWCA and the YMCA, the Boys Clubs of America, the Recruitment and Training Program, the National Federation of Settlements and Neighborhood Centers, and the New York Coalition for More Jobs—urged that:

A public service youth employment program of one million jobs, at least three-quarters of which would be for out-of-school, out-of-work youths should be launched immediately, through the Comprehensive Employment and Training Act, other existing mechanisms, new contractual arrangements or a combination of these. Preference in the program should be given to those youth who are members of minority groups, to women, and to those others whose employment problems are manifestly greater.

Such a program should provide socially useful work serving community needs, and prepare enrollees to move on to jobs in both the private and public sectors of the economy.

On Tuesday, January 11, I introduced a bill (S. 170) which would establish just such a program of community service jobs for up to 1 million youths, as well as establish a wide variety of other programs to assist youths in their preparation for the world of work. This bill, the Comprehensive Youth Employment Act of 1977, was coauthored by my good friend Senator JAVITS, and has been cosponsored by Senator ABOUREZK, MATSUNAGA, CASE, INOUYE, ANDERSON, and MOYNIHAN.

Among the programs that would be created by enactment of the Comprehensive Youth Employment Act are:

First, a youth community service program to create productive jobs for youths on local community projects;

Second, a youth opportunities in private enterprise program to help youths find jobs in private enterprise and to reimburse industry for on-the-job training costs;

Third, a work experience for in-school youths program to provide youths with job experience before secondary school completion;

Fourth, an occupational information and career counseling program to provide youths with the job counseling and information needed to make informed career choices;

Fifth, a national conservation corps to provide jobs for youths on national and local conservation corps projects; and

Sixth, an expansion of the Job Corps for severely disadvantaged youths.

I welcome this group of organizations' call for a significant youth employment program and I welcome their support.

Mr. President, I ask unanimous consent that the position paper be printed in the RECORD at this point.

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

POSITION STATEMENT ON YOUTH EMPLOYMENT

We believe that a major assault on the problems of youth employment is essential, and that this effort must begin in the very near future. To begin to meet the immediate needs of today's unemployed youth, a carefully planned, one-million-job public service youth employment program should be implemented as soon as is feasible; and a Presidential Youth Commission with the full backing of the President and with considerable authority should be created within the next six months for the purpose of long-range, comprehensive planning, coordination and youth advocacy.

The millions of young people who are unemployed cannot be adequately absorbed by the private sector, nor can they be reached by the standard remedies for adult unemployment and a flagging economy—increased employment among adults does not benefit young people, and tax cuts do not filter down to them. If we are to reduce the national tragedy of massive, chronic youth unemployment the special needs of youth must be confronted directly.

Furthermore, if young people are to be prepared for productive adulthood we must recognize that youth employment problems encompass many groups: the unemployed, the underemployed, those seeking part-time work, and all younger children who are uninformed about the world of work. If the

federal government is to launch a truly meaningful effort to reduce youth unemployment for the present and insure jobs for youth in the future, the neglected needs of all of these groups must be met.

Dealing with all these needs would require a massive effort, including the creation of between four and five million jobs, which cannot realistically be expected at this time. However, a limited approach, considering a hierarchy of needs should be undertaken as quickly as possible, with long-range plans prepared by the Presidential Youth Commission to meet the needs of those young people not immediately served.

PUBLIC SERVICE YOUTH EMPLOYMENT PROGRAM

A public service youth employment program of one million jobs, at least three quarters of which would be for out-of-school, out-of-work youth should be launched immediately, through the Comprehensive Employment and Training Act, other existing mechanisms, new contractual arrangements or a combination of these. Preference in the program should be given to those youth who are members of minority groups, to women, and to those others whose employment problems are manifestly greater.

Such a program should provide socially useful work serving community needs, and prepare enrollees to move on to jobs in both the private and public sectors of the economy.

PRESIDENTIAL YOUTH COMMISSION

A Presidential Youth Commission, housed in the White House, should be created to provide overall direction and planning for youth programs, greater coordination among operating departments (e.g. the Departments of Labor and Health, Education and Welfare) and greater adherence by all concerned to the developmental needs of youth. Equally important, the Commission would be a focal point for youth advocacy within the federal structure.

The PYC should be given Cabinet-level status, and its Commissioner included in Cabinet meetings. Its mandate should require the development of comprehensive, long-range plans for federal action, to be presented to the President within one year of its creation.

The Commission in its planning should, through conferences and workshops, seek input from and consultation with a broad spectrum of groups in our society, including business, labor, education, voluntary organizations and youth. Voluntary agencies, in particular, have had significant success in youth program operations, and should be given a major role in both planning and conducting future efforts.

All of the organizations endorsing this statement stand ready to assist in the planning and implementation of federal efforts made on behalf of youth, and we are prepared to provide additional specifics upon request.

RECOMMENDATIONS ON PUBLIC SERVICE EMPLOYMENT PROGRAMS FOR YOUTH

1 That jobs be developed in line with an analysis of current and projected labor market needs to insure that Public Service Employment participants will be able to compete for jobs upon leaving the program, and that the labor market needs be quantified and placed in a time frame.

2. That in developing these jobs for youth, task analysis be used to identify training needs, specify skill levels, and prepare job descriptions.

3. That separate data on youth be gathered measuring employment, underemployment and unemployment by census tract, race, sex, age, education, previous work experience and usable skills.

4 That a national monitoring and evaluation effort be part of the overall program from its inception to insure continuous program improvement and progress, and that it be conducted by non-government organizations.

5. That every program established by any department of government contain a youth employment section in its manpower impact statement.

6. That there be a significant role for voluntary and community-based organizations in planning and implementing youth employment programs, both on national and local levels.

7. That the Public Service Employment Program, to insure community participation, require local communities to establish a cooperative network of agencies and institutions for comprehensive planning, implementation, and evaluation.

8. That individual programs be small in size and located as close to home as possible, eliminating the need for residential services, at least in urban areas.

9. That training slots and jobs be focused on areas of social need and on labor-intensive occupations.

10. That wherever possible young workers be integrated with the regular adult work force and not segregated with their peers.

11. That every local program be mandated and funded to provide reasonable and related education and training.

12. That competent counselors and supervisors be provided in every program, and that the ratio of such staff to enrollees be established on the basis of work requirements and enrollees' needs.

13. That at least the minimum wage be paid to all enrollees, with the possible exception of those who may be engaged in a carefully supervised, legally authorized, apprenticeship training program.

14. That no job in the program be created by laying off a regular employee.

UNITED STATES–CANADIAN RELATIONS

Mr. PEARSON. Mr. President, I take this opportunity to commend the Canadian Government for making 250 million cubic feet of natural gas per day available for export to the United States. At a time when shortages of natural gas in the United States are at emergency levels, the decision of the Canadian National Energy Board is particularly welcome and significant. Utilities in eastern Canada will reduce their consumption from the trans-Canada system so that the Columbia Gas Transmission Corp. might purchase the vitally needed gas for distribution to gas-deficient areas in our Nation.

Mr. President, as a result of the record cold wave, the United States is experiencing a natural gas shortage that has idled over 200,000 workers and closed hundreds of schools. Many States have declared energy emergencies and have called for voluntary conservation measures by homeowners, stores, and industries.

In my home State of Kansas, the Energy Office predicted that natural gas curtailments would be 63.5 billion cubic feet—a shortfall of 29.65 percent. However, due to the severe conditions, the actual curtailments for the first 2 months of this winter are running at a shortfall of 37 percent.

Although the amount of natural gas imported by the United States from Canada is only 4 percent of our total consumption, it is vitally important to many regional markets. Canadian natural gas accounts for 71 percent of the gas consumed in New Hampshire, Vermont, and Maine; 60 percent of the gas in Montana; 30 percent of the total natural gas used in California, Washington, and Oregon; and over 15 percent of the natural gas in Minnesota, Wisconsin, and Michigan. The increased availability of Canadian natural gas will allow the United States to better distribute its own supplies to those areas of the Nation that need it most.

Mr. President, this sale should be viewed within the context of our overall relations with Canada. The United States and Canada have a unique relationship. We share the world's largest unarmed border. Over 70 million people cross this 5,500 mile frontier each year. Canada and the United States have the largest bilateral trading pattern in the world, amounting to over $40 billion annually. There is a network of relationships—personal, family, business, financial, formal, and informal—which affect life in both countries. Since World War II, the two nations have entered into formal mutual security and special trade relationships.

We are so accustomed to the friendship and interdependence of the United States and Canada that we tend to overreact when differences between the nations arise. But we must become aware of the fact that our relationship is changing.

Canada is seeking to reduce its dependence on the United States and establish a distinctive national identity. Canadians are becoming more nationalistic. At the same time, the United States is continuing to stress the importance of political and economic cooperation. The ensuing conflicts have strained our friendship. At times, the tensions between the two nations have tended to obscure a fundamentally sound relationship. The good relationship must be preserved—we must make constructive efforts to solve our differences.

Canadian nationalists have attacked American dominance of the Canadian economy. Many Canadians feel this dominance cuts short their bid toward a separate identity. They back their feelings by pointing out that Americans own 80 percent of the long-term foreign investment in Canada; they control 96 percent of the auto industry; 90 percent of the electrical equipment industry; and 50 percent of all manufacturing.

A recent Gallup poll indicated that 58 percent of all Canadians would prefer to see their country buy a majority control of U.S. companies operating in Canada, even if this meant a reduction in their own standard of living.

The Canadian government has reflected this public opinion by imposing trade restrictions curtailing American imports of both capital and agriculture.

Let me briefly list just a few of the other issues that are presently increasing United States-Canadian tensions. Both nations present conflicting claims regarding the extension of their maritime jurisdictions. There are differences in approach to the issues presented at the Law of the Sea Conference. Americans are concerned that Canadian cable television stations pick up American pro-

grams, but blackout the commercials and replace them with Canadian sponsors. Both nations are upset that the other is polluting the Great Lakes. Americans are concerned about plans to nationalize American-owned potash companies in Saskatchewan. There is disagreement whether natural gas from Alaska should be piped through Canadian territory.

Mr. President, Canadian-United States energy relations are also causing tensions. Canada has always been considered the most reliable and secure source of imported energy for the United States. The new Canadian energy policies are an integral part of the official "Canada First" program. The Canadians now state that only energy sources found to be in excess of domestic needs will be exported.

Mr. President, it is in light of these recent events that the decision of the Canadian National Energy Board to release the needed gas supplies must be seen. Certainly, the two nations have their differences. But we must remember that in times of emergency our cooperation far exceeds our conflicts. Mr. President, we have often overacted to some of our differences. We must remember that our relationship with Canada remains sound. The release of the natural gas is most appreciated, and it is a positive sign that we can work out our common differences.

UKRAINIAN DAY OBSERVANCE

Mr. ZORINSKY. Mr. President, 59 years ago this week, the freely elected parliament and Government of the Ukraine declared itself to be a free and independent nation.

As we discuss modern issues like the "Vladivostok and Helsinki Agreements," "detente" and "SALT," we might do well to remember that Soviet Russia among others recognized the fledging nation. We all know what happened. Almost immediately, the Soviet Government moved overtly and covertly to incorporate the sovereign Ukrainian state as a constituent member of the Soviet Union.

As the United States of America moves into its third century of democracy and freedom, we should not forget the millions of people whose aspirations for national self-determination have either been crushed or never realized.

A TRIBUTE TO THE UKRAINIAN NATION

Mr. ROTH. Mr. President, January 22 marks the anniversary of the independence of the Ukraine. The Ukraine occupies a large area in eastern Europe, and its people are one of Europe's most numerous national groups. They have a distinguished and important place in world history, beginning with the flowering of Kiev as a center of cultural enlightenment in centuries before the Mongol conquest in the 13th century.

Unfortunately, the Ukraine enjoyed independence for only a brief period after the first World War. In 1921, the invading Red Army crushed the Ukrainian Republic and a Communist-controlled puppet regime was established. In 1923, the Ukraine was merged into the Soviet Union, thus betraying the Ukrainian people's desire for freedom and independence. Since then the Ukrainian people have suffered many hardships including famine, invasion, and political and cultural repression.

Despite Soviet repression, the Ukraine continues to produce courageous and articulate spokesmen, such as Valentyn Moroz and Svyatoslav Karavansky. I am pleased to join the many thousands of Americans of Ukrainian descent in Delaware and the other 49 States in once again paying tribute to these individuals and the great Ukrainian nation. I am confident that they will one day regain their legitimate rights.

STATEMENT BY SENATOR ABOUREZK

Mr. McGOVERN. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from South Dakota (Mr. ABOUREZK).

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

STATEMENT BY SENATOR ABOUREZK

I have asked my colleague Senator McGovern to insert this statement into the RECORD today because it was necessary for me to be absent. I thought it was important to express my feelings about the position Mr. Califano, the new HEW Secretary, has taken in regard to the use of public funds for abortion.

Mr. Califano's stated opposition to the use of Medicaid funds for abortions runs counter to my feelings on this subject but also runs counter to what I think is required by the equal protection clause of the 14th Amendment to the Constitution.

If Mr. Califano, in his position of HEW Secretary, does in fact restrict the use of Medicaid funds for abortion, it is clear he would be placing the government of the U.S. in the position of discriminating against the poor who cannot afford to pay the cost of an abortion.

Mr. Califano would not be putting an end to all abortions in this country because abortions would still be available for those who could afford it. Abortions will also continue to occur because poor women will again obtain their abortions from backroom abortionists in both unsafe and inhumane conditions.

Mr. President, I want to urge Mr. Califano not to restrict the progress we have made in the country toward realization of equal rights for every American.

HOW TO SUCCEED AT HUD

Mr. BROOKE. Mr. President, as we go through this period of transition from one administration to another, there is time to make an assessment of the state of the government being handed over from the Ford administration to the Carter administration.

As the ranking Republican on the Housing Subcommittee, I am particularly interested in the state of the Department of Housing and Urban Development. In this regard the January 24 Washington Post contained two excellent articles—the first by Charles Krause titled "What Mrs. Hills Did," and the second by Carrie Johnson titled "What Mrs. Harris Faces." I shall ask unanimous consent that these two articles be printed in the RECORD following my remarks.

Both of these women are talented lawyers with forceful personalities. I think Mrs. Hills' service in Government has given her a deserved reputation for both competence and an ability to achieve results. And there is every reason to believe that if Mrs. Harris does as well in administering HUD as she did in fielding questions at her confirmation hearings she will be more than qualified to carry on what Mrs. Hills has so ably begun.

Mr. President, I ask unanimous consent that the two articles be printed in the RECORD.

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

WHAT MRS. HILLS DID

(By Charles A. Krause)

Before Carla Anderson Hills slips from the public eye, her almost two years of service as Secretary of Housing and Urban Development should be appraised.

Sen. William Proxmire (D-Wis.), chairman of the Senate Banking, Housing and Urban Affairs Committee, was wrong when he said during confirmation hearings for Patricia Roberts Harris, the new HUD Secretary, that Mrs. Hills was "a failure."

Proxmire and other critics of Mrs. Hills say that she never demonstrated a real concern for the housing needs of the poor, that not enough subsidized housing was built during her tenure and that she was unable to get more money from the Ford administration for the cities.

But Secretary Hills didn't see her role that way. She saw it as straightening out demoralized, inept and confused department to provide the framework for effectively delivering the programs HUD already has.

It is now generally recognized by almost everyone who deals with HUD, from the president of the Mortgage Bankers Association of America to the director of Ralph Nader's Housing Research Group, that she was right: HUD had to be cleaned up administratively before there was any point in dumping more programs in its lap and before more ambitious goals could be pursued. And Carla Hills was right for the task.

As Secretary, she was tough. She accepted none of the gobbledygook that some HUD bureaucracy predictably tried to push on her. She had a command of the department's programs that seems to have awed even the oldest HUD veterans. And she tried valiantly to make those complicated programs work.

Specifically, Mrs. Hills managed to get HUD's billion-dollar rent-subsidy program off the ground, no mean feat considering that the program, passed by Congress in 1974, did not even have published regulations when she came to HUD in 1975.

She also succeeded in getting a financial-counseling program for thousands of HUD-insured homeowners who are on the brink of defaulting on their mortgages. She started the federal government's successful urban homesteading program, which allows families to buy homes for $1 if they will fix them up and live in them for three years.

Finally, she earned the respect of mayors, congressmen, housing industry representatives and the press for her truthfulness, her unwillingness to promise more than she could deliver and her insistence on delivering what she promised. All too often she spoke in legalese, but she could be eloquent on the subject of revitalizing the nation's cities.

At the end, this smart lawyer, who knew nothing about housing when she was ap-

pointed, was able to make program decisions based on a keen understanding of the problems inherent in providing housing for the poor and lower-income families.

She could not do everything in less than two years time. But that had more to do with the sorry state she found HUD in when she came than with any inability or unwillingness on her part to grapple with hard issues and demand results.

Proxmire called Mrs. Hills a failure because HUD was able to produce only 41,000 new subsidized units last year under the new Section 8 rent subsidy program. He should have complimented her: It is amazing that any new units were produced at all, given the many serious administrative and programmatic problems she found at HUD

There is no question that, despite Mrs. Hills' best efforts, HUD is still in many ways a troubled, wasteful, often unproductive agency that wraps its programs in red tape.

Just one example: It now takes three years from the time regulations are published to the time a new public housing unit is completed. Trying to understand all of the procedures would give anyone a headache. And this program was begun 40 years ago, plenty of time, it would seem, to untangle the bottlenecks and streamline the requirements.

One top HUD official recently likened the department to a battleship: hard to stop, hard to start and almost impossible to turn quickly. HUD's waves (in the form of bad programs, bad administraiton and even corruption) have swamped whole cities (one needs only visit Detroit to see how HUD's old home-ownership program for the poor has created terrible waste and destruction).

But that was not Carla Hills' fault. She came to clean up the mess and she succeeded beyond most people's dreams. Toward the end, in fact, several influential Democrats were urging President Carter to keep her on.

HUD may still be a clumsy battleship, but no one can say that Carla Hills was not a tough and talented captain.

WHAT MRS. HARRIS FACES

(By Carrie Johnson)

The incoming Secretary of Housing and Urban Development, Patricia Roberts Harris, has started off with two smashing performances. First she invoked her experiences as "a black woman, the daughter of a Pullman-car worker," to demolish Senate Banking Committee chairman William Proxmire's criticisms of her ability to represent the urban poor. Then she won rave reviews from big-city mayors last week by promising vigorously—though predictably—to channel more funds to the cities and to act as their "aide," not their "adversary."

Yet a basic question remains. It is not whether an aggressive lawyer with a sharp mind and rhetorical flair can be effective at HUD. It's how do you tell?

How do you measure success in the murky arena of urban affairs? Proxmire's favorite gauge is how many subsidized housing units get built. By that standard the best HUD Secretary was George Romney. But that expansionist era (1969-73) was soured by massive scandals and mismanagement. Hundreds of thousands of homes and apartments underwritten in the Romney years have come back to HUD in default, causing enormous damage in cities like Detroit, plus federal losses that may exceed $1.8 billion.

Well, HUD is supposed to be more than a housing agency, so perhaps some broader index of urban progress can be applied. Yet the HUD Secretary does not have full command of federal urban policies; key programs such as jobs, welfare, revenue-sharing and public works are run elsewhere. Even in the housing planning and development areas where HUD is engaged, what happens often depends more on economic conditions and local leadership.

Are we left, then, to judge Mrs. Harris' performance only by whether she can keep the mayors contented and hold her own on Capitol Hill? Not at all. There are some tough tests on which she can be graded. Here are three:

(1) Whether she can run HUD at least as well as her predecessor, Carla A. Hills, whose greatest achievement was devising a management system that worked. She negotiated specific performance goals for HUD personnel and monitored progress so effectively that she could tell Proxmire this month, for instance, that "we said we would reserve 400,000 units or rental assistance by September 30—and we reserved 492,000." Overall, the Hills staff calculated that 40 of her 61 targets were met, with minor problems in 17 areas and major snags in only four.

Careful readers will have caught one jarring word there: "negotiated." Does a HUD Secretary really have to negotiate goals with her subordinates? Certainly—if she wants to set attainable targets and mobilize a bureaucracy that is far-flung and was so recently demoralized.

Moreover, there is no faster way to find out where HUD's limits are. For instance, Secretary Harris has said that she wants to reach the 1968 housing act's goal of 600,000 subsidized housing starts per year—which involves more than doubling production. HUD budget officers estimate that to do that under current programs, she would need 1,600 to 2,000 more personnel. A few such figures should make it clear why Mrs. Hills put such emphasis on modest promises and sharp management.

(2) How well she can make the housing subsidy programs work. This is not just a matter of getting more resources and minimizing scandals and defaults. Two other problems need to be addressed. One is that HUD's regulations and guidelines need to be pruned. The programs' complexities make many builders and investors reluctant to participate.

A larger problem is the perennial conflict between building housing and housing people. Emphasizing subsidized construction is the best way to please the housing industry and its congressional champions. But subsidizing lower-income families in decent existing housing costs much less per unit and may be more beneficial for the cities and the poor whom Mrs. Harris regards as her prime constituents. To help stabilize neighborhoods and enable more families to find decent homes, she will have to persuade Congress to make the programs more flexible.

(3) Whether she can persuade local officials, especially in the suburbs, to accept lower-income families where they are now shut out. Since the Supreme Court has discouraged legal challenges to restrictive zoning, the best tool for opening up the suburbs may be the popular program of block grants for community development. To qualify for aid, jurisdictions must file plans that include housing for the lower-income families "expected to reside" there. Many suburbs have submitted plans and gotten sizable grants—while doing nothing to provide the homes.

By enforcing the law sternly, the new Secretary could force such communities to choose between providing some lower-income housing and losing their grants. This is, however, a very delicate exercise. If HUD comes on too strong in favor of economic integration, many jurisdictions might simply pull out of the program—and President Carter or Congress might well pull out the rug from under HUD. Thus, if she wants to open up new housing opportunities for poorer families, Mrs. Harris cannot afford to be too much their champion. How she handles this prickly problem will be the hardest test of her political astuteness and persuasive powers.

PRELIMINARY NOTIFICATION: PROPOSED ARMS SALES

Mr. HUMPHREY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that five notifications were received on January 19, 1977.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S116 in the Capitol.

REAPPRAISING NUCLEAR WEAPONS POLICY

Mr. HATFIELD. Mr. President, a recent issue of Army magazine contained a thought-provoking article on nuclear weapons policy. Specifically the article questions the wisdom of our substantial reliance upon nuclear weapons, both tactical and strategic, for response to a wide variety of conflict situations. As the author, Dr. Harvey A. DeWeerd, points out—

> Policies which call for the use of nuclear weapons for any purpose but to deter or defend against a direct nuclear attack on one's homeland will become increasingly open to question.

Mr. President, as we contemplate estimates of Soviet capabilities and assess our own, I believe it is most important that we evaluate the role of nuclear weapons in our defense posture. I believe that this article will be helpful in that evaluation, and I ask unanimous consent that it be printed in the RECORD.

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

[From Army magazine, January 1977]

IS IT TIME UNITED STATES REAPPRAISED ITS NUCLEAR WEAPONS POLICIES?

(By Harvey A. DeWeerd)

Should the nuclear weapons policies developed by the United States from 1945 to 1976 be reexamined or revised?

To judge from what is being written in the press and said over the air, many Americans feel that as soon as the Carter Administration can divert its attention from urgent

domestic problems, it would be in the national interest to reexamine the extent to which nuclear weapons should be relied upon to support American foreign-policy objectives.

Existing policies about the use of nuclear weapons were importantly influenced by the events of World War II, particularly by the strategic bombing campaigns against Germany and Japan. The surrender of Japan, coming immediately after nuclear air strikes against Hiroshima and Nagasaki, led some to believe that strategic nuclear bombing operations would "revolutionize" warfare and reduce the need for large armies, navies and air forces.

They believed that a few bombers carrying nuclear weapons would be able to accomplish what immense fleets of planes carrying "high-explosive" bombs failed to accomplish in World War II: defeat the enemy quickly by destroying his military, industrial and population bases of power.

In their enthusiasm men wrote books and articles about what they called "the ultimate weapon."

In "the gunpowder era," the utility of a new weapon was determined by the extent to which it could help defend a country and further its foreign policy objectives. The nations of the world have had centuries to adapt to the invention of gunpowder, but the United States has had only three decades to adjust its foreign and defense policies to the invention and proliferation of nuclear weapons.

A study of political-military history from 1945–1976 leaves one with the impression that the United States rushed into a reliance on nuclear weapons in hope of realizing simultaneously great economies in defense expenditures and increased security. The results have been both unexpected and disappointing.

In what we now know was the false hope of big-three unity after World War II, the United States demobilized its great armies, naval and air forces with a speed unequaled in history. The government reduced defense expenditures on conventional forces to a point where it could not carry out President Harry S Truman's "contain communism everywhere" doctrine announced in 1947.

Three years later, in the spring of 1950, the National Security Council made a study of the defense implications of the Truman doctrine. Its findings, revealed in the recently declassified (formerly top-secret) report, NSC–68, were that the weakness of the United States in conventional forces would prevent it from offering resistance to the Soviet Union at "any of several vital pressure points in the world."

This being the case, the only deterrent to Soviet aggression the United States could present, NSC–68 states, "would be to make any of the vital pressure points it could not hold the occasion for a global war of annihilation."

A number of factors led the United States to decide on nuclear weapons as the cornerstone of its defense policy: the cold war behavior of the Soviet Union; the fear of "bankrupting the country" by trying to support conventional forces, and the seductive appeal of nuclear-deterrence theories which held that nuclear weapons are so destructive they would deter aggression and thus "do away with war."

The decision was also influenced by the then current belief in the "monolithic" character of the communist threat under Stalin, in the "indivisibility of peace," and the anticipated "total" character of the next great war, commonly referred to as "World War III."

In the late 1940s and early 1950s, it was widely assumed that World War III would happen as soon as the Soviet Union developed a strategic nuclear capability to attack the United States and would be accompanied by a Red Army invasion of Western Europe.

Instead of World War III, the United States in the 1950s and 1960s became involved in limited conventional wars in Korea and South Vietnam, fighting against the proxy powers of the Soviet Union and the People's Republic of China. While the last of these long and costly wars was being waged in Vietnam, thousands of miles from the United States, we accepted the communization of Cuba less than 100 miles from the coast of Florida.

We also accepted a détente with the Soviet Union which helped that country support our enemies in Vietnam, and we also accepted a great shift in the strategic balance favoring the Soviet Union.

For a free and open country like the United States, one of the major problems presented by the decision to rely on nuclear weapons was to develop policies under which these weapons could be used to defend the homeland and protect American interests abroad—policies that would be credible to our adversaries, our allies and our own people.

The use of nuclear weapons to defend the United States itself was never a matter of much doubt. What was always in doubt, even in periods of American monopoly or great superiority over the Soviet Union, was the extent to which they could be used to defend third world areas important to the United States.

By the mid-1960s, the strategic nuclear capabilities of the Soviet Union had increased to where there seemed to be few places outside the United States worth defending at the cost of an all-out nuclear war.

There have been great differences concerning the use of nuclear weapons between the declarations of the Soviet Union and those of the United States. U.S. statements have always implied the deterring of war rather than fighting one with nuclear weapons; the Soviets have rather emphasized the necessity of fighting and "winning" a nuclear war.

American policy statements have changed frequently from 1945 to 1976; Soviet statements have not. They have consistently declared that any great war with the West would involve the use of nuclear weapons, and that tactical use of nuclear weapons would inevitably lead to all-out nuclear war.

The United States has been at a disadvantage in the battle of words about nuclear weapons. Because the United States fought two large-scale limited wars in Korea and Vietnam and accepted a less-than-favorable outcome of those wars without using nuclear weapons, U.S. statements on nuclear weapons have been tested in ways that Soviet statements have not.

One consequence has been to raise questions about the certainty that the United States would use nuclear weapons to defend its major allies. Lord Louis Mountbatten, after he had retired from the post as chief of the British Defence Command and no longer had to support the official position of NATO on tactical nuclear weapons, wrote a letter to the London *Times* (23 February, 1970) which said: "No one in his right mind would contemplate the use of tactical nuclear weapons [in Europe] because this would lead to total global nuclear destruction."

Gen. Alfred G. M. Perétié of the French Army expressed much the same view in sardonic language in the July, 1975, issue of the *Revue de Défense Nationale*. With exquisite understatement, he wrote: "The thinking of those who recommend the nuclear initiative does not seem to be particularly felicitous."

While some critics have pointed to inconsistencies between what the United States has said about nuclear weapons and what it has done in the years 1945–1976, there is a grim consistency about what Soviet leaders have said on the subject of nuclear weapons in war and what they have done to prepare for it.

They have pushed through to near completion an immense but unpopular civil defense program. They have created a large militia force to supplement the regular military establishment in order to maintain order in the event of a nuclear war. They are taking steps to protect vital industries and raw materials in order to ensure a successful post-attack recovery program.

They are reported to have protected food reserves from nuclear contamination. All that remains to be done in order to demonstrate their "war survival capability" would be to do what some Kremlinologists predict they will do at some time of maximum political impact in the future—evacuate the population of some of their large cities.

All this does not mean that the Soviet Union will employ its growing strategic nuclear forces to launch an all-out attack against the United States. They will not have to pay the costs of such a course of action to extract concessions from the United States in salami fashion—all of which they will probably describe as "contributions to detente" and "steps toward peace."

The difficulties involved in arriving at credible American policies for the use of nuclear weapons are illustrated by the tortuous series of changes made in post-World War II policy statements issued by the United States.

These statements ranged from John Foster Dulles' 1954 Massive Retaliation doctrine to President Dwight D. Eisenhower's 1955 assertion that nuclear weapons are the "same" as conventional weapons and would be used in the same way; to Adm. Arthur Radford's 1958 pronouncement that "our whole military program is based on nuclear weapons"; to Robert S. McNamara's 1962 "city avoidance" policy statement and to his 1964 "flexible response" statements; to Melvin Laird's 1969 "assured destruction" policy statement, through James R. Schlesinger's 1974 plea for "limited nuclear options" and his agonizing statement in 1975: "There is a residual possibility that in the event of a major aggression against the United States and its allies, the United States may have to employ nuclear weapons."

Small wonder that our allies and our own people have been confused by the changes expressed in these statements.

One important factor behind the series of changes in American policy statements has been the enormous growth in numbers and effectiveness of nuclear weapons in the stockpiles of the Soviet Union and the United States and uncertainties about the consequences of their use in war.

A 1975 study conducted by the National Academy of Sciences strongly suggested that environmental consequences of the gravest nature might follow the explosion of large numbers of high-yield nuclear weapons in the atmosphere.

These adverse environmental consequences are expected to be so widespread and unavoidable that the country launching a large-scale nuclear attack upon another country woud suffer serious physiological, economic and environmental damage—even if there were no nuclear response from the country which had been attacked.

As these prospects are studied here and in the Soviet Union, policies which call for the use of nuclear weapons for any purpose but to deter or defend against a direct nuclear attack on one's homeland will become increasingly open to question. French Gen. Pierre Gallois, writing in *International Security* (Fall, 1976), expressed a view held by many West Europeans when he said: "Countries which possess nuclear weapons foresee their use only for the direct protection of their territory."

This is likely to be the case no matter what policy statements are issued about the use of nuclear weapons.

McGeorge Bundy, who served as national security adviser to Presidents John Kennedy and Lyndon Johnson, wisely discounted the views expressed by "defense intellectuals" about the willingness of U.S. (or Soviet) leaders to use nuclear weapons against the other country's cities. He wrote:

"There is an enormous gulf between what political leaders really think about nuclear weapons and what is assumed in the complex calculations of relative advantage in simulated strategic warfare. Think-tank analysts can set "acceptable" damage levels well up in the tens of millions of lives. They can assume that the loss of dozens of great cities is somehow a real choice for sane men. They are in an unreal world. In the real world of real political leaders—whether here or in the Soviet Union—a decision that would bring even one hydrogen bomb on one city of one's own country would be recognized in advance as a catastrophic blunder . . . and a hundred bombs on a hundred cities are unthinkable. Yet, this unthinkable level of human incineration is the least that could be expected by either side in response to any first strike in the next ten years, no matter what happens to weapons systems in the meantime. . . . In sane politics, therefore, there is no level of superiority which will make a strategic first strike between the two great states anything but an act of folly."

Present U.S. alliance commitments to South Korea and NATO would require the employment of tactical nuclear weapons by the United States if conventional theater forces were unable to stop a communist advance into their territory. If theater nuclear forces should fail, then strategic nuclear forces would be expected to come into action. The ultimate, if somewhat irrational, threat in that case would be nuclear attacks on the aggressor's cities, with all that this would imply.

The U.S. Army would be vitally involved in the first two stages of such a tragic chain of events. Among the armies of the great powers, the U.S. Army is the only all-volunteer force. In existing circumstances, the United States must tell its small volunteer Army that it must train and prepare for conventional operations in which it is likely to be outnumbered.

Then, when things go wrong and—in former Secretary of Defense Schlesinger's words, "circumstances [are] indeed so desperate that there seemed to be no other alternative"—tactical nuclear weapons would be used.

That is not an attractive prospect for any army. You cannot plan in a responsible fashion for such a war, to say nothing of preparing troops to face the ordeal of such uncertainties. This writer has taken part in a great many war games in which the opening scenario told the Blue team that it must conduct the defensive phase of a campaign on the assumption that conventional weapons are to be used in the initial phases, but that nuclear weapons might be used after the conventional war had essentially been lost.

Such a scenario presents impossible problems to soldiers, planners and operational officers. While war games cannot simulate what would happen in a real war, Blue players invariably conducted the conventional phase of these war games with the objective of putting their surviving forces in the best condition to face the changeover to tactical nuclear war.

In many instances, this prevented them from getting the best defense possible out of their conventional forces before the changeover took place.

In many instances, this prevented them from getting the best defense possible out of their conventional forces before the changeover took place.

The situation is not the same for the Soviet Union. With its conscript forces and its police-state discipline, it can and does tell the Red Army to train and prepare for war with the West on the assumption that nuclear weapons would be used. It conducts its maneuvers in ways consistent with this assumption.

Yet, it maintains conventional forces large and powerful enough to attain some of its foreign-policy objectives without requiring the support of tactical nuclear weapons. Thus far, this fact has provided all the rationale needed to satisfy its thoroughly indoctrinated and disciplined armed forces.

One strong incentive for reexamining U.S. nuclear weapons policies would be the possibility of lessening the burden under which our armed forces are compelled to operate, which arises from the inconsistencies and irrationalities inherent in these policies—as compared to the elements of consistency which seem to exist between Soviet statements and preparations for war.

Even Secretary of State Henry Kissinger, who has tried to carry out U.S. foreign policy while Soviet strategic nuclear capabilities are rapidly increasing, has expressed doubts about the usefulness of nuclear weapons. Exasperated by Soviet unwillingness to agree on reductions of nuclear weapons—or even parity of strategic nuclear forces—in the Moscow arms limitation talks of July 1974, he asked the questions: "What in God's name is strategic superiority and what does one do with it?"

Speaking in San Francisco on 3 February, on the "new requirements" of U.S. foreign policy, he said:

"Today, while we still have massive strength, we no longer enjoy meaningful nuclear superiority. . . . Today, for the first time in our history, we face the stark reality that the challenge is unending; that there is no easy and surely no final answer; that there are no automatic solutions. We must learn to conduct our foreign policy as other nations have had to conduct it for so many centuries, without escape and without respite, knowing that what is attainable falls short of the ideal, mindful of the necessities of self-preservation, conscious that the reach of our national purpose has its limits. This is a new experience for Americans.

The fact that Dr. Kissinger felt compelled to say these things in 1976 suggests that they were not fully understood or acted upon in earlier years when the United States decided upon the use of nuclear weapons as the chief support of its foreign policies.

Some observers of the American scene look forward to the year 1977 as a possible turning point in U.S. nuclear weapons policies. During the Presidential campaign, President-elect Jimmy Carter spoke out about the dangers of nuclear proliferation inherent in U.S. nuclear power export proposals.

This was followed on 28 October by a major announcement by President Ford of new criteria to be applied to possible American exports of nuclear fuel and equipment, especially those related to national reprocessing or fuel-enrichment activities which might lead to the production of nuclear weapons.

President-elect Carter raised questions about the continued basing of American tactical nuclear weapons in South Korea. By passing the War Powers Act of 1973, Congress acted to restore its constitutional responsibilities for the declaration or initiation of war.

Several bills were before committees of the last Congress, which would have required its approval before the President could authorize the use of nuclear weapons in war. The American Federation of Scientists has mounted a strong campaign to have the United States adopt a resolution preventing a first use of nuclear weapons.

It is to be hoped that these and other developments will lead to a great national debate on what our foreign policy should be and how we should attempt to implement it. Whatever the outcome of such a debate, the U.S. Army stands to gain from it.

SENATOR JAMES ABOUREZK: ESTEEMED COLLEAGUE

Mr. McGOVERN. Mr. President, South Dakota will lose an effective and forceful voice in the U.S. Senate when Senator JAMES ABOUREZK steps down. He is one of the most courageous men ever to serve in the U.S. Senate.

His decision not to seek reelection to the position he has filled with such distinction will be disappointing to his many friends in South Dakota and to his colleagues in the Senate. But having sustained many of the personal and professional pressures of his office, I can readily understand the reasons for his decision.

Senate service, as Senator ABOUREZK has noted, requires a total commitment, and all too frequently it is the family of the public servant that must suffer his absences and the lack of daily attention to their needs.

In the compassionate way that has marked his entire public career, Senator ABOUREZK has timed his decision so that those who may have an interest in running for the U.S. Senate can make their plans well in advance.

As a Senator from South Dakota and as a friend of JIM ABOUREZK, I regret that he will not seek reelection—but as a father and a grandfather, I can understand his decision.

It will require a strong and eloquent public servant to take his place. JIM ABOUREZK will be keenly missed in the Senate.

Mr. President, I ask unanimous consent that Senator ABOUREZK's statement concerning his decision not to seek reelection be printed in the RECORD.

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

STATEMENT BY SENATOR JAMES ABOUREZK

I am announcing today that I will not be a candidate for re-election to the United States Senate in 1978. I have spent long, sometimes painful hours discussing this decision with my family and my staff. But in the end it was a decision which had to be made, and could only be made, by my wife and me together.

I have been active in politics since 1968. When I ran for the House of Representatives in 1970, and again for the Senate in 1972, I made only one promise—I promised that I would work as hard as I knew how to represent the people of South Dakota. I believe I have fulfilled that promise.

But I have fulfilled it at great cost.

During the time I have served our State I have had, to my sorrow, to watch my children grow up from a distance. I have seen my wife and my children endure, in silence, while my work has kept me from fulfilling my responsibilities to my family.

While I consider it the public duty and responsibility of every citizen to work for the benefit of others within our society. I have another duty—a duty which I have neglected—and that duty is to my family.

Together, Mary and I have decided to live more normally as a family, to put our children through college, and to try to know our grandchildren better. We have decided after eight years of truly fulfilling, but personally draining public service, that it is time to meet our responsibilities to one another, and to the children. These are the responsibilities I will assume when my term in the United States Senate ends two years from now.

Some have told me that I could spend much less time on my Senate duties, more time at home, and still remain in the Senate. I do not believe this. I have always given a total commitment to this job. I could not, and would not, give it anything less.

Others have suggested that I should wait until next year to announce my decision not to seek re-election. But I believe this would be dishonest. My Party, the Democratic Party, have a great many capable men and women, people who are willing to offer their talents to the citizens of this State. They deserve the opportunity to prepare themselves for public service free of uncertainty about my own future intentions.

I have considered the time I have spent in public service to be a contribution to my State, to my country, and to its people. I came into politics with the idea that I had a contribtuion to make. I never had the idea that I should perpetuate myself in office. I realize that it has become normal procedure for those successfully elected to office to run for term after term. The temptation is great, and few are able to resist it. But I've never believed that I am indispensable.

I have sought especially to help those citizens without the wealth or power to easily secure the good things in life for themselves. But I believe others can provide that help as I did.

What troubles me most about the decision I announce today is not some exaggerated view of my own worth. It is rather the hundreds of truly good friends and supporters whose encouragement has sustained me in this job, and whose disappointment I feel so heavily. To them, and to the dedicated staff that has worked so capably for me and for the people of South Dakota, I can only say that I know they will understand. This has been a difficult decision, a very personal decision, a decision I had to make and one which I can only hope my friends will understand.

I have been honored to serve as a colleague with one of the greatest leaders of our State and country, George McGovern. I am proud to have represented the people of South Dakota.

Finally, I want to emphasize, and emphasize strongly, that my term in the United States Senate does not end until January 3, 1979. When I assumed this office I promised to fight just as hard as I knew how for the people of South Dakota. I intend to keep that promise each and every day I am a United States Senator.

I leave today for three days of public meetings across the State on the subjects of drought relief, water resources and agriculture. I hope that South Dakotans will join with me at these meetings so that we can develop together the kinds of legislation you want me to seek for you in the U.S. Senate.

That kind of partnership with you is what my job has always been about, and that is what it will remain until the day I leave office in 1979.

Thank you very much.

WORLD BANK PRESIDENT ISSUES URGENT PLEA TO MOVE INTERNATIONAL ECONOMIC NEGOTIATIONS FORWARD

Mr. HUMPHREY. Mr. President, in a speech on January 14, Robert S. McNamara, President of the World Bank, issued a plea for the creation of a new private commission to break the current impasse in the economic relationships between the rich and poor nations.

Mr. McNamara pointed out that after more than a year of intense debate in various international forums, there still was no substantial agreement between the developed and developing nations on what should be done next.

I share Robert McNamara's concern that a successful resolution of the outstanding differences between the developed and developing nations on global economic problems need to be resolved as quickly as is practicable. The current impasse only exacerbates the plight of 2 billion of the world's poorest people, while increasing the prospects for further international economic instability which, in turn, will have a detrimental impact on our own economic well-being.

Mr. McNamara emphasized that it is essential to determine:

The overall volume of additional financial and trade support that developed nations should apply;

The additional policy reforms and structural changes the developing nations should undertake; and

How these two mutual efforts can be more effectively applied to meeting the needs of the 2 billion people in the developing world.

Mr. President, Robert McNamara's recommendation certainly bears our attention, particularly in light of his sensitivity to bridging the widening gap between the rich and the poor.

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

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

REMARKS OF ROBERT S. MCNAMARA ON THE OCCASION OF RECEIVING THE WORLD AFFAIRS COUNCIL CHRISTIAN A. HERTER MEMORIAL AWARD, BOSTON, JANUARY 14, 1977

Ambassador Lodge, Ladies and Gentlemen: I am deeply honored and grateful for this award.

Honored and grateful, because Chris Herter was—by any of half a dozen criteria—one of the great public servants of his era.

He was an immensely versatile man: diplomat, magazine publisher, Harvard lecturer, State legislator, Member of Congress, Governor of Massachusetts, Secretary of State.

He was a man who never allowed partisan considerations to shape his views of the proper relations between this country and the rest of the world. No one in the postwar period was a more effective proponent of bipartisan support for the broad central goals of U.S. foreign policy.

As a Republican Congressman in the Truman Administration he helped secure essential G.O.P. approval for the Marshall Plan.

As Secretary of State in the Eisenhower Administration he mustered support in the Democratic Congress for continuity in U.S. relationships abroad.

And in both the Kennedy and Jonhson Administrations—indeed, until the day he died—he served as Special Representative, and head of delegation, in the international trade liberalization negotiations.

Chris Herter was a man whose personal warmth and unfailing courtesy were founded on a tough inner core of courage. And his civility illustrated a great truth in human affairs: that magnanimity, and compassion, and concern for others are not traits born of naviete or weakness, but of realism and strength.

For all these reasons—and more—Governor Herter was a great credit to his state, to his country, and to the postwar world that he helped reconstruct.

It is a tradition of service that the men and women of Massachusetts know well.

Ambassador Lodge—in a pre-eminent way—personifies that tradition. His long service to the nation as legislator and diplomat, and particularly his willingness to serve not merely once, but twice, in what was at the time surely the most demanding and difficult U.S. diplomatic post in the world—wartime Saigon—is a measure of his dedication.

Senator Brooke and other members and and guests of this Council display that same sense of dedication, and that is why I am particularly grateful for this opportunity to speak to you briefly about the problems of international development.

It is, as you know, a very complex subject.

However, as I pointed out recently in Manila, there is one central issue which more and more is affecting the thought and actions of peoples all over the globe. Equality of opportunity among men, both within nations and between nations, is becoming a major concern of our time.

It is an issue that has been gathering momentum for a century or more. The rise of the labor union movement, the drive against racial discrimination, the expansion of civil rights, the enhancement of the status of women—these and similar movements have all had an ingredient in common: the surge toward greater social justice and more equitable economic opportunity.

This broad thrust is growing more insistent today in all nations. It is searching for new solutions to the intolerable problems of poverty.

What are the dimensions of that poverty?

Let me begin with the situation of the poorest of the developing countries—those countries in which the per capita incomes are below $200. More than a billion people live in these countries. And their per capita incomes have virtually stagnated over the past decade. In statistical terms they have risen only about two dollars a year: from $130 in 1965 to $150 in 1975.

But what is beyond the power of any set of statistics to illustrate is the degradation—the inhuman degradation—the vast majority of these individuals are condemned to because of their poverty.

Malnutrition saps their energy, stunts their bodies, and shortens their lives. Illiteracy darkens their minds, and forecloses their futures. Preventable diseases maim and kill their children. Squalor and ugliness pollute and poison their surroundings.

The miraculous gift of life itself, and all its intrinsic potential—so promising and rewarding for us—is eroded and reduced for them to a desperate effort to survive.

Compared to us sitting in this room—by an accident of birth enjoying life in a developed nation—individuals in the poorest nations have:

An infant mortality rate eight times higher;

A life expectancy rate one-third lower;

An adult literacy rate 60% less;

A nutritional level, for one out of every two in the population, below the minimum acceptable standards; and for millions of infants, less protein than is sufficient to permit the optimum development of the brain.

The blunt fact is that poverty tends to perpetuate itself, and unless a deliberate intervention is designed and launched against its internal dynamics, it will persist and grow.

At present, the outlook for these poorest countries is appalling: over the next decade, income per capita is projected to grow at no

more than 2% a year. For hundreds of millions of human beings that means at most an advance in income of only one or two dollars a year.

What we must understand is that unless a specific effort is made to bring these people into the development process, no feasible degree of traditional welfare, or simple redistribution of already inadequate national income, can fundamentally alter the circumstances that impoverish them.

The responsibility for such an effort lies first, of course, with the governments of the poorest countries themselves. By and large they are making that effort—on the whole far more so than most people in the developed world realize. In the past decade, the poor nations have financed over 90% of their development investments out of their own small incomes. But it is true that they must make even greater efforts. They have invested too little in agriculture, too little in population planning, and too little in essential public services. And too much of what they have invested has benefited only a privileged few.

Yet whatever the degree of neglect the governments in the poorest countries may have been responsible for, it has been more than matched by the failure of the international community to assist them in the development task.

The central point is that the plight of the poorest nations can only be remedied by deliberate action, and that action must be taken at both the national and international levels.

The governments of the poorest nations have to redirect their own efforts so that they will both accelerate economic growth and reduce absolute poverty. A reasonable objective for them would be to meet the basic human needs of all their peoples by the end of the century. They must begin by changing national investment priorities and by putting greater emphasis on assisting the poor to become more productive.

This will involve:

Intensifying their efforts to expand food production;

Placing a higher priority on the expansion of exports;

Taking more determined action to moderate population growth;

And directing social services more equitably towards the poor.

But although nothing can be accomplished unless these governments themselves act, they clearly cannot meet such an objective without outside assistance. Therefore the international community must help them, and help them generously.

There are four principal ways the industrial nations can make this help available:

By additional transfers of concessional assistance;

By reallocation of some of their existing assistance;

By easing the burden of present and potential debt;

And by reducing the tariff and non-tariff barriers that continue to discriminate against many of the exports of the poorest countries.

In particular, if poverty is to be reduced, then developed nations must squarely face the fact that current and projected levels of Official Development Assistance (ODA) for the poorest countries are disgracefully inadequate.

In 1975, ODA amounted to about .36% of the GNP of the industrialized nations—one-half of the target set by the General Assembly five years before. Moreover, on the basis of present plans, not only is there no hope that the target can ever be reached, but there is a serious possibility that performance over the remaining years of the decade may erode even further.

It may be of interest to the members of this Council that the United States—the country with the largest GNP in the world—is currently one of the poorest performers in the matter of Official Development Assistance. Among the developed nations, Sweden, the Netherlands, Norway, Australia, France, Belgium, Denmark, Canada, New Zealand, Germany and even—with all its economic problems—the United Kingdom: all of these nations devote a greater percentage of their GNP to Official Development Assistance than does the U.S.

In 1949, at the begining of the Marshall Plan—the Marshall Plan for which Chris Herter as a Republican Congressman in a Democratic Administration worked so hard—U.S. Official Development Assistance amounted to 2.79% of GNP. Today, it is one-tenth of that: .27% of GNP. And this after a quarter-century of real growth in personal incomes in the United States, which has more than doubled the standard of life for the average American in any terms in which you want to measure it: salaries, ownership of homes, automobiles, second television sets, beef consumption, leisure-time activities; almost any category you can name.

Even dogs and cats in America today have a better standard of nutrition than tens of millions of children in the developing nations. But U.S. Official Development Assistance to those nations has not only not kept pace with its own growing domestic affluence. It has very substantially declined.

The economies of the developed nations—already immensely productive—will become even more productive over the next few years. For them to increase their help to the poorest countries would not require them to diminish in the slightest their own high standards of living, but only to devote a tiny percentage of the additional per capita real income they will earn over the decade.

If the governments of the poorest countries do not take the internal measures they must, and if the developed nations do not help them with the development assistance they so seriously need, then the outlook for three out of every four of the more than one billion human beings who live in these disadvantaged countries is unspeakably grim.

These, then, are the elements of a program to accelerate economic growth and to reduce absolute poverty in the poorest nations. What is the situation in the developing countries with per capita incomes over $200 per year—the so-called middle-income developing countries—The Brazils, Mexicos, Turkeys, and Koreas?

The outlook for them is much more favorable. As a group, they have achieved an overall growth rate during the past decade of almost 7%—about 4% in per capita terms.

As compared with the poorest nations, they have been able to take advantage of their more favorable endowment in resources, better market opportunities, and increased capital flows.

Their 900 million citizens now enjoy an average per capita income about 50% higher than ten years ago. On the whole, it is fair to say that the middle-income developing nations have begun to establish a promising structure for high economic growth rates.

They face, however, two serious problems.

The momentum of their growth has been sharply interrupted since 1973. On a per capita basis, it fell to 1.5% last year as a direct consequence of the recession in their export markets, the increase in their energy costs, the deterioration in their terms of trade, and the persistent worldwide inflation.

And equally disturbing is the fact that in many of these countries there has been a serious neglect of equity in the distribution of employment opportunities, and in the allocation of public services that affect productivity. The inevitable result has been a severely skewed pattern of income distribution.

They have increased their gross national products over the decade, but the benefits of this growth have accrued disproportionately to the already more favored upper-income groups in their societies, and broadened rather than narrowed the gap between the privileged and deprived.

Though these countries do enjoy some distinct advantages over the poorest nations, the fact remains that collectively they, too, contain large numbers of individuals—some 170 million—trapped in absolute poverty.

There are hundreds of millions more in what I have termed "relative poverty"; that is, persons with incomes somewhat above the absolute poverty level, but less than one-third of the national average. These individuals may feel even more frustrated than those in the poorest nations, since they live in an environment of visible economic growth. Their societies are progressing rapidly, but they are not.

The governments of these nations must recognize the necessity of assuring broader participation of the peoples in the process of development. That means assisting the poor to become more productive at the same time as steps are taken to increase the mobilization of internal resources, to broaden the range of export products, and to expand the coverage of export markets in order to accelerate national growth rates.

In turn, the developed nations must find practical ways to assist these developing countries by allowing them more equitable access to markets, and by making available additional development capital on reasonable terms.

Although the formula for economic advance in the middle-income countries differs from that applicable to the poorest nations, the action required is similar in one important respect: both groups of nations need additional support from the developed world if they are to achieve acceptable rates of growth.

It is the recognition of this fact which led a year ago last September to the Seventh Special Session of the General Assembly; to the meeting of UNCTAD in Nairobi last spring; and to the North-South Dialogue which continues in Paris.

And yet, to date, after more than a year of intense debate, there has ben no agreement on the level of additional assistance to be provided to the developing nations.

The reason for the lack of agreement is, I think, obvious: the discussions have focused far too much on details rather than on fundamentals.

What is needed is a basic understanding among the parties as to:

The nature and magnitude of the problem.

The action required to address it.

The relative responsibilities of the parties for taking such action.

The costs and benefits to each of doing so.

Once the broad limits of such a meeting of minds have been established—a global compact, if you will—then the specific forms of assistance to be provided by individual developed nations to particular developing countries could be examined. It would then become apparent very quickly that it is relatively unimportant whether the assistance is to take the form of commodity agreements, debt relief, trade concessions, bilateral aid, or multilateral financing—or any particular combination of these—provided the overall total is adequate.

In view of the continuing impasse at official levels, it seems to me that the chances of reaching such an understanding might be improved if a high-level, but deliberately unofficial, commission were organized to analyze the problem, and to recommend action to be taken by both developed and developing nations.

Such a private commission should clearly be drawn from individuals—from both the

rich and poor nations—who have either had practical political experience in dealing with development issues, or who have demonstrated outstanding professional competence in development economics.

The chairman and convener of such a commission ought to be a person of the great political experience and stature, say, of a Willy Brandt, the former Chancellor of the Federal Republic of Germany.

The chairman and members of the commission would have the advantage of collaborating not as official representatives of particular countries, or blocs of nations, but rather as international figures of reorganized competence and in dependent judgment, whose mandate it would be to formulate those basic proposals on which global agreement is both essential and possible.

The funding required for the commission's work would be modest, and to ensure the commission's independence the cost could be shared by a number of governments, international institutions, and private foundations. I have already received indications from Minister Pronk of the Netherlands, and Mr. David Hopper, President of Canada's International Development Research Center, that they would be willing to consider participating in such financing.

Such a commission cannot be expected, of course, to provide an instant, comprehensive, all-purpose solution to the problems of development—for none exists.

But what one could realistically expect from such a private, high-level independent group is the careful identification of those political decisions which can command public and legislative support in rich and poor countries alike, and hence enable the international community to break out of the current impasse.

There will be some critics who say that it is fanciful to suppose that the rich and poor nations—all of them politically sensitive over their own national prerogatives—can come to any meaningful understanding over development issues.

I do not believe that is true.

What I do believe is that such an understanding is unlikely to come about in the current international climate of contentious debate.

And I want to stress again that what is essential is to determine the overall volume of additional financial and trade support that the developed nations should supply; the additional policy reforms and structural changes the developing nations should undertake; and how these two mutual efforts can be more effectively applied to meeting the needs of the two billion people in the developing world.

It would be the commission's role to help make that happen.

It is true that the world today is divided on a whole spectrum of issues; political, economic, ideological, cultural.

It would be naive to pretend otherwise.

But surely there is one issue on which none of us can disagree.

And that is that a greater degree of equity must be achieved both within nations and among nations.

The commission's task, the international community's task—indeed, the task of all of us here in this room—is to help move that forward.

HEARINGS ON DISCRIMINATION AGAINST U.S. CITRUS EXPORTS

Mr. GOLDWATER. Mr. President, it was my pleasure today to appear as a witness before the section 301 committee. This is an interdepartmental panel of the executive branch chaired by the Office of Special Representative for Trade Negotiations.

The hearings were conducted under section 301 of the Trade Act of 1974 to determine whether U.S. citrus is being improperly denied access to the European community. The panel will forward its findings to President Carter and recommend solutions to the trade restrictions and discriminatory acts that are the subject of its hearing.

For there is no question that U.S. citrus is running afoul of discriminatory practices in the European community which are totally unjustifiable and unreasonable and which are restricting exports of fresh and processed citrus from our country. In fact, the burden of these discriminatory trade policies is so severe that the survival of the citrus industry in Arizona may depend upon their elimination.

Although it is not well known, Arizona is the second largest fresh citrus exporter in the United States. In all, Arizona packinghouses shipped $41 million of fresh fruits during the 1975–76 crop year and diverted the equivalent of $5.6 million to juice and byproducts.

What we must remember about this is that for every dollar received at the packinghouse, another $5 is generated in related sectors of the economy. On this basis, the Arizona citrus industry created an impact of $223 million upon our total economy in the last crop year. When one citrus grower is hurt by unfair trade barriers, it triggers an economic chain reaction that reaches across the State and Nation.

And to indicate the importance of exports to my State's citrus industry, let me reveal that foreign sales of Arizona citrus totaled $19.2 million. This represents nearly half of all shipments from Arizona packinghouses.

Now, what has happened is that U.S. exports of fresh citrus are directly threatened with destruction because of discrimination against our fruit by the world's largest citrus importing area—the European Economic Community. The EEC has granted a sizable tariff preference to major competitors of U.S. citrus growers, but has not given the same treatment to U.S. exports.

The preferences are not something the EEC bargained for and won at the last round of world trade negotiations. In fact, the EEC accepted oranges as an item on which the duty rate is bound at a specified level. Yet, in total disregard of their treaty obligations, the EEC is allowing entry of oranges from nine Mediterranean nations at a duty which is two to five times less than that assessed against our fruit.

American fresh oranges are particularly affected. Our oranges shipped to Europe must compete with fruit which enjoys a price advantage of as much as 80 cents a carton, and this is before even considering the relative freight and distance advantages which the Mediterranean producers have. I might note, for example, that it is at least four times more expensive to ship oranges from Long Beach, Calif., to Rotterdam, than it is to ship the same quantity of oranges from Morocco to Rotterdam.

Even if, for the sake of argument, we should assume that the agreements are legal, I would insist that our Government should mount just as strong pressure for their removal because we would suffer the same damage in either case. But section 301 does not require that the preferences be illegal as a precondition to Presidential action. It is enough that the preferences are discriminatory and are unjustifiable or unreasonable—which they are.

Also, I might note that there is reason to believe the concessions by the European Community are an effort to lock into the normal trade system a scheme under which U.S. citrus imports are forced into the narrow marketing period of 5 months out of the year on a permanent basis. This would disregard the fact that oranges historically have been exported to Europe by us on a 10-month basis. About one-third of our orange shipments to the EEC have traditionally been made outside the 5 months when the duty is the lowest.

Mr. President, American citrus is of high quality and normally commands a premium price. Thus, when discriminatory trade practices give our competitors an unnatural advantage, it prices our fruit out of the market. This is what is occurring in Europe.

The impact of the discriminatory tariff preferences upon American exports of fresh oranges was immediate and drastic. Our producers lost over $2¼ million in sales within the first year after the preferences went into effect. By 1972, U.S. exports of fresh oranges to the European Community were down 51 percent. The injury is felt most severely in Arizona because our marketing season occurs when duties are the highest. From March through May, when Arizona valencia oranges are at the peak of their quality, U.S. fresh orange shipments to the EEC were down by two-thirds from the same months of 1969.

Although U.S. negotiators obtained a substantial reduction in 1974 in the tariff rates on fresh oranges and grapefruit entering the European Community, the worst effects of the preference system have not been removed. Moreover, every time our negotiators gain one step forward, the European Community pushes us another step back. The preferences given by the EEC are constantly being increased and extended to additional products and countries. Accordingly, our negotiating goal must be the complete elimination of the preferences, not just partial adjustments.

Now, I know the European Community claims these preferences will help the developing countries. But, in the long run, they will not. In fact, the preferences have a colonialist tinge. They encourage the less developed nations to stay locked into an agricultural condition and to slight their industrial development.

Unfortunately, the citrus preferences are not aimed at lifting local consumption in those countries. They maneuver the beneficiary countries into producing a fruit for export which will likely be in great oversupply within a few years if the artificial stimulus of the preferences continues.

Thus, the United States has a unique reason for protecting from discrimination the investment it has made in desert agriculture.

In conclusion, Mr. President, I have urged that the trade panel recommend to President Carter that strong action be taken by the United States to restore most-favored-nation treatment to U.S. citrus. If trade discrimination cannot be eliminated by negotiations, then our only recourse is the imposition of sanctions which the law provides to enforce our trade rights.

HOBOKEN SHOWS HOW TO MAKE GOOD

Mr. WILLIAMS. Mr. President, Hoboken, N.J., is rapidly gaining a reputation for its success in dealing with urban problems. Beginning about 6 years ago, the city launched a dynamic program of comunity development and neighborhood revitalization. In the years since, Hoboken has demonstrated the kind of progress that can be made when federal dollars are combined with intelligent, creative, local leadership. The renovation and rehabilitation of older, deteriorating structures has received special emphasis in Hoboken. The Clock Tower Apartments is a project in which an old factory was converted into a fine, attractive group of rental units for moderate income people, and is an excellent example of the strides that Hoboken is making toward providing safe, decent housing and a wholesome living environment for all of its people.

On Wednesday, January 17, 1977, the Wall Street Journal carried an article entitled, "Hoboken, the Target of Bad Jokes, Shows How To Make Good," which describes Hoboken's success story, and tells why it richly deserves the recognition it has received for its community development activities. Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

HOBOKEN, THE TARGET OF BAD JOKES, SHOWS HOW TO MAKE GOOD

(By James Carberry)

HOBOKEN, N.J.—Cathy and Mel Garfinkel moved here from Manhattan a few years ago, bought a rundown, vacated church and are busy converting it into an attractive home for themselves and their four-year-old daughter.

"We love the town," says Mr. Garfinkel, a 34-year-old free-lance television cameraman. So do many other residents of this mile-square city of 45,000 across the Hudson River from Manhattan. They are working hard to rescue Hoboken from the blight afflicting many inner cities. Although other cities, such as Boston, Atlanta, St. Paul, Dallas and San Francisco, have begun housing rehabilitation programs, Hoboken is achieving a rare measure of success, and with it national attention.

"Hoboken has proved to be one of the best cities in using public funding" to stimulate private investment in housing renovation, says David O. Meeker, Jr., formerly an assistant secretary in the U.S. Department of Housing and Urban Development.

In so doing, Hoboken—whose name comes from an Indian word meaning "land of the tobacco pipe"—is giving housing experts some ideas to ponder on. For example, it has selected a single firm to run most programs for renovating tenement buildings, and the concentration of effort and responsibility seems to have proved beneficial.

SIZABLE OUTLAY

In the past six years, about $50 million in public and private capital has gone into community-improvement programs here, principally the rehabilitation of Hoboken's aging but sturdy housing stock. About 500 two-to-four-family brownstones and a number of big tenement buildings accounting for 15% of the city's housing supply have been renovated, and work is continuing. A 71-year-old former factory has been converted into comfortable rental housing for 173 moderate-income families. A community center has been built, the local water supply system is being modernized, and health and job-training programs have been established.

Other programs are in the works. The architectural firm that designed San Francisco's Ghiradelli Square is preparing plans for restoration of Hoboken's deteriorating Erie Lackawanna Railway terminal, a copper-clad historical landmark through which thousands of commuters pass daily for the 13-minute train ride to Manhattan under the Hudson River. The city has applied for an initial $4 million in federal money for restoration work, which will include the opening of shops, stores, theaters and a farmers' market in and around the terminal.

Amid all this activity, Hoboken is being "discovered" by middle-class New Yorkers whose only previous contact with the town often was from watching television reruns of the 1954 movie, "On the Waterfront," a portrayal of Hoboken's corrupt seaport of yesteryear. Stockbrokers lawyers and writers from Manhattan are moving in next door to blue-collar workers descended from the town's German, Irish, Italian and Puerto Rican immigrants.

STILL A BARGAIN

The reason for the influx of newcomers, says Maureen Singleton, a real estate saleswomen and enthusiastic Hoboken booster, is that even though housing prices have risen here, they still are lower than in many of New York's better neighborhoods. And Hoboken, with its easy access to Manhattan and "lots of great old ethnic restaurants," offers many of the benefits of urban living without some of New York's problems, she says, adding: "The streets are safe. People are friendly. They help one another.

Mrs. Singleton and her husband, Don, a New York Daily News reporter, moved here from a New Jersey suburb about seven years ago partly because Mr. Singleton felt he was losing touch with the urban environment about which he had written extensively. The Singletons paid about $23,000 for a four-story brownstone on tree-lined Bloomfield Street, where Hoboken's brownstone revival began in 1971. They put in a new kitchen and other improvements for about $8,000. Mrs. Singleton estimates the property's current value at $50,000.

Despite its attractions, however, Hoboken does suffer from some common urban ills. Many of its citizens are poor; median family income is about $7,200. Its unemployment rate is around 16%, twice the national average. It has declined as a manufacturing center. And its waterfront, which employed 100,000 during World War II, is dying from lack of business.

But many of Hoboken's natives have chosen to stay in the city. "People here have a civic pride that borders on chauvinism," says Bob Armstrong, Hoboken's former director of planning and redevelopment and now a law student. "They think Hoboken is better than New York or London or Tokyo or anywhere else."

This boosterism isn't surprising for a city whose citizens have included independent-minded people like Col. John Stevens. Originally settled by the Dutch, Hoboken in 1784 came into the hands of Col. Stevens, an inventor who built the first steam locomotive in the U.S. He developed Hoboken as a summer resort for New Yorkers, and one of his sons founded Stevens Institute of Technology, today a respected engineering school on Castle Point overlooking Hoboken. The city's most famous son, however, is Frank Sinatra. While growing up here, the singer was known as "Slacksey O'Brien," because his mother, who recently died in a plane crash, dressed him in Little Lord Fauntleroy suits and his father once was a professional boxer using the name O'Brien.

LEADER IN REHABILITATION

In the early 1970's, Hoboken became one of the first U.S. cities to begin a housing rehabilitation program, as part of a broad attack on mounting economic and social problems. City officials believed that rehabilitation—rather than demolition of existing housing to make room for new units—would preserve the stability and charm of Hoboken's neighborhoods, with their stately brownstones, cobblestone alleys and historic sites like St. Paul's Episcopal Church. And rehabilitation is cheaper than building anew.

One rehabilitation program here offers federally insured home-improvement loans from a local bank to the 60% of residents who own their homes. To encourage homeowners to borrow, the interest rate is reduced to an effective 3% from the normal 9% or more; the difference is subsidized by federal funds. The city also provides technical advice on rehabilitation. And it gives informal assurances that rehabilitated property won't be immediately reassessed and taxes raised—an important consideration, even though the tax break is only temporary, because Hoboken has one of the highest property tax rates in New Jersey.

About 500 such loans have been made. The most unusual was a $12,500 loan to enable Mr. Garfinkel to renovate his 96-year old church, which he had bought from a Baptist congregation. Renovation included installation of new plumbing, electrical wiring and a kitchen.

HELPING PUERTO RICANS

The other rehabilitation program is aimed mainly at the city's Puerto Rican community, currently about 40% of the population. Many Puerto Ricans lived in deteriorating tenements like "Tootsie Roll flats" which originally housed workers in a since-departed candy factory. The city proposed that more than 800 tenants be relocated so that rehabilitation work could be started.

If the relocation were bungled, "we knew the potential for social conflict was great," says Michael Coleman, formerly director of the city's Community Development Agency and now a city consultant. "We had to do things right."

With federal assistance, the city hired a mostly Puerto Rican relocation staff and offered each tenant generous relocation terms: a $4,000 cash grant plus moving expenses, help in finding new quarters and consideration for residence in the renovated buildings. As a result, the transition went smoothly, Mr. Coleman says.

About $25 million in tenement rehabilitation has been carried out in Hoboken so far, principally by Applied Housing Associates, a private firm. Work has been financed through sale of limited-partnership interests and through federally insured loans from banks and other sources. The federally subsidized interest rate on the loans is less than conventional rates; the saving in interest costs is passed on to tenants in reduced rents, which currently run $166 for a one-bedroom apartment to $229 for a four-bedroom unit.

CHOOSING CAREFULLY

Walter Barry, Applied's president, says the firm selected for renovation tenement build-

ings in neighborhoods still spared from complete physical and social decay. And it was careful in choosing tenants—mostly lower-to-middle-income, working-class families. Tenants were educated in the upkeep of their apartments; "some were afraid of the pilot light in stoves and didn't know what the garbage compactor was for," he says. Applied's 54 tenement buildings have, in fact, been well maintained. More tenements are being renovated.

Applied's work has attracted a lot of interest, and Joseph Barry, a partner in the firm, has been on the lecture circuit, describing how to lure private investment into federally subsidized housing. He blames past failures in low-income housing partly on government policies that enabled "every Tom, Dick and Harry housing developer," with little investment of their own, to build subsidized housing, take profits and bail out quickly, with the property often left in poor financial shape.

Joseph Barry proposes that two or three experienced developers in each city be given practically a monopoly on developing subsidized housing. These housing "utilities" would be required to have the capital and experience to build and operate such housing, and their profits would be keyed partly to their efficiency.

Observers of Hoboken's home-improvement programs over the years say generally attractive buildings have resulted. "We've had some homeowners who have been insensitive to esthetics—shaving cornices off their buildings to put up sheet-metal siding, that sort of thing. But, on the whole, it's gone well," says Sally Aaronson, formerly with the Community Development Agency.

ONE PUZZLING PROBLEM

With housing rehabilitation moving along, city officials these days wonder what to do next.

That question invariably gets around to how Hoboken can attract business and cut its persistently high unemployment rate. Louis DePascale, a former mayor instrumental in the housing rehabilitation thinks the city should provide high-rise office space for the brokerage houses that he believes will continue to flee Manhattan for less-expensive quarters and lower taxes elsewhere. "From here, they'd have a great view of Manhattan," he jokes. "Over there, they pay more and what have they got to look at? "Hoboken!"

At city hall, the current mayor, Steve Cappiello, wonders what can be done with the 37% of the city's waterfront property that lies unused. A proposal for an oil-tank farm was killed a few years ago when a citizens' group protested, and the city now is exploring other ideas. "I think I'd give that waterfront to a developer if he'd do something with it," Mayor Cappiello says in a moment of frustration.

Nevertheless, there is widespread feeling here that down-at-the-heels Hoboken—long the butt of corny jokes—is making a comeback. The mayor, a former policeman and the last of 12 children of an Italian bootblack, naturally reflects this optimism. People in Hoboken, he says, "are the true heroes of the '70s, who have scuffled and fought to maintain their dignity, their cherished lifestyle, their homes and their neighborhoods."

NATO AND THE NEW SOVIET THREAT

Mr. HUMPHREY. Mr. President, our distinguished colleagues from Georgia and Oklahoma (Mr. NUNN and Mr. BARTLETT) have just released a report to the Senate Armed Services Committee on "NATO and the New Soviet Threat."

Based upon a recent inspection trip to Europe, this report examines Soviet military capabilities and the problems facing the NATO alliance in responding to that threat.

Since there is widespread public and congressional interest in this most significant report, I ask unanimous consent that the major portions of the report be printed in the RECORD.

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

Letter of transmittal

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., January 24, 1977.

Hon. JOHN C. STENNIS,
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At your request, I traveled to Europe in February of 1974 to examine a number of issues surrounding our troop deployments there. In view of your continuing concern and the interest of the Committee with the NATO military posture, I undertook a similar trip on October 31–November 14, 1976.

On this recent trip, I was accompanied by my colleague from the Committee, Dewey F. Bartlett, who has a long-standing interest in NATO. His hard work and diligence in defense matters has made him an invaluable member of the Committee. During our discussions with American and Allied officials, his expertise in conventional weapons and forces was extremely useful.

In Brussels, we met with General Haig, Supreme Allied Commander Europe, and his staff to discuss the current military situation and major issues facing the Alliance. We would like to thank General Haig and his staff for their splendid cooperation. General Dr. Schnell and Lieutenant General Schulze discussed Allied interdependency and readiness with us. We also met with the U.S. Ambassador to NATO, Mr. Strausz-Hupe. We were able to get different perspectives on the NATO Alliance from the British, Belgian, French and German Ambassadors to NATO and from NATO General Secretary Luns. Admiral Sir Peter Hill-Norton, Chairman of the Military Committee, provided us with informative views on the NATO military situation.

In Bonn, we had the opportunity to exchange views with high military and government officials. We had frank and useful discussions with Defense Minister Leber and Foreign Minister Genscher. Lieutenant General Wuust, Deputy Chief of German Armed Forces, pointed out a number of important aspects of the military situation in Central Europe.

We also visited our senior commanders in Europe. General Blanchard of the Army discussed the current U.S. conventional posture, General Ellis of the Air Force reviewed United States and Soviet air capabilities and Admiral Turner of the Navy presented an overview of the situation in the Mediterranean. In addition to visits to Allied and U.S. Army and Air Force installations, we observed carrier operations of the Sixth Fleet at sea.

In Vienna, we met the U.S. Ambassador to the MBFR negotiations, Mr. Resor. He gave us an informative report on the current negotiations.

In Spain, we visited with King Juan Carlos, Prime Minister Suarez, Deputy Prime Minister Osorio and Foreign Minister Oreja to discuss Spain's movement toward democracy and its role in the defense of Europe. Ambassador Stabler provided us with his first-hand observations of problems and progress in Spain.

Mr. Chairman, we have attempted in the attached report to bring together the military and political problems of the Alliance inherent in confronting the new Soviet threat. The purpose of this report is to examine and to discuss the Soviet military capabilities, not Soviet intentions.

A debate on these and related issues within the Alliance and within each member country is imperative if NATO is to develop a credible conventional deterrent. It is, therefore, essential that the Armed Services Committee, the Congress and the American people be fully apprised of the new problems facing the Alliance

Our observations and this report are based on an exhaustive military study and upon numerous discussions with American and Allied officials, both in Washington and in Europe. The report provided to the Committee by Lieutenant General James F. Hollingsworth (Ret.) was of great value during our trip. This study was conducted by General Hollingsworth at my specific request while he was still serving in the Army. General Hollingsworth's expert assistance throughout our trip and as a consultant to the Committee have been invaluable. We are also grateful to Secretary of the Army Martin Hoffmann and former Army Chief of Staff Fred Weyand for authorizing the Hollingsworth study.

Finally, we would like to commend the staff who accompanied us on the trip or assisted us in the preparation of this report: Mr. Frank Sullivan, staff director, and Miss Louise Hoppe of the Armed Services Committee staff, Dr. Jeff Record of my staff and Mr. Fred Ruth of Senator Bartlett's staff. They are outstanding staff members and their efforts were extremely valuable. We would like to express our appreciation to Colonel Hank Steenstra, who was escort officer for our trip, and to Senior Master Sergeant Rasem Malley. They juggled a complete and demanding schedule, all without a hitch.

Sincerely,

SAM NUNN.

INTRODUCTION

It is the central thesis of this report that the Soviet Union and its Eastern European allies are rapidly moving toward a decisive conventional military superiority over NATO. This trend is the result of NATO's failure so far to modernize and maintain its conventional forces in response to the Warsaw Pact's buildup and modernization of conventional forces.

In an era of nuclear parity between the United States and the Soviet Union, the importance of a capacity to wage war successfully below the nuclear threshold has mushroomed because of the declining credibility of nuclear responses to non-nuclear aggression.

The viability of current NATO force posture in Europe and perhaps even NATO's strategy of flexible response and forward defense is questionable. There now exists a disparity between the Alliance's declared strategy and the ability of NATO forces to implement this strategy.

To meet the new Soviet threat, substantial alterations in current NATO force posture are necessary. Unless changes are made, the Alliance will become increasingly important as a vehicle for the collective security of its members.

The importance of NATO

The North Atlantic Treaty Organization was founded on April 4, 1949, to preserve the territorial and political integrity of Western Europe. That Western Europe twenty-eight years later remains free, democratic, and shielded from unacceptable external pressures is in no small part attributable to this Alliance, which for all its faults and problems, is still the primary guarantor of its members' security.

NATO is the most important of all of America's military alliances. If there is one place outside the territorial confines of the North American continent where our interests may

be regarded as truly vital, that place is Europe. It is for this reason that the possibility of another war in Europe—however remote it might appear to some in an era of détente and after three decades of peace on that Continent—remains the principal determinant of the size and structure of our armed forces.

The U.S. stake in Europe

The importance of U.S. security interests in Europe cannot be exaggerated. Together, NATO's European members possess the world's largest industrial plant, a population greater than that of the United States or the Soviet Union, and an aggregate gross national product larger than the American GNP and over double that of the U.S.S.R. Western Europe's loss to any power or group of powers hostile to the United States would be unacceptable. Control of Western Europe would give an adversary a magnitude of human and industrial resources which we could not counterbalance. However, these facts also demonstrate that NATO has more than enough resources to counterbalance the U.S.S.R. militarily. NATO must demonstrate the will to convert these resources to a credible conventional deterrent.

Overlaying America's security interests in Europe are a host of political, cultural, historical, and commercial ties spanning the North Atlantic which gave NATO the character of a genuine community of nations. These ties are such that events on the European continent have and will continue to affect the United States in a way that events in no other part of the world can. The United States has fought two major wars in Europe in this century. The cost in blood and treasure of a third war would dwarf the price of deterring a future conflict upon that Continent. The defense of Europe is our defense. The issue is not whether the United States should be committed to Europe's defense. It is rather how best to enhance the effectiveness of that defense.

The state of alliance defenses today

Unfortunately, NATO defenses today are not what they should be. In the crucial Central Region,[1] which would be the decisive arena of combat in any future military conflict in Europe, declining real defense expenditures over a period of years and shrinking active force levels, relative to the increasing Warsaw Pact buildup have hampered efforts to maintain a credible deterrent to aggression by the Soviet Union and its Warsaw Pact allies. The continued refusal of France to participate in NATO's integrated military commands is cause for serious concern, as is the pulling back of key formations to the Low Countries. Furthermore, the continued dissipation of NATO combat power through reliance upon a multitude of different weapons, tactics, procedures and supplies must be reversed.

Questions mount—as indeed they should—as to whether the current posture of NATO's conventional forces in the Central Region is capable of dealing with a dramatically altered Soviet threat in Eastern Europe. The Warsaw Pact forces which confront NATO today across the inter-German border represent more than simply an enlarged threat. It is a threat whose character has been deliberately re-tailored to exploit fully the very weaknesses in NATO's conventional postue which have always plagued the Alliance. This threat challenges not only the viability of NATO's conventional deterrent but also the capability of NATO's political machinery to authorize the mobilization of that deterrent in time to meet the likely demands of a future military crisis.

The problems confronting NATO forces in the Central Region, although serious, are not insurmountable. They can be overcome within the framework of the political, economic, and military resources now available to the Alliance. Moreover, solutions are at hand which would entail no major expansion of NATO's active manpower levels. For NATO, the issue is not one of simply increasing numbers of men, tanks, ships, and aircraft. The principal task before the Alliance is improving the firepower and making better use of the forces it already has.

NATO weaknesses in the Central Region are compounded by the erosion of Alliance defenses in the Mediterranean. Combined, weaknesses in Central Europe and disarray in the south could threaten the vital interests of both Europe and the United States.

Indeed, NATO's Southern Flank can be regarded as little more than a shambles. Against a background of expanding Soviet naval power in the Mediterranean, NATO's Mediterranean members appear to be abdicating their responsibilities under the North Atlantic Treaty. Although the quality and performance of the Italian Navy remain impressive, Italy, buffeted by a worsening economic crisis, has announced plans to cut the size of its army by one-third. Greece has withdrawn from military participation in NATO. Turkish and Greek armed forces, which together muster almost 700,000 men, continue to betray no more enlightened objectives than preparation for war against one another.

The situation along NATO's Northern Flank is little better. The defense of the Northern Flank is more heavily dependent upon early reinforcement than the defense of any other military sector of the Alliance. Yet, in the face of a growing Soviet threat on the Kola Peninsula and in the Norwegian Sea, neither Norway nor Denmark as yet appear predisposed to undertake the initiatives necessary to facilitate the full exploitation of reinforcements.

THE NEW SOVIET THREAT

Soviet conventional forces in Europe have undergone significant expansion during the past decade and are now being qualitatively improved. Against a background of strategic nuclear parity with the United States and substantial advances in their tactical nuclear capability, the Soviets have provided their non-nuclear forces deployed opposite West Germany an ability to initiate a potentially devastating invasion of Europe with as little as a few days' warning. This is evident in a growing emphasis upon firepower and readiness of ground forces and in the dramatic transformation of Soviet tactical aviation from a defensive force into a hard-hitting offensive air armada of extended reach.

While Soviet forces in Eastern Europe can initiate a conflict from virtually a standing start, NATO forces continue to require warning time of a duration sufficient to permit the Alliance to mobilize and deploy to the center of conflict its ultimately greater but typically less ready and poorly deployed forces. As the Warsaw Pact capability to attack from a standing start grows relative to NATO's defensive capacity, so does the likelihood that the Warsaw Pact would already be on the Rhine when the NATO decision is made to use tactical nuclear weapons.

Ground force expansion

Prior to the Soviet invasion of Czechoslovakia in 1968, Soviet Army forces in Eastern Europe contained over 400,000 men organized around 26 divisions. Since then, approximately 100,000 men (including five divisions) have been added to that deployment. This sharp increase has been attributable primarily to the introduction of a major Soviet force presence in Czechoslovakia following the invasion, and to an expansion in the personnel authorized for both Soviet armored and motorized rifle divisions pursuant to their recent reorganization. It is estimated that thousands of men have been added to Soviet ground forces in Eastern Europe since the beginning of the MBFR talks in 1973. It is worthwhile to note that the latest NATO proposal at MBFR calls for the removal from East Germany of 69,000 Soviet troops—a Soviet tank army.

Ground force modernization

Following this quantitative expansion, the Soviets have pursued a program of organization and modernization designed to provide Warsaw Pact ground forces the capacity to wage successfully the kind of blitzkrieg called for in Soviet doctrine. Among the highlights of this program are:

(1) The T–72 main battle tank has been introduced into the Group of Soviet Forces in Germany. This improvement in tank quality has been coupled with an increase of 60 to 80 tanks in the standard inventory authorized for their 16 motorized rifle divisions in Eastern Europe. Together, these improvements have greatly strengthened Pact armor, which today outnumbers NATO's by almost three to one.

(2) The replacement of armored personnel carriers with the BMP–60 mechanized infantry combat vehicle. This has granted Soviet infantry an ability to fight without dismounting—a capacity denied to almost all of NATO's mechanized infantry (German infantry being the sole exception). For the most part, NATO is still tied to the technologically obsolescent armored personnel carrier.

(3) The shift from towed to self-propelled artillery, which permits artillery to keep pace with advancing armor, thus significantly enhancing the tank's survivability. This shift has been accompanied by an estimated expansion of at least 50 percent in the number of Soviet artillery tubes in Eastern Europe in recent years.

(4) The proliferation throughout Soviet ground forces of a formidable array of tactical air defense systems. Better air defense could result in a severe loss of NATO aircraft during the opening stages of hostilities.

(5) The impressive growth of Soviet ability to neutralize NATO's anti-tank capabilities.

The transformation of Soviet tactical airpower

The simultaneous quantitative and qualitative upgrading of Soviet ground forces in Eastern Europe during the past eight years has been accompanied by a dramatic transformation of Soviet tactical aviation. In 1968, Soviet tactical air forces were oriented primarily toward the defense of air space over Pact territory, and accordingly were composed largely of short-range, low-payload aircraft possessing only incidental ground attack capabilities. Since then, Soviet tactical air forces have been fundamentally restructured with the apparent objective of acquiring a powerful offensive force for both close air support along the entire breadth of the battle area and deep interdiction throughout NATO Europe. This could threaten vulnerable fixed-site targets such as nuclear weapons facilities, supply bases, airfields, and air defense sites.

The rapid introduction on a large scale of a host of longer-range, heavier-payload aircraft and strike helicopters—the MIG–21J, K, and L, MIG–23, SU–17, SU–19, Backfire bomber and MI–24—greatly reduces NATO's traditional advantage in tactical air power. According to the latest U.S. estimates, the Soviets have increased their deployment of new fighter-bomber aircraft in Eastern Europe by 200 percent in the past two years. Moreover, recent Pact air exercises appear to be focusing more and more upon simulated long-range strikes against vital NATO military targets.

NATO's technologically superior tactical air forces continue to possess greater staying power than those of the Pact. NATO also

[1] Defined as the territory of the Federal Republic of Germany south of the Elbe, Belgium, Netherlands, Luxembourg, France, and the United Kingdom.

has an advantage in pilot training and experience. However, as a ranking NATO air officer recently concluded, "the air war in the Central Region has shifted westward, and although the ultimate mission of NATO's air forces remains that of providing the Army firepower, we must now first save ourselves before we can save the Army." If this assessment is correct—that the new and emerging character of Soviet tactical aviation has deprived NATO's own air power of its traditional role as the great "equalizer" of Pact preponderance on the ground—the size and role of NATO's air forces demand a thorough re-evaluation.

The new threat: Decreased warning time

The precise consequences for NATO of each of these numerous improvements in Soviet conventional forces remain speculative. However, taken together, the size and capabilities of Soviet ground forces in that region and the new power accorded to Soviet tactical air forces has fundamentally altered the character of the threat to NATO in the Central Region.

Soviet forces deployed in Eastern Europe now possess the ability to launch a potentially devastating conventional attack in Central Europe with little warning. Such an attack might be unattended by the telltale prior callup and transfer to the Central Region of Soviet divisions stationed in the western military districts of the U.S.S.R.

NATO's conventional force posture in the Center remains predicated upon the presumption that, for Pact forces to have any reasonable chance of overwhelming NATO, they would require, prior to hostilities, substantial augmentation by Soviet reinforcements drawn from the U.S.S.R.'s western military districts. Based on this assumption, these transfers, and the likely accompanying mobilization of less ready divisions throughout Russia would take weeks. They could not escape early detection by NATO. If acted upon promptly, this would give the Alliance a degree of warning time sufficient to mobilize fully its forces already deployed in NATO Center and to transfer and assemble there crucial reinforcements from the United States, Canada and the United Kingdom.

If, however, Pact forces in Eastern Europe alone now possess a substantial conventional capability independent of prior augmentation, then NATO is confronted with the prospect of warning calculable in days, not weeks or months. The significance of a Pact capability to launch such an attack from virtually a standing start cannot be exaggerated. Such an attack would hit the Allies in a reduced state of readiness. The Pact could also employ an attack to divide the Allies, particularly if the attack were launched against one member rather than against the Alliance as a whole. For NATO, the political and military implications of sharply decreased warning time are profound. They call into question whether NATO's present conventional force posture is adequate to meet the new threat.

IMPLICATIONS OF DECREASED WARNING TIME

Major Warsaw Pact aggression preceded by perhaps just a few days' warning would exploit certain political and military weaknesses which continue to plague NATO. For this reason, it is hard to entertain the notion that the fundamental alterations in the character of Soviet force posture in Eastern Europe registered during the past eight years have been anything but deliberate.

We are neither suggesting any intention on the part of the Soviets to invade Western Europe nor predicating an invasion. Divining ultimate intentions is an arcane if not occult endeavor which defies scientific precision. However, we are persuaded that Soviet military capabilities, which *are* identifiable, do indicate the kind of conflict the Soviets would wage should they choose to make war.

Implications for strategy

Military strategy should serve as an impetus and a basis for planning and structuring forces to meet a military threat. However, NATO conventional forces have not been adequately changed to meet a shifting Soviet conventional threat. Therefore, it is time for a careful rethinking of NATO's capabilities to meet the new Soviet threat and to take advantage of the major developments of conventional military technology in the areas of firepower, mobility, and command and control. Some of the latter developments were evident in the 1973 Mid-East war. The principal issue is not the stated principles of NATO strategy, but rather the ability of the Alliance to implement them. In our view, there is a grave disparity between expressed NATO strategy on the one hand, and NATO force posture on the other.

History of NATO Strategy

Strategy for the defense of Europe has changed markedly since the formation of NATO. Until the mid-1960's, America's overwhelming strategic and theatre nuclear superiority was believed alone sufficient to deter any form of Soviet aggression in Europe. Although the Soviets and their East European allies maintained, as they do today, a preponderance of conventional forces on the Continent, the threat of massive nuclear retaliation against the Soviet Union itself was adequate to deter the use of those forces by a country incapable of responding in kind. The function of NATO's conventional forces, such as they were, was primarily that of a trip-wire designed to establish the fact of aggression and thus to ensure an immediate nuclear response by NATO.

By the mid-1960's, however, the credibility of the U.S. strategic nuclear guarantee to Europe was under serious challenge. Confidence that nuclear weapons alone could continue to deter hostile Soviet military action across the full spectrum of threats ranging from nuclear attack to limited conventional aggression had markedly declined. The emergence of formidable Soviet strategic nuclear retaliatory capabilities, although still inferior to those of the United States, had rendered the American homeland itself a potential target in the event of war in Europe. Doubts arose in Europe, voiced most strongly by French President Charles De-Gaulle, over whether any American president would risk a nuclear holocaust for his own country in defense of anything other than American territory.

These developments strongly argued for the creation a genuine capacity to defend Western Europe before resorting to nuclear weapons. The result was the formal adoption by NATO in 1967 of the current strategy of flexible response.

Present Strategy

Flexible response calls for the development of strategic nuclear, theatre nuclear, and conventional capabilities sufficient to provide NATO an ability to deter, and if necessary, to defeat Pact nuclear and conventional aggression. The basic premise underlying flexible response is that the emergence of secure Soviet nuclear retaliatory capabilities at both the strategic and tactical levels has lessened the credibility of NATO's nuclear deterrence of non-nuclear aggression against Western Europe. We believe that the essence of flexible response is the altered role of NATO's conventional forces: no longer simply a trigger to automatic nuclear escalation, they are today charged with the task of halting a conventional attack *without* an immediate resort to a theatre or strategic nuclear response. NATO's conventional forces are further charged with the mission of presenting a defense which would require the Warsaw Pact to use such massive conventional forces in any invasion as to pose grave risks of escalation to nuclear war.

An integral part of NATO's flexible response strategy is the doctrine of forward defense—the requirement that defense against conventional attack be waged as far eastward (forward) in West Germany as possible. Tactically, according to the U.S. Army, the forward defense of NATO Center [2] would be implemented as follows:

Phase I

A non-nuclear Pact invasion of NATO Center would be met initially by a NATO "covering force", consisting largely of armored cavalry formations deployed well forward along the inter-Germany border. The covering force trades space for time. These forces today represent approximately one-quarter of all active NATO ground forces deployed in NATO Center.

Phase II

The second phase of the defense calls for waging the main defensive battle, with the aim of halting the advance of Pact forces. This battle would be fought by a combination of major NATO combat formations in Europe and reinforcements brought in from the United States, Canada, and the United Kingdom during Phase I. Unless there is nuclear escalation, the location of the battle would depend on the degree to which covering forces could slow the pace of advance of attacking Pact forces during the first phase.

Phase III

The third phase hinges upon the outome of the main defensive battle. Should NATO succeed in stopping the Pact's advance, a major counter-attack would be launched, designed eventually to rid all NATO territory of hostile Pact forces. Should NATO conventional forces be threatened with destruction, immediate consideration would be given to using theatre nuclear weapons. Thus, even if unsuccessful, NATO's conventional forces would at least "buy time" for the Alliance to ponder the alternative of nuclear escalation.

Problems of Flexible Response and Forward Defense

Several observations may be made about flexible response and forward defense without questioning the political and military necessity for either NATO possession of a wide range of defense options or for a conventional defense as far forward as possible. We do not question the desirability of NATO's commitment to forward defense. We endorse this commitment. We do, however, question NATO's capacity to carry out this commitment.

First, inherent in the concept of the "covering force" operation is an at least temporary loss of some German territory. Currently, this risk is compounded by deficiencies in the posture of NATO's deployed forces which threaten both the ability of the covering force to provide the time needed to mount a main defense, and the capacity of the covering force to hold forward positions. Together, these conditions could result in a loss of territory so substantial as to demoralize Germany's civil and military authority. This could result in early loss of NATO's most powerful continental member. Even if the Soviets stopped their attack at that point to negotiate (perhaps the most valuable option for the Soviets), it might be only a matter of time before all Western Europe would be dominated by the Soviet Union. We wonder about the value of a "forward" defense which is insufficient to protect crucial forward areas.

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[2] Defined as the territory of the Federal Republic of Germany south of the Elbe and the Benelux countries.

Second, the proposition that retreating NATO forces, which up to the main defensive battle had suffered the agony of defeat, could suddenly halt, regroup, defeat, and eject a vastly larger enemy flushed with the thrill of victory borders on the fantastic. In 1914, the so-called "Miracle of the Marne" was attributable more to mistakes made by invading forces than it was to any intelligent defense. In the 1940 campaign against France and the Low Countries, the invader made no mistakes.

Third, whatever chances NATO's conventional forces might have for success under current tactical doctrine may depend upon the amount of warning time preceding the outbreak of hostilities. Insufficient warning could preclude both the full mobilization and deployment of European-based forces and the arrival on the Continent of adequate reinforcements from the United States, Canada, and the United Kingdom.

Finally, recent developments in Soviet theatre nuclear force posture, particularly when coupled with Soviet achievement of parity at the strategic nuclear level, suggest that the Soviets are striving to neutralize NATO's tactical nuclear options under "flexible" response. During the past several years the Soviets have expanded their theatre nuclear forces in Europe to the point where they may now credibly deter a NATO first use of tactical nuclear weapons. The bulk of Soviet tactical nuclear weapons are more destructive and longer-ranged than NATO's. They could be used against most large European cities. Moreover, the Soviets have, to a much greater extent than NATO, organized and equipped their conventional forces to continue to operate and fight on a nuclear battlefield.

In sharp contrast, the comparatively short reach and low yield of most of NATO's tactical nuclear weapons would restrict their employment primarily to NATO territory, particularly if NATO's conventional forces had been driven deep into the rear of Germany. As one knowledgeable German recently remarked, "During the past eighteen months NATO has played five war games, and my country has been 'defended' five times and destroyed five times."

Political implications

The political implications for the Alliance of decreased warning time relate to NATO's capacity to fund and station adequate forces in peacetime and to decide to act once warning is received. Failure to do either could invite major Soviet escalation in a crisis.

Decisionmaking in Crises

First among the political implications of short warning time is the need to improve current procedures within the Alliance to obtain the political authority for timely and coordinated mobilization and reinforcement of NATO's conventional deterrent. The present formal structure of collective political decisionmaking within NATO is so complex and cumbersome that it raises the catastrophic prospect of hostilities preceding even a NATO *decision* to mobilize. Moreover, the entire structure rests upon the willingness of each member state to accept the judgment of NATO's international military commanders and staff, which may or may not be in accord with those of national intelligence services. This complicated procedure not only lengthens the decision process but also risks disjointed mobilization.

The current means of mustering adequate political authority for comprehensive military mobilization may have been tolerable at a time when NATO could justifiably count upon weeks if not months of military warning. They are clearly unacceptable against the threat of unexpected attack.

Forward Stationed Peacetime Forces

Decreased warning time severely limits the reinforcements that could be moved from North America and the United Kingdom to NATO Center. This greatly magnifies the importance of forces *already* in place on the Continent, the bulk of which are and of necessity must be European. Yet there has been a contraction of active forces forward deployed in the Central Region.

At a minimum, Allied contributions to the defense of NATO Center should be stabilized and improved both in strength and location. U.S. and German forces in the Central Region are the only ones that have not been reduced. Indeed, present plans call for the addition of another entire U.S. tactical air wing. The British Army of the Rhine has been sapped by the demands in Northern Ireland. Dutch and Belgian contingents forward deployed in Germany have been weakened. The French have announced plans to cut their Army forces in Germany by almost 25 percent. Each country has its own immediate political reasons for these actions, but the cumulative long term effect of weakening conventional forces could be disastrous for Europe.

The outcome of modern war is no longer decided simply by masses of men, tanks, airplanes, and ships. But at some point numbers do count, especially in the face of an eroding NATO technological superiority no longer capable of offsetting, to the degree it once did, the Pact's widening quantitative preponderance of forces.

Equitable burden sharing

Primary responsibility for the defense of Europe below the nuclear threshold is, and must be, a European one. The defense of Europe is vital to the United States; but it should be even more vital to Europeans. Although no member of NATO (including the United States) is doing all it could to confront the Pact with a credible conventional deterrent, the gap between potential and actual contributions is widest among our European allies, none of whom have either significant security commitments outside Europe or major strategic nuclear responsibilities.

Contributions to NATO's conventional deterrent cannot and should not be measured solely by quantitative "bean counts" of men, tanks, aircraft, and ships. Numerical comparisons serve to inflate European contributions while ignoring significant differences in actual combat power between U.S. and Allied military forces deployed in the European theatre. The truth of the matter is that, in terms of such crucial factors as firepower, mobility, and readiness, U.S. ground and tactical air forces deployed in Europe are decidedly superior to those of most of our Allies. Thus, purely quantitative comparisons of U.S. and European contributions to the defense of the Continent do not provide an adequate foundation for any discussion of conventional defense burden sharing within NATO. We plan to issue a subsequent report to the Committee for the purpose of discussing this concern more thoroughly.

Military implications

The military implications for NATO of decreased warning are no less grave. If current trends continue, the credibility of the Alliance's present conventional force posture will be increasingly subject to question. The decreased warning time implicit in the changing character of the Soviet threat in Eastern Europe in the last eight years may be said, militarily, to represent a Soviet invitation to a "come as you are" party. It is an affair which NATO, unless improved, cannot extend because it is inappropriately dressed and lacks transportation.

Tactical Doctrine

The pitfalls of a so-called "forward" defense doctrine without adequate forward deployed forces to carry it out are apparent. The inability to implement this doctrine could result in a withdrawal from rather than a major defense of Germany east of the Ruhr. Such a doctrine will not work if the invasion is launched (1) *before* in-place forces can be mobilized and moved forward, and (2) *before* adequate United States, Canadian, and British reinforcements can begin to be transferred to the Continent. There is comparatively little space in NATO Center to trade for anything. It is doubtful whether NATO's present covering forces possess sufficient mass and firepower to impose a substantial delay upon a highly mobile armored juggernaut estimated to contain as many as 58 Pact divisions. This implies that current tactical doctrine may give insufficient attention to developments in firepower, mobility, and command and control which, if exploited, are capable of bringing massive conventional firepower to bear quickly on any attack.

Deployment Patterns

The maldeployment of NATO forces already located in the Central Region further reduces the readiness of the Alliance. It is widely recognized that the deployment of the entire U.S. Army, Europe (USAREUR) in southern Germany is not a product of contemporary tactical considerations but rather a legacy of World War II logistics arrangements and of postwar occupation agreements. Yet it is the North German Plain which is the most likely principal axis of Pact aggression, and where the Soviets have deployed fully two-thirds of all their forces in Eastern Europe. In short, despite a larger and more immediate Soviet threat in northern Germany, NATO remains stronger in southern Germany.

Less well recognized is the East-West maldeployment of NATO forces. The peacetime positioning of major combat units well to the rear, beyond the reach of the Pact's initial onslaught, does not support a forward defense strategy. In some corps areas, formations are withheld so deep in the rear that it is questionable whether they would be available in time to participate in major defensive operations against a sudden or unexpected blitzkrieg. For example, five of the six Dutch brigades committed to the "forward" defense of the crucial 1st Dutch Corps area along the Elbe remain in Holland. The French Army in Germany, the Canadian Battlegroup, and substantial Belgian, German, and U.S. forces also are stationed west of the Rhine or in the distant southwest corner of Germany.

The successful movement of these forces to their assigned wartime positions east of the Rhine, as is called for in present doctrine, would be doubtful in the face of a warning of only a few days. Moreover, once hostilities were initiated by the Pact, the probable destruction of many of the bridges across the Rhine would severely delay this movement.

Finally, even forward deployed units are not without problems. Urban sprawl and growing German safety and environmental restrictions have led to the separation of many combat units from even their initial supplies of ammunition, thus imposing further delays upon their redeployment to assigned wartime positions.

Reinforcements

As for the timely introduction of United States, Canadian, and British reinforcements, decreased warning makes clear the inadequacy of the present pace at which they could now be transferred to the Continent. For example, the time required for the projected buildup of the British Army of the Rhine, once parliamentary approval was obtained, would be insufficient against the new Soviet threat. Decreased warning imposes even greater restraints upon the movement of adequate U.S. forces in Europe. They would have to move exclusively by air since forces moved by sea would not arrive in time.

The problem is compounded by an already inadequate U.S. strategic airlift capability

and by an acute shortage of key arms and equipment prepositioned on the Continent and earmarked for use by U.S. forces to be transferred to Europe by air. Thus, in the face of decreased warning, the demand for existing strategic airlift resources is likely to exceed the availability. Moreover, those units which do arrive in Europe before D-Day may be compelled to "fall in" upon depleted sets of equipment which would preclude them from realizing their full combat potential. Finally, it is not clear that U.S. reinforcements, once in Europe, would have available to them sufficient tactical airlift resources to permit their rapid tactical positioning and resupply. The U.S. Army has, as yet, specified no tactical airlift requirement for Europe, although a study on the subject is reportedly nearing completion.

Firepower and readiness

Another significant military implication for NATO of decreased warning time is the woeful inadequacy of the current level of firepower readily available to NATO forces in the Central Region. The immediate application of immense firepower upon Pact forces along both sides of the inter-German border may be the only means of halting an invasion well forward. Yet there is a general shortage of armored fighting vehicles, artillery, missiles, and other high priority items throughout NATO Center. Ammunition stocks are grossly inadequate in the light of expanded consumption rates projected for modern combat in Europe. Shortages in artillery shells are especially acute. Finally, the disparity between authorized and actual levels of equipment maintained in U.S. war reserve and prepositioned stocks is nothing short of a disgrace.

In this regard, the plight of the U.S. Army, Europe is especially illustrative, USAREUR today is short of its authorized ammunition, of which a substantial percentage is stored at a few vulnerable locations west of the Rhine. However, pursuant to a recent Department of Defense reassessment of the likely rates of ammunition consumption in a high intensify conflict in Europe, USAR EUR's authorization has been dramatically expanded. Therefore, if DoD's new projections are correct, USAREUR now has on hand but a fraction of the ammunition it will need during the first thirty days of war.

The separation of many USAREUR combat formations from immediate access to their ammunition; the concentration of ammunition storage sites in a manner which represents a standing temptation to a preemptive Soviet air attack; and the disposition of much of USAREUR's ammunition west of the Rhine (including England) all combine to raise serious questions about USAREUR's true readiness for combat.

The state of USAREUR's war reserve and prepositioned equipment is appalling. War reserve stocks are general stocks maintained to replace equipment expenditures or losses in combat; prepositioned equipment, or POMCUS (prepositioned overseas materiel configured to unit sets), is equipment specifically withheld for use of U.S. reinforcing units flown in from the United States. Yet, current shortfalls in both types of stocks are of such magnitude that deployed USAREUR combat units and initial reinforcements might not be able to sustain more than a few days of high-intensity combat.

Compounding the problem with the POMCUS equipment is the incompleteness of "unit" sets. Some equipment that is listed as "in stock" may not be operationally ready because there may be other integral equipment associated with it such as radios or batteries that are either not in stock or not operationally ready.

The principal cause of these shortfalls is a comparatively low production base in the United States for many items of equipment coupled with transfers and foreign military sales to other countries. These actions appear to place a higher priority upon equipping the forces of foreign countries than our own. The present shortages in stocks of such high-technology weapons as improved Hawk air defense missiles, AIM-7 and AIM-9 air-to-air-missiles, and TOW and Dragon anti-tank missiles could be eliminated with a small percentage of these weapons the United States has recently sold (or undertaken to sell) to a handful of Middle Eastern countries. In some cases, equipment already authorized by the Congress for the Army or the Air Force has been abruptly siphoned off the production line by one foreign military sale or another deemed "critical to the national interest". We wonder what national interest could be more critical than that of supplying U.S. fighting men with equipment sufficient to survive on the battlefield. We wonder who has higher claim on America's arsenal, our own forces or those of the Middle East?

The war reserve and POMCUS equipment that is present is more often than not poorly maintained or placed in the category of deferred maintenance. We wisited a POMCUS site where, for example, armored fighting vehicles were stored in open fields completely exposed to the elements, while such non-essential items as tent pegs, tents, garbage cans, and field kitchens were neatly tucked away in climate controlled shelters. In some cases, vehicles lacked workable vital components such as radios and batteries. We plan to file a more detailed report on the status of POMCUS and war reserve stocks at a later date.

Anti-Tank Capability

NATO's all too often casual confidence in the ability of its preponderance of anti-tank weapons to offset the Pact's advantage in armor may be unjustified. The Soviet Union's inventory of main battle tanks—conservatively estimated at 42,000—(of which over 15,500 are deployed in Eastern Europe) is alone of sufficient magnitude to absorb a very high loss rate, perhaps even higher than that sustained by both sides during the Yom Kippur War of 1973.

Moreover, even the latest generation of Western anti-tank systems, such as the wire-guided TOW, Dragon, HOT, and Milan missiles have severe disadvantages which can be exploited by an alert enemy. Most are "line of sight" weapons requiring not only visual acquisition of a target but also sustained and uninterrupted visual observation of the target from launching to impact, during which time the anti-tank "gunner" and crew must remain exposed to the threat of hostile fire.

Unlike Middle Eastern battlefields, the terrain and vegetation of Central Europe, together with the prevalence of inclement weather throughout the Region for much of the year, inhibit the full exploitation of these weapons, particularly at extended ranges.

The pronounced and deliberate Soviet emphasis on camouflage, smoke, night operations, and on prodigious use of their overwhelming preponderance of long-range artillery to suppress anti-tank defenses further reduces the potential effectiveness of these weapons. This is not to suggest that NATO's heavy investment in these weapons is or has been misdirected. It is to say, however, that their contribution to the defeat of Pact armor probably will fall short of expectations derived from the Middle East experience.

AIR DEFENSE

The new Soviet threat also poses serious problems for NATO's air defenses. As we noted earlier, the Alliance's longstanding confidence in its tactical air power to offset Pact preponderance on the ground must be reassessed. The emergence of a Soviet air force capable of conducting wide-ranging offensive operations suggests a need for heightened NATO attention to air defense. U.S. ground forces have historically been accustomed to fighting without the serious threat of air attack, and the goal of achieving air superiority would be extremely important in any confrontation in Central Europe. We urge the U.S. Department of Defense and NATO to study intensively the various ground and air options for greatly increasing air defense capabilities in Central Europe. In particular, better integration of ground air defenses with the new highly capable F-15 and F-16 aircraft is essential.

Ground air defenses are particularly thin in the CENTAG area, and much of the great U.S. logistics infrastructure in southwest German, such as the mammoth Kaiserslautern Army depot, is poorly defended. Moreover, a significant proportion of NATO's air defenses are tied to fixed-site weapons, like the Nike-Hercules, whose vulnerability to preemptive air attack greatly reduces their potential contribution to the protection of U.S. ground forces.

A major deficiency in NATO's ground air defenses in a crucial shortage of surface-to-air missiles. One example will suffice. According to USAREUR authorities, the "basic load" of improved Hawk missiles for U.S. Hawk batteries assigned to the defense of the Fifth and Seventh U.S. Corps areas is today adequate to sustain combat against a high-intensity Pact air threat for only a few days, after which the batteries would be compelled to draw upon ware reserve stocks. Yet Hawk missiles withheld in war reserve represent only a small percentage of the level authorized, and most are older unimproved Hawks. As of the third quarter of 1976, the United States under the Foreign Military Sales Program had sold or had contracted to sell over 2,000 Hawks—most of theim improved—to Iran, Israel, and Jordan alone.

Command, Control, and Communications

A final implication for NATO of the new Soviet threat is the inadequacy of the Alliance's current command, control, and communications capabilities, which one senior NATO commander recently declared to be "the fundamental deficiency within NATO today."

The threat of an immense blitzkrieg preceded by little warning places upon NATO stringent demands for these capabilities. The anticipated intensity and breadth of combat, as well as it rapidly changing character will require a capacity not only for instant communication among NATO's various national forces operating in the battle area, but also for rapid, efficient, and coordinated allocation of the Alliance's military resources. Only in this way can both ground and air targets be quickly acquired and destroyed without the confusion, delay, and duplication which would inevitably accompany reliance on NATO's present command, control, and communication capabilities.

These capabilities are constrained by the scarcity within NATO of all-weather reconnaissance and attack aircraft; the absence of easy communication among tactical units of differing national armies; the acute shortage of sophisticated information processing systems; continuing obstacles to efficient air-ground communications; and what appears to be unnecessarily large and unwieldly staffs at some headquarters.

Implications for MBFR

The Mutual Balanced Force Reduction (MBFR) negotiations have been underway since January, 1973. No reduction of NATO and Warsaw Pact general purpose forces in central Europe has yet been made as a result of these talks.

In our view, the manpower disparities between NATO and the Warsaw Pact in the

designated reduction area (formally known as the NATO Guidelines Area) are not the major NATO problem. Of great concern, however, is the Pact's superiority in firepower, greater readiness, and unsurpassed mobility. These are the true pillars of success in modern war, as was dramatically demonstrated in the October War of 1973. In our opinion the main objectives of MBFR should be to reduce Soviet firepower in the Guidelines Area, to provide the necessary verification means to insure it is not reintroduced, and to take steps which would improve early warning of impending attacks. We plan to file a more detailed report on the MBFR situation at a later date.

TASKS BEFORE THE ALLIANCE

In lieu of eliminating the threat of decreased warning through negotiation, it is imperative that NATO alter its own conventional force posture to offset the military benefits the Pact now enjoys as a result of decreased warning. The tasks before NATO are formidable. But they are unquestionably within the economic resources of the Alliance. NATO encompasses the greatest economic and industrial constellation on the planet. NATO does not lack the means; NATO must demonstrate that it does not lack the will. Moreover, the tasks cannot be fulfilled on the national level. They can be only as part of a comprehensive, coordinated, and concerted program undertaken by the Alliance as a whole. The failure of any member to do its part could jeopardize the efforts of others.

Work in progress

We agree with the general concepts of a truly flexible response and a conventional defense as far forward as possible. The issue is the ability of present NATO forces really to provide these capabilities.

Many of the deficiencies in present NATO force posture discussed in this report are both longstanding and recognized by the Alliance. Some have for years been the object of great concern within the Alliance, and this concern has heightened sharply in the face of the new Soviet threat. Moreover, many of the corrective actions we propose have at one time or another been entertained within NATO at the national or international level, and some are currently under intensive study.

Promising initiatives have been undertaken by the Alliance and its member governments which, if carried to fruition, could to some extent reduce some of the advantages conferred upon Soviet and Pact forces by decreased warning. Prominent among these initiatives, planned or in progress, are:

1. the reorganization of the U.S. Army, Europe, the British Army of the Rhine, the Bundeswehr, and the French Army to improve the immediately available combat power;

2. the relocation of some critical stocks of ammunition and other stocks to forward sites closer to combat units;

3. the assignment of three new brigades (one U.S. and two German) to northern Germany;

4. the development of an improved, more reliable, and integrated command and control system supported by an expanded secure voice network and by enhanced protection of critical international command headquarters;

5. the revision of logistic consumption planning rates and stockpile guidance to reflect recent reassessments of the needs of modern combat;

6. the expansion of the capacity of NATO airbases to cross-service (including ordnance re-arming) aircraft of various national air forces;

7. the creation of an integrated tactical air command system;

8. the addition of an F–111, and an F–15 air wing; and

9. the possible procurement of the Airborne Warning and Control System (AWACS).

As commendable as these initiatives are, however, they are not enough. Even together, these efforts to increase the effectiveness of NATO's conventional forces will not compensate for the new threat posed by the Soviets. More—much more—must be done.

Political tasks

The NATO allies would be most vulnerable to an intense conventional attack with short warning at a time of political weakness or transition when the decision to mobilize or to use nuclear weapons might be delayed. To meet the new threat confronting the Alliance requires changes not only in military posture but also in political attitudes. The political leadership and the general public must understand the implications of the new Soviet conventional threat. It appears that public opinion in some NATO countries is ahead of political leadership in this regard. Our NATO Allies and the United States must devote enough resources to provide a credible conventional deterrent to the threat of attack with little warning. Additionally, top priority attention should be given to developing ways to speed up the political decisions required to meet unexpected Warsaw Pact mobilization. We recommend that a conference of key NATO military and political leaders be convened as soon as possible to identify the steps needed to meet this challenge.

Military task

First, *current U.S. force planning assumptions as to the prior warning time and likely duration of a future conflict in Europe must be revised.* Although some individual NATO and national commands have undertaken such revisions on their own, there is still no common, Alliance-wide agreement on the issue.

For example, for planning purposes the Department of Defense continues to project over three weeks warning time followed by a conflict of up to six months. These assumptions appear to be increasingly unrealistic in the light of the new Soviet threat. Serious consideration should be given to establishing for NATO as a whole planning factors which would encourage coordinated preparation for an intense war preceded by perhaps as little as a few days' warning. This should be done without weakening powerful hedges in NATO force structure against a protracted war. Against the economic and industrial might of the West, the Soviets would be foolish indeed to risk a long war. Yet for NATO to continue to focus so much of its planning on this unlikely scenario is to presume that the enemy will cater to our strengths and ignore our weaknesses. What good are NATO hedges against a long war if the Alliance cannot survive a short war?

Second, *current postural deficiencies which threaten NATO's ability to conduct a successful forward defense should be corrected with the aim of permitting the Alliance to wage the main defensive battle close to the inter-German border.* NATO forces currently deployed along that border which are designated as "covering forces", and designed to slow but not stop a Pact invasion, should be strengthened to the degree necessary to compel the Pact forces to deploy for major battle *before* they enter NATO territory. This may require a redeployment of selected combat formations now located along the Rhine or to the west of it to forward assigned wartime positions. It may also necessitate the transfer of forces more northward along the likely principal axis of major Pact aggression.

We realize that formidable political and economic obstacles stand in the way of redeployment. There is a severe shortage in Germany of land suitable for military purposes, and German safety and environmental laws and regulations cannot be ignored. Moreover, the repositioning of U.S. combat units from CENTAG to NORTHAG could be interpreted by the United Kingdom, Belgium, and the Netherlands as evidence of American willingness to assume military responsibilities which those countries currently bear, and serve as an excuse for reduction in deployed Allied forces. NATO should not be permitted to degenerate into little more than a United States-German military combination.

Therefore, consideration of the militarily sound proposal to establish a second and even a third U.S. brigade in northern Germany, must be approached with political caution. Yet, whatever the nonmilitary obstacles to redressing the maldeployment of forces in NATO Center, there can be little doubt that it must be redressed if NATO is to confront the Pact with a truly forward defense of NATO territory.

Corrective action in this regard should not be misinterpreted as a call for the creation of a Maginot Line along the inter-German border at the expense of powerful active forces withheld in the rear as a flexible reserve. The Maginot Line concept of defense was discredited thirty-seven years ago. It is a call, however, for a shift in the weight of NATO's combat firepower deployed in the Central Region to the east and to the north.

Third, *a quantum jump is needed in NATO's conventional firepower.* In the short term, this can be accomplished by procuring additional artillery, anti-tank, and air defense systems. Top priority should be given to artillery, which is a comparatively cheap source of firepower and one of the most longstanding and pronounced deficiencies of NATO ground forces. Ammunition stocks also should be brought up to authorized levels based upon revised requirements. Artillery ammuntion stocks must be increased, since current stocks in some corps areas would cover only a few days' expenditure at projected rates. The fulfillment of these short-term objectives for U.S. forces should not be permitted to fall victim to commercial or foreign military sales. The lives of American fighting men must take precedence. Restoring and maintaining U.S. POMCUS and war reserve stocks must be given top priority.

In the long term, the quantum jump in NATO firepower necessary to counter the new Soviet threat can be obtained only by accelerated exploitation of ongoing technological advances in munitions and delivery systems. Representative of these advances are cannon-launched guided projectiles, air- and artillery-delivered mines, laser-guided weapons, and tactical applications of cruise missile technology. The new potential of multiple rocket launchers also should be explored.

Fourth, *the readiness for immediate combat of deployed U.S. and Allied forces must be improved.* In addition to the permanent eastward repositioning of selected U.S. and Allied combat units to their assigned wartime positions, this aim can be helped by the collocation of combat units with their initial supplies of ammunition.

Fifth, *NATO's air defenses must be transformed into a capability to inflict unacceptable losses upon intruding Soviet tactical air forces.* This can be achieved through better integration of existing air defense systems: surface-to-air, air-to-surface, air-to-air, and surface-to-surface. The critical shortage of surface-to-air missiles must be remedied.

Sixth, *the Alliance's present command, control, and communications capability must be substantially enhanced to accommodate the demands of the modern battlefield.* There is an impressive concensus within NATO that procurement of the Airborne Warning and Control System (AWACS) is essential to realization of this objective.

Seventh, *the pace at which U.S. and British*

reinforcements can be transferred to the Central Region must be hastened. This can be accomplished only through an expansion of airlift resources available to NATO and prepositioned stocks of equipment that are both sufficient and properly maintained.

Finally, *interoperability of arms and equipment within the Alliance must be relentlessly pursued.* NATO can no longer afford to pay the stiff military and economic price of dependence upon a museum of national armaments inventories incompatible with one another. Lack of interoperability serves the interests only of the Warsaw Pact. Although progress has been made, much more needs to be done.

Serious consideration should be given to establishing within each ministry of defense powerful bureaucratic constituencies committed solely to achieving standardization and interoperability. For the Department of Defense, this might entail creation of an office of standardization in both the Office of the Secretary of Defense and with each service. The institutionalization of the impetus toward standardization would provide a major counter-weight to contrary parochial political and economic interests. Progress toward comprehensive Alliance-wide interoperability of arms and equipment can be facilitated by the development of a common tactical doctrine and by testing it through joint exercises. Ultimately, however, progress will require discarding of the notion that logistics should be exclusively a national responsibility.

WAMI: PROGRESS IN RURAL HEALTH CARE

Mr. CHURCH. Mr. President, on January 5, I spoke of a medical program jointly sponsored by the States of Washington, Alaska, Montana, and Idaho—the acronym is WAMI—which seeks to increase the number of primary care physicians in the four-State area and to bring first-class medicine to underserved rural communities. I reported that the program is highly successful, and I quoted at length from a survey evaluation made by a liaison committee of the American Medical Association and the Association of American Medical Colleges which enthusiastically commended the WMAI program and its results. This report was a broad overview in terms of statistics and technological standards, a macro analysis if you will. It is interesting to compare it with a microscopic view of WAMI, as it is seen from below by patients and doctor in a remote town in the northwestern tip of the United States. Natalie Davis Spingarn dispatched such a report from Forks, Wash., to the Washington Post. It appeared on December 5, 1976. Mrs. Spingarn is a talented journalist whose articles on medical topics appear frequently in the Outlook Section of the Washington Post, and who has recently published books on the confidentiality of medical records and on the politics of health research. Her story adds another dimension to the bright picture of WAMI, and shows how legislative decisions actually affect people. Because I think the WAMI experience might be worthy of emulation in other parts of the country, I ask unanimous consent to print the Post article in the RECORD.

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

[From the Washington Post, Dec. 5, 1976]

A DOCTOR'S CHOICE: FORKS, WASH., AND NOT THE BIG TIME

(By Natalie Davis Spingarn)

FORKS, WASH.—One might think this small logging town at the northwestern corner of the United States would have had little trouble attracting a new doctor. It boasts many attractions: Towering dark firs. Clean air. Clear streams and lakes you can fish. Dramatic beaches with huge rocks jutting into the Pacific. A new community hospital and clinic, and the veteran doctor, who had served the 10,000 people hereabouts for a quarter century, getting ready to retire.

But potential replacements came—and did not stay. For more than four years, the hospital stood virtually empty, and people here began calling it the "million band-aid station." Expectant mothers and injured loggers had to travel 60 miles around Lake Crescent to the hospital at Port Angeles. Forks (pop. 2,000) put up a sign at the edge of town: "Welcome to Forks, Doctor Needed."

The faded sign is gone now. Dr. Stephen H. Kriebel settled in after completing his residency in July, 1975. Now this bearded, 30-year-old physician runs a five-person medical team and serves as chief of staff at the hospital. Before he arrived, not one child had been born at Forks Community Hospital. In the first half of this year, 60 babies were delivered. The number of surgical procedures—appendectomies, hernia repairs, cyst removals—has risen from zero to more than 70.

The doctor's wife, Lela, conducts childbirth education workshops at the clinic for prospective parents. This summer the Kriebels and their 2-year-old daughter moved into a new home on a 15-acre riverside spread just outside Forks. It looks as though Forks has its new young doctor at last.

The success story was due in large part to WAMI, a decentralized regional medical educational program which takes its name from its four participating states—Washington, Alaska, Montana and Idaho. WAMI whetted Kriebel's appetite for modern rural practice and gave him the chance to find out if he was suited to it.

GREEN TWIGS

Whether the overall doctor shortage is a thing of the past is a matter of controversy. But one can definitely say there is a need for more rational doctor distribution. Nearly two and a half times as many physicians practice in metropolitan areas as in small towns and rural America. The proportion of doctors who consider themselves general practitioners dropped from 50 to 16.4 per cent between 1949 and 1974, while the proportion of specialists rose from 37 to 80 per cent.

WAMI was founded in 1971, with funds from a private foundation and the Department of Health, Education and Welfare, as a regional effort to address such problems. It is a vast region with five time zones, 6 million people (most of them in the Puget Sound area), 20 per cent of the U.S. land mass—and one medical school, at the University of Washington in Seattle.

"When the twig is green, we begin to bend it." So says M. Roy Schwarz, the University of Washington physician who runs WAMI. Experience has shown that half the medical students from rural areas return there to practice and 70 per cent of those who complete the last phase of their training in a rural area become country doctors. WAMI is built around these two findings, together with the fact that building a medical school at a cost of $60 to $100 million was simply not an option.

Participants are admitted as regular U. of Washington students, but many begin their education away from Seattle—at the Universities of Alaska and Idaho, Montana State and Washington State at Pullman. There, in addition to their basic science studies, they spend half a day once a week working alongside a local physician or preceptor. They visit remote Alaskan villages, Indian reservations in Idaho and Montana and migrant farm camps in Washington.

Romance is a word Dr. Schwarz uses a good deal when he talks about WAMI: "We don't expect students to learn about diagnosis and treatment of disease in that first year. It's romantic at that point. We only expect doctors to enthuse their students. Show them what rural practice is like. Simply, what's their lifestyle? Are the people happy or aren't they? What do they do for cultural experience and education?"

In the second and third years, students return to Seattle for more traditional training in a major medical center. After the second year they choose a "pathway" or major field of study.

Then, when the students have gained more medical sophistication, they go back into the small communities for from six weeks to several months' clerkships in family medicine, pediatrics,, obstetrics/gynecology, internal medicine and psychiatry at community clinical units (CCUs) in 14 towns across the region, towns such as Kodiak, Alaska, or Missoula, Mont. Supervised by community physicians, they work in doctors' offices, in community clinics, hospitals and emergency rooms.

It takes a long time to make a doctor like Stephen Kriebel, and the students who enterd WAMI's first year will not finish their training until 1978. But the WAMI clerkships are also open to post-M.D. residents.

Kriebel, a graduate of the University of Pennsylvania medical school in Philadelphia, was tired of the hassle and dirt of urban life when he and Lela moved to Seattle for his residency in family medicine. But he had never seriously considered small town practice—probably, he believes now, because, like most young doctors, he had trained at a big city academic medical center and thought you had to practice near such a center to offer patients the advantages of modern quality care.

MEETING THE COMMUNITY

That changed when he spent two months at the WAMI Community Clinical Unit at Omak, an isolated little town in north central Washington. There WAMI students deal with everyday medical problems: An elderly lady feels queasy; a man suffers severe stomach pains; a new patient comes in for a complete workup; a baby falls down or suffers convulsions. They work as team members with practicing doctors and other health workers, such as nurse practitioners.

They also get a taste of life outside the office. They attend the county medical society meetings, meet local bigwigs, get to know how the school board and chamber of commerce are structured. They visit the mills and stores where patients work. They sample local hiking, fishing or hunting.

If the WAMI student is married, the program pays transport for his or her spouse to and from the clerkship assignment and provides the couple with a furnished apartment. Dr. Schwarz explained: "If a doctor's wife doesn't like it, he'll either leave or get himself a new wife. Neither is desirable."

Pointing to the conservatism of small towns, Schwarz said, "We have to be careful not to send any 'arrangements' out there." But sometimes different lifestyles can be accommodated. A women in labor rejected a WAMI student with a lengthy hairdo and other counterculture accoutrements. "I have enough troubles," she told him. "I don't want you and your lifestyle." The student consulted his supervisor, shaved off his beard, changed his clothes—and delivered the baby. Now the two couples—doctor and patient and their respective spouses—are good friends.

What drives most doctors away from rural practice—and what probably kept a new doc-

tor away from Forks for so long—is the isolation; they feel alone out there. At Amak, Kriebel liked his first encounter with a well-run modern rural practice. He was part of a team; he did not feel isolated from the medical mainstream.

Through WAMI's continuing education program, University of Washington faculty members visit the community clinics each month. Courses are offered in subjects from "Alcoholism" to "Treating the Untreatable." In addition, community clinic doctors, holding part-time appointments on the university faculty, visit Seattle for conferences and courses and can consult specialists there through a 24-hour-a-day telephone hookup called Med-Com.

SPREAD THE WORD

Before he completed his medical education, Steve Kriebel signed up with the National Health Service Corps, a U.S. Public Health Service program which recruits doctors for underserved areas and guarantees them a minimum salary. Upon completion of his residency, he examined the Corps' list of communities in need, noticed the name of Forks and remembered that years earlier, while passing through on a backpacking trip, he and Lela had noticed that sign: "Welcome to Forks, Doctor Needed." They decided to give it a try.

Steve could have fulfilled Corps regulations by going to work in a city slum or a larger country town. He has, he believes, made the right choice: "The more I live here the more I appreciate it. You have to be honest because everyone knows everyone else. You have to be open and friendly. You can't hold grudges because you run into the same people every day. There's space."

"It's a great place," Lela said. "Spread the word—the people are great, the closeness is nice. You have to be good to your neighbors because they know everything about you. If you need help, people are ready to help."

True, it rains too much, and school is not a big priority; with $100 a day to be made in the woods, there is a high dropout rate. But classes are small and, the Kriebels feel, the teaching is better than in many big city schools. They have had no trouble making friends. The average age in this community is 25, and the doctor and his wife enjoy working with young families. Obstetrics, the doctor said, is a happy part of practice.

Forks too remote? Why, they can get cable TV in town, and travel abroad with more ease than most of us (from Port Angeles to Victoria in British Columbia in two hours). They can drive to Seattle in four.

Forks' macho reputation? "There's no more frontier violence here than there is in Washington, D.C.," Lela says. You don't have to lock your car or even your house, Steve adds.

Lela's worries center around her husband: "I'm afraid he'll work too hard and we will never see him. I'm afraid that we won't be able to find a doctor who will be willing to stay and share the responsibility." Though veteran Dr. Edwin Leibold has not yet actually retired, he is tapering off and Kriebel had a taste of 20-hour days before Dr. John Hemmen, another NHSC recruit, joined the Forks clinic team this past summer. "You cannot really practice alone here," Kriebel says. But he knows that Dr. Hemmen may leave for further residency training next summer when he fulfills his work obligation in return for the Corps' financial help toward his medical tuition.

Still, Kriebel is practicing family medicine now in the way he wants, treating patients regardless of age, sex or disease and emphasizing continuous care and maintenance of good health. Patients—about 40 a day—get an introductory slip of paper when they come into the office. "Family Practice," it reads, "is a revitalized concept of General Practice. Professionals being trained in Family Practice today are trained not only for the usual acute type problems, but also for preventive care and behavioral and emotional support for the family."

Kriebel's job satisfaction is partly, he says, a personality thing. "I'm attracted to a challenge" and he finds family practice a challenge. "I like having long-term direct contact with patients, with whole families and with a community. In other people-oriented specialities, even in psychiatry, you don't get to know people over a whole lifetime."

The hospital emergency room sees about 600 patients a month. Specialists now visit Forks on a regular basis—a general surgeon twice and an orthopedic surgeon once a week, and an optometrist and several pediatricians periodically. But 95 per cent of the care Dr. Kriebel and his team offer is, he says, "definitive." If he needs a consultation, he can get the best via two toll-free lines to Seattle.

The clinic charges patients a fee for services averaging $9.25 per patient visit. Most patients' bills are covered by private or public health insurance, including Medicare, Medicaid and the Indian Health Service.

There are, of course, some problems: slow paying patients, an important local insuror who balks at the rates for paraprofessionals. On the whole, however, the clinic is doing well. It is attracting federal grants, including HEW funds to hire a badly needed counselor for alcoholics, and it is reimbursing the NHSC which supplied the start-up funds most young doctors need to launch a practice. The way things are going, it will turn into a self supporting group practice, with Dr. Kriebel doubling his present $20,000 salary.

A WORKABLE FORMULA

So, no expensive Park Avenue practice, no big shot super-specialty. The Kriebels seem satisfied with that prospect, and they may be more representative of the contemporary ethic than most people realize. Only four or five members of Steve's med school class were attracted to family medicine; this year 60 per cent of all graduating medical students chose to specialize in internal medicine, family medicine, obstetrics/gynecology or pediatrics. "Its a generational thing," Steve believes.

Here in the Northwest, WAMI's leaders are encouraged by results of their program thus far. More medical students are opting for primary care practice; the number in the three classes who chose the family practice "pathway" after WAMI got started was 147 as compared to 88 in the three pre-WAMI groups. Evaluation seems to demonstrate that there is no difference between the academic performance of the students who spend their first year at the medical school in Seattle and those who spend it out at the cooperating universities. And the attrition or dropout rate is no different (a law 3 per cent across the country). After some misgivings, the University of Washington Medical School faculty has come to accept and support the program, and it has gained accreditation for the full seven years.

Without a cent spent on expensive brick and mortar, the number of far Northwest residents who have had the chance to attend medical school has increased enormously (40 per cent in Washington, 500 per cent in Montana and 90 per cent in Alaska). And almost two out of three of the doctors who, like Kriebel, have been through the WAMI training program and completed their residencies have begun to practice in rural areas—45 per cent in town of less than 5,000 like Forks, and 15 per cent in towns of 5,000-15,000.

This fall, after three years of wrangling, largely over the extent to which the government can influence medical education, Congress enacted a new three-year, $2.3-billion health manpower act. President Ford signed the measure with some complaints about its size of the funds authorized. Among many other provisions, the act beefs up both the National Health Service Corps program and WAMI-like decentralized education projects called Area Health Education Centers.

Under the law, medical schools continue to receive "capitation" funds for each student enrolled (now more than $1,000 each), and students are not required to join either program. But there is a *quid pro quo;* the medical schools must train a portion of their residents—half by 1980—for primary care.

In the next decade, then, we will probably see many more doctors like Stephen Kriebel practicing in communities that desperately need them—in big city slums as well as isolated rural towns.

URGENT HELP NEEDED FOR MIGRANT WORKERS LEFT JOBLESS BY WINTER FREEZE

Mr. WILLIAMS. Mr. President, the distinguished Senator from Wisconsin (Mr. NELSON) and I have sent an urgent letter to the Acting Secretary of Labor, the Honorable Alfred G. Alberts, requesting that the Department take immediate steps to alleviate severe problems that face as many as 130,000 migrant and seasonal workers as a result of the destruction of vegetable and citrus fruit crops in Florida and other Gulf States in recent days.

We have requested that the Department not only allocate its own available resources in an emergency effort, but also take the lead in coordinating the resources of other departments and agencies of the Federal Government in providing assistance. This latter request, I believe, is entirely reasonable in that it is based upon the established intent of the Congress in assigning to the Department of Labor the activities of other agencies, in particular the former Office of Economic Opportunity, when the migrant programs were reorganized in 1973.

In addition, we have requested that the Department, and in particular the U.S. Employment Service, make exceptional effort to implement outreach procedures for locating, identifying, and referring affected migrant workers to other agencies for necessary services. In this connection, we have also requested that unobligated fiscal 1976 funds in the Migrant Worker Division of the Department be allocated immediately to provide emergency food, medical and transportation services. In both of these respects, the Department has been less than diligent in carrying out the intent of the Congress—or, in fact, the directive of the courts—in recent years.

Mr. President, a new administration is ascending to assume these responsibilities. I am personally confident that we will begin to see new attention, commitment, and compassion focused on the problems of migrant and seasonal workers. The crisis of these workers at this time, which may be the worst to engulf them in several years, provides a test that the new administration must not fail.

Mr. President, I ask unanimous consent that the letter of the Senator from Wisconsin (Mr. NELSON) and I to the

Acting Secretary of Labor be printed in the RECORD.

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

COMMITTEE ON
LABOR AND PUBLIC WELFARE,
Washington, D.C., January 25, 1977.

Hon. ALFRED G. ALBERT,
Acting Secretary of Labor,
Department of Labor,
Washington, D.C.

DEAR MR. ACTING SECRETARY: The winter freeze that struck the vegetable and citrus fruit crops in Florida and portions of other Gulf States has confronted tens of thousands of migrant and seasonal farm workers and their families with grave problems. There are reports that at least 80,000, and perhaps has many as 130,000 farm workers will be indefinitely unemployed.

Although more normal warm weather has returned to these areas, the prospects of the workers and their families have not brightened. Lacking jobs, many are in need of immediate food assistance. Thousands may be forced to leave their temporary housing, because they cannot afford the rent or the utility costs they are expected to pay. Many of the workers have brought their entire families with them from homes as far away as Texas. For them, the crisis may be the worst in several years.

We therefore urge you to take all feasible steps and allocate all available resources of the Department of Labor immediately on behalf of these workers and their families. In addition, we request that the Department take the lead in coordinating the urgent efforts of other departments and agencies of the Federal government in providing assistance.

We would strongly suggest that you take steps to insure that Special Unemployment Assistance payments can be made within a few days at the full entitlement level of each eligible worker. As you know, a major impediment and serious delaying factor in determining eligibility of farm workers for SUA payments has been the difficulty of collecting earnings histories from multiple employers and frequently from several States. The Unemployment Insurance Service should move immediately to assist in expediting the processing of interstate claims for unemployment assistance. Unless the claims process is streamlined with utmost urgency, the workers may be forced to move northward to harvest other crops before they can receive any of the SUA payments to which they are entitled under the law; the result would be not only the lost benefits for the workers, but wasted administrative resources of State and Federal employment security offices as well. Your efforts in this regard would also facilitate the payment of disaster unemployment benefits if and when a Federal disaster declaration is made; we understand that these benefits are based upon the provisions of the State unemployment compensation laws in essentially the same way as the SUA program is, indicating that delays in interstate claims processing would hamper this program as well.

We would further suggest that the United States Employment Service make extraordinary efforts, both at the Federal level and through the associated State offices, to locate and indemnify the workers affected so as to insure (1) that they are promptly referred to any job opportunities available in the region in work for which they are trained or experienced and (2) that they are referred to other agencies that can provide food, health care, temporary housing, transportation and other necessities.

We believe it is essential that you take immediate steps to determine what assistance you can provide under the Comprehensive Employment and Training Act, both directly and through the system of prime sponsors. We understand, for example, that several million dollars of unobligated funds under Title III were carried over from fiscal 1976 and are available to provide emergency food, medical and transportation assistance. In addition, the Department has yet to allocate approximately $17.3 million of discretionary funds under Title VI and $80 million of discretionary funds under Title II; a portion of these resources might be committed to providing emergency public service employment for the jobless farm workers. Other discretionary funds under Title I should be evaluated as a means of establishing emergency programs of skill training, including subsistence payments as authorized by law.

Especially in the absence of a Federal disaster proclamation, the resources of other Federal agencies should be mobilized to the full extent of their authority and available funding. The Department of Labor, because of its special responsibilities for assisting migrant and seasonal farm workers, should assume the leadership in coordinating these efforts. Among the alternatives, the following should be explored immediately:

(1) the Department of Agriculture's authority, under an agricultural disaster proclamation of the Secretary, to provide emergency free food stamps for a 30-day period;

(2) the authority of the Community Service Administration to provide cash or vouchers for the purchase of food;

(3) the authority of the Department of Health, Education and Welfare under Part A, Title IV, of the Social Security Act to provide emergency assistance to needy families with children.

The large number of workers who are facing the despair of unexpected joblessness is more than sufficient justification for taking exceptional and urgent steps to assist them. The need is magnified further by the fact that women, children and elderly persons are traveling with the migrant workers. In addition, the reliance of the Nation's food-producing industries on these workers makes it all the more necessary to prevent further deterioration of the health and well-being of these valiant workers. As we help to see them through their current, and hopefully temporary hardship, we will contribute to maintaining the work force needed to harvest crops in future growing cycles.

Your earnest and immediate attention to these matters would be deeply appreciated.

With sincere best personal wishes,

HARRISON A. WILLIAMS, Jr.,
Chairman, Committee on Labor and Public Welfare.

GAYLORD NELSON,
Chairman, Subcommittee on Employment, Poverty, and Migratory Labor.

ELECTIONS IN INDIA

Mr. KENNEDY. Mr. President, like many Americans who have followed developments in India with concern and hope, I greatly welcome the announcement last week by Prime Minister Indira Gandhi that elections will soon be held, and that some terms of emergency rule are apparently coming to an end.

The actions of the Government of India last week—in releasing many political detainees and restoring some constitutional rights—could represent a very first step to redeeming Mrs. Gandhi's pledge in 1975 to remain faithful to India's democratic tradition.

All friends of India, and of democratic government, must welcome these actions by Mrs. Gandhi.

Particularly at this time—as we have watched the democratic transfer of power in our own land—we can share the spirit of Mrs. Gandhi's speech to her nation last week, that elections are the legacy of India's freedom struggle, and the life's work of Mahatma Gandhi and Jawaharlal Nehru. They give meaning to the fact that India's system "rests on the belief that governments derive their power from the people and that the people give expression to their sovereign will every few years freely and without hindrance by choosing the government they want and by indicating their preferences for policies."

Mr. President, as Mrs. Gandhi has stated, "every election is an act of faith." As India prepares again to meet one key test of democracy, its friends must wish it well and hope that this important step will contribute to a return to full democratic practices.

I would like to share with the Senate the important remarks of Mrs. Gandhi in announcing elections, and I ask unanimous consent that her statement be printed in the RECORD.

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

[January 18 broadcast to the nation by Prime Minister Gandhi—recorded]

GANDHI ADDRESSES NATION, ANNOUNCES MARCH ELECTIONS

It is some time since I last spoke to you on the radio. However, through my continuous travels in various parts of the country and through the groups and large number of individuals whom I meet in Delhi and elsewhere, I have continued to be in close touch with you all. Your support, your affection and your trust enabled me to serve India to the best of my ability. On my journeys up and down the country I have been glad to find that our people have shaken off the sense of defeatism and gloom. There is a new pride in being Indian. Indeed, it can be said that in the year just completed the nation has rediscovered its sense of purpose and its potential strength.

Some 18 months ago our beloved country was on the brink of disaster. Violence was openly preached. Workers were exhorted not to work, students not to study and government servants to break their oath. National paralysis was propagated in the name of revolution. The democratic way would have been to work toward the next elections, which were not far off. The government had to act and did act. Without purposive government, a nation, especially a developing one, cannot survive.

At that time I made it clear that the restrictions imposed would be temporary. They have been gradually eased. The leaders and many of the rank and file who had been detained have been released. For some time past, press censorship has been relaxed and newspapers have been reporting the activities of the people and the parties. Restrictions could have been lifted earlier had violence and sabotage been given up, had there been no attempt to stir up communal and other unrest.

This discipline and feeling of hope enabled us to initiate and pursue new policies to help those sections of the population who have not greatly benefited from development plans. The constitution has been amended to

remove impediments to policies which are designed to serve the people. We have also undertaken programs to combat social evils such as dowry, which is a burden on our middle classes, and [have instituted] family planning, which aims at healthier and better cared-for children. Any act of compulsion or harassment would be dealt with severely.

May I remind you that the emergency was proclaimed because the nation was far from normal. Now that it is being nursed to health we must insure that there is no relapse. Normality means the orderly conduct of business. This is possible only if people live by certain codes and norms of behavior. Democracy also has certain rules. The government's functioning cannot be obstructed. None should imperil the welfare of any section of the people or the safety of the nation. If India is to live and prosper, there can be no preaching of hatred, no practicing of violence, no encouragement of subversive activities or lowering of standards of public life.

The economic situation has vastly impoved. Others are studying our anti-inflationary strategy.

Production has increased, thanks mainly to the new spirit of dedication which we see in our farms, in our industrial workers and in our scientists, technicians, managers and administrators. The public has cooperated despite difficulties. We have resumed work on many development plans which had been interrupted by the economic crisis and political disturbances. The 20-point and the 5-point programs have shown tangible results. Even though much remains to be done, they have generated an attitude of confidence and have galvanized young and old. In spite of criticism, there is a new respect for our country abroad.

I am conscious of the difficulties which farmers, industrial workers and some other sections of our population are experiencing. We are studying each problem so as to find quick solutions. Cyclones, droughts and floods have caused hardships in some areas. My sympathy to all those affecetd.

In recent months prices of a few commodities have increased, but we have already initiated corrective action which will soon show results. We have the largest grain stocks in years. Elements which wish to stir up economic trouble will be sternly dealt with. As long as there is close cooperation between the government and the people, our economic battle can and will be won. Anyone can see that today the nation is more healthy, efficient and dynamic than it has been for a long time. The question now before us is how to restore substantively those political processes on which we were compelled to impose some curbs.

Change is the very law of life. This is a time of great fluidity in the world. Contemporary society is beset with dangers to which developing countries are especially vulnerable. Hence all change must be peaceful. This is the legacy of our freedom struggle and of Mahatma Gandhi and Jawaharlal Nehru. Our system rests on the belief that governments derive their power from the people and that the people give expression to their sovereign will every few years freely and without hindrance by choosing the government they want and by indicating their preferences for policies. The government so chosen has their complete mandate to carry out such policies.

The present Lok Sabha was elected in 1971. The clear-cut mandate of the people enabled the country to meet a combination of challenges—those created by the events in Bangladesh, by the international economic crisis, by the drought of 1972–73 and by the political events of 1974–75. Legally, the present Lok Sabha can continue for another 15 months. But we also strongly believe that Parliament and the government must report back to the people and seek sanction from them to carry out programs and policies for the nation's strength and welfare.

Because of this unshakable faith in the power of the people, I have advised the president to dissolve the present Lok Sabha and order fresh elections. This he has accepted. We expect polling to take place in March. The rules of the emergency are being further relaxed to permit all legitimate activities necessary for recognized parties to put forth their points of view before the people. I earnestly counsel the political parties to eschew violence and refrain from vilification and calumny. People should neither believe in nor give currency to rumors and gossip.

Every election is an act of faith. It is an opportunity to cleanse public life of confusion. So let us go to the polls with the resolve to reaffirm the power of the people and to uphold the fair name of India as a land committed to the path of reconciliation, peace and progress. My good wishes to you. For the people of India, may 1977 prove to be a year of added stability, strength and continuing achievements. Jai Hind [Hail India]!

PROPOSED INFORMATION TECHNOLOGY ASSESSMENT

Mr. KENNEDY. Mr. President, the proposed assessment will provide an analysis of prospective developments in information technologies, prospective applications of these technologies, and the likely impacts, for the period 1977–90. The assessment will examine the adequacy of existing institutions and policies in the light of alternative plausible information futures, and will identify and evaluate policy options. The emphasis will be on issues that cut across traditional jurisdictional lines, both in the Congress and the executive branch.

During the past two decades there have been major advances in computer and communications technologies, leading to new forms of information transfer and the availability of new information services. These developments are likely to continue at an accelerated pace during the next two decades. It is said that an information revolution is occurring, comparable in importance to the industrial revolution. The issues raised by this information revolution will need to be addressed by Congress. The proposed assessment will provide Congress with information and analysis bearing upon these issues.

The Board is asked to approve the initiation of this assessment and the resources required to conduct it.

BUDGET

The Board is asked to approve an initial budget of $173,000 for fiscal year 1977 and $130,000 for fiscal year 1978 for project development. It is estimated that approximately $370 in additional funds would be required for transition to full project status in fiscal year 1978.

SENATOR NUNN'S AND SENATOR BARTLETT'S REPORT ON NATO

Mr. HART. Mr. President, two of my colleagues on the Armed Services Committee, Senator NUNN and Senator BARTLETT, yesterday released their report on NATO. In my view this report is one of the most thorough, most perceptive, and most important studies ever made on the needs and problems of the NATO alliance. It is a document which should be read by every Senator, and by every American concerned with our national security.

Senators NUNN and BARTLETT present a comprehensive view of the alarming increase in Warsaw Pact capabilities. They note, correctly in my view, that the achievement of strategic parity by the Soviet Union has greatly altered various theater balances, including that in Central Europe. Previously, we relied on our strategic superiority to counterbalance Soviet and Warsaw Pact conventional superiority. Now, we no longer have the first, but they will have the second. Clearly, this results in a lessening of theater-level deterrence.

Not only has the Warsaw Pact maintained its conventional superiority in Central Europe, but as Senators NUNN and BARTLETT note, they appear to have increased that superiority to a substantial degree. Warsaw Pact manpower in the theater has increased; levels of equipment have increased even more; and the newer Pact equipment seems qualitatively equal to or, in some cases, superior to NATO equipment. This must raise concern on our part, concern not only as to Pact capabilities but also Pact intentions. If the Soviet Union is truly committed to a policy of détente, why does it seek military preponderance in Central Europe? Is the magnitude of the Soviet military effort compatible with détente? These questions must be addressed by all members of the NATO alliance, and by the Members of the Senate.

The Nunn-Bartlett report makes several specific points which are particularly perceptive and worthy of further note and discussion. One of these is that light antitank weapons, which some have presented as a panacea for the threat of Warsaw Pact armor, are in fact of very limited capabilities. They are subject to countermeasures of known types, especially artillery, which the Soviets have in abundance. Moreover, while such weapons in some degree improve the firepower of infantry forces, they in no way improve the infantry's two main deficiencies lack of tactical mobility and lack of protection. This is not only relevant to our forces in Europe, but even more to light infantry forces, such as the 82d Airborne Division, the 101st Airmobile, and the Marines, which believe they can place heavy reliance on light antitank weapons to meet an armored threat. In fact, those forces which either inherently cannot be mechanized, such as the Airborne, or which now resist mechanization, such as the Marines become less and less cost/effective as more countries field modern armored and mechanized forces.

Another excellent point raised by the Nunn-Bartlett report is that NATO forces remain much inferior to Soviet and Warsaw Pact forces in defensive preparation for tactical nuclear warfare

Soviet tanks, and mechanized infantry combat vehicles have protective filtration and pressurization systems to defend their crews against radiation, chemical weapons and bacteriological weapons. Most modern European equipment has similar defensive systems; but neither the new XM-1 tank nor the planned U.S. Mechanized Infantry Combat Vehicle has such protection. I hope the Armed Services Committee will, during this year's hearing, explore the issue of why the U.S. Army plans to remain deficient in this critical respect.

There are, however, several issues on which points raised by Senators NUNN and BARTLETT should perhaps be the subject of further discussion and debate. Their report stresses the need for more NATO firepower to counter the growing Warsaw Pact threat. This follows the basic U.S. understanding of war as being the application of firepower to cause attrition of enemy personnel and equipment. But there is another, different understanding of war: that which sees maneuver rather than firepower as decisive. It may well be that the best answer to the Pact threat is not more firepower—although more firepower is certainly desirable—but a change in strategy which stresses maneuver by NATO forces. Maneuver, rather than firepower, is the main creator of uncertainty in war, and uncertainty produces the deterrence which is NATO's goal. The Soviet blitzkrieg doctrine stresses maneuver, with firepower used to create opportunities for maneuver, rather than maneuver serving firepower as it does in U.S. Army doctrine. The Germans found during the Second World War that a defensive maneuver doctrine was the best answer to the Soviet offensive maneuver doctrine, and it may also be the best answer for NATO today.

The question of firepower versus maneuver doctrine relates to another point raised in the Nunn-Bartlett report: the NATO commitment to forward defense. The report states that Senators NUNN and BARTLETT continue to support forward defense, and it suggests ways forward defense can and should be strengthened. It also notes, however, that we must not support forward defense at the expense of creating a Maginot Line, and that we also need "powerful active forces withheld in the rear as a flexible reserve." Indeed, if the Warsaw Pact blitzkrieg is to be stopped, it would appear from the previous lessons of armored warfare that the main need is for such reserves rather than for a forward defense. A blitzkrieg type attack concentrates forces in a narrow sector, which bypasses most of the forces deployed for a forward defense and renders them irrelevant to the conflict.

Forward defense is inherently firepower, not maneuver oriented, and of necessity has the liner defense characteristic of a Maginot Line. Ideally NATO should have both the forward defense, for its political significance to the Germans, and strong reserves of mobile ground forces. But if, as seems to be the case, there is little chance of having enough forces for both, should we choose the politically desirable but militarily ineffective forward defense over the militarily more promising concept of mobile defense based on strong active reserves?

The issue of standardization has one important aspect which was not fully dealt with in the report. This is the problem that weapons systems are seen domestically not only as defense requirements, but also as contributors to the economy. Thus, there is substantial resistance within each nation to standardization. Even when licensing and coproduction arrangements can be made, each nation retains the suspicion that it could have benefited its own economy more with a purely national program. And even with such multinational production arrangements costs are often greater than if one nation served as the producer of a given system for all the consumers. The political leadership of all the NATO nations must come to realize that we cannot afford to regard defense as a "pork barrel." Important as domestic jobs and profits are, they are no answer to the continuing rise in Soviet military capabilities.

I am also hopeful that, as our colleagues turn their attentions to these important NATO issues, we include in our deliberations future naval force structure considerations. Our future NATO posture cannot be determined separately from the configuration of our Atlantic and Mediterranean fleets. As I indicated in a recent report to the Armed Services Committee, some of our most difficult decisions are in this area.

Finally, the Nunn-Bartlett report urges the acquisition of more airlift capability so that U.S. forces stationed in the continental United States can be moved to Europe quickly enough to participate in a conflict that comes with little or no warning. I agree with the distinguished Senators that we are likely to have little or no warning of a Warsaw Pact attack. But if we look more closely at airlift, we see that, with our CRAF fleet, we already have sufficient airlift capacity to move all the personnel we might need to Europe in a short time. On the other hand, the capability of aircraft to move heavy battle equipment, such as tanks and artillery, or large quantities of munitions and POL is inherently severely limited by the capacity of even the largest aircraft.

Is it logical to think that we can move any significant quantity of equipment to Europe in a short time even with a massive increase in airlift assets? Or must we rely on more prepositioning, plus possibly the special organization of selected sealift assets so that they can be deployed quickly or even predeployed? Similarly, it is not clear that the tactical airlift for which the report calls could be used in central Europe in the face of the Soviet's capability to project tactical aircraft into that region.

While I believe these and other points should be debated, it is clear that Senators NUNN and BARTLETT have done the Senate and the American people an immense service with their report. It comprehensively addresses a series of the key issues in the defense of NATO, and offers needed criticisms and suggestions. I sincerely hope that every Member of the Senate will take the time to read this vitally important study, and to think about the national security issues that are involved.

A MYTH IN THE MAKING: THE SOUTHERN ECONOMIC CHALLENGE AND THE NORTHERN ECONOMIC DECLINE

Mr. JOHNSTON. Mr. President, in the last few years, much publicity has been given to the economic, political and social resurgence of the South. At the same time, the economic problems of the North have been given needed attention. A disturbing and erroneous linkage of these two issues has been made and I am distressed by reports of increased regional tensions and inflammatory rhetoric stemming from competition for Federal funds.

The popular belief that northern losses are a direct result of southern growth and Federal fiscal policies simply does not hold water. A study undertaken by two economists, Dr. Carol L. Jusenius and Dr. Larry C. Ledebur, for the Office of Economic Research of the Economic Development Administration clearly demonstrates that Northeastern population losses are more attributable to lower fertility rates than to outmigration. On the other hand, some 65.5 percent of southern population growth rates are a result of natural population increases. Similarly, northern industrial decline cannot be attributed to movement of businesses south. In fact, over 50 percent of the North's employment losses occurred as a direct result of the "death" of firms while 64.3 percent of southern employment gains were due to existing firms' expansion. "Inmigration" of businesses to the south accounted for a mere 1.2-percent increase in employment while "outmigration" in the North resulted in a 1.5-percent loss of employment opportunities.

The Jusenius-Ledebur study also examines Federal fiscal policies. The data analyzed show that the North has not suffered at the expense of the South. For example, per capita Federal Government expenditures in the South did not meet the national average even though southern States are among the poorest in the Nation. Furthermore, the slightly lower percent of income paid in taxes in the South—23 percent in the South as compared to 24.9 in the North in 1975—can be explained by the South's lower per capita income—$5,288 compared to $6,265 in the North—and our progressive income tax structure.

This cursory summary highlights only a few of the factors examined. Because copies of the report are in short supply, I am asking that this well-reasoned and informative study be reprinted in the RECORD. I sincerely hope that my col-

leagues will review this study and join me in trying to develop new initiatives from a national perspective, rather than enacting short-sighted parochial efforts which would, in my opinion, be counterproductive to long-run balanced economic growth. The South has shed many shackles of the past, but despite its recent growth and development, many crippling legacies remain. The South still has a lower per capita income than the North; poverty in the South is more widespread than in the North—43.6 percent of the poverty population resided in the South in 1970 compared to 36.9 percent in the North—and income distribution is more unequal in the Southern States. While I personally sympathize with the plight of all Americans who are unemployed, with our older industrialized regions suffering from high unemployment and lack of growth, I think we should work together to develop positive policies to solve these problems and not hastily opt for punitive measures which would help one area at the expense of another.

Mr. President, I ask unanimous consent that the Jusenius-Ledebur study to which I have referred may be printed in the RECORD.

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

A MYTH IN THE MAKING: THE SOUTHERN ECONOMIC CHALLENGE AND NORTHERN ECONOMIC DECLINE

(By C. L. Jusenius and L. C. Ledebur,* Visiting Scholars, Office of Economic Research, Economic Development Administration, U.S. Department of Commerce, November, 1976)

This Publication was prepared for the Office of Economic Research, Economic Development Administration, U.S. Department of Commerce. The statements, findings, conclusions, recommendations, and other data in this report are solely those of the authors and do not necessarily reflect the views of the Economic Development Administration.

ABOUT THE AUTHORS

In 1975, the Office of Economic Research of the Economic Development Administration introduced a visiting scholar program. This is a resident research program whereby scholars of demonstrated competence are invited to undertake research in the areas of urban and regional economic research.

Dr. Carol L. Jusenius is Assistant Professor of the Department of City and Regional Planning, Ohio State University, Columbus, Ohio and is a Brookings Fellow for 1976–1977. She has served previously as Research Associate at the Center for Human Resource Research, Columbus, Ohio, and as Assistant Professor, Department of Economics, Smith College.

Dr. Jusenius attended Mills College, Oakland, California, received her B.A. in Economics from Washington Square College, New York University, and her M.A. and Ph. D. degrees from the Graduate School of Arts and Science, New York University. Her publications include:

"Economists' Approaches to Sex Segregation in the Labor Market: An Appraisal" (with Francine Blau). Presented at the Workshop on Occupational Segregation, May 1975, sponsored by the AEA Committee on the Status of Women in the Economics Profession. Published in *Women and the Workplace*, University of Chicago Press, 1976.

"The Influence of Work Experience, Skill Requirement and Occupational Segregation on Women's Earnings". Presented at the American Economic Associations' meetings, Dallas, December 1975. Forthcoming in the *Journal of Economics and Business* February 1977.

Dual Careers, Vol. III. (with Richard Shortlidge), Manpower Administration Research Monograph No. 21, Fall 1975. Vol. IV (with Herbert Parnes et al.), Employment and Training Administration R&D Monograph No. 21, 1976.

"The Influence of Human Capital and Occupational Distribution Upon Black-White Wage Differentials" (with Arvil V. Adams). To be presented at the 1977 Western Economic Association Meetings.

Dr. Larry C. Ledebur has been Associate Professor of Economics at Denison University, Granville, Ohio, since 1971. He has served as Director of the Denison Program on Learning Through Simulation and Dean of Men.

Dr. Ledebur received his B.A. degree in Economics from Austin College, Texas, and his M.S. and Ph.D. degrees from Florida State University. His publications include:

Economic Disparity: Problems and Strategy for Black America (with William L. Henderson). New York, The Free Press. 1970.

Urban Economics: Processes and Problems (with William L. Henderson). New York, John Wiley & Sons, Inc. 1972.

"Regional Economic Development and Human Resources Requirements" in *Human Resources and Regional Economic Development*, Paul Braden (ed.), Economic Development Administration, forthcoming Winter, 1976.

"The Viable Alternatives for Black Economic Development" (with William L. Henderson) *Journal of Public Policy*, Vol. 18, Spring, 1970.

"Government Incentives for Black Economic Development" with William L. Henderson. *The Review of Social Economy*, December 1969.

INTRODUCTION

The relative economic decline of the Northeast and the contrasting economic growth of the "Sunbelt" recently have been a focus of attention in the media and in political forums. It is being argued that over the past few years population migration to the South has become a "flood-tide" and that industry migration to this region has "burst beyond the bounds than can be accommodated by existing political institutions".[1] According to this view, the Northeast, as a consequence, has been left with a declining population and a decreasing number of employment opportunities for its populace.

It is argued also that in spite of the economic problems of the Northeast in recent years, the Federal government has done little to alleviate the situation.[2] The Northeast continues to pay into the Treasury a higher per capita level of Federal income taxes than it receives in Federal expenditures per person. Members of Congress from the Northeastern and Midwestern States have formed a coalition to protest this flow of funds and to "insist on equity." [3] They have been joined by at least one policy analyst who has recommended that "the hemorrhage of funds from the Northeast and Midwest be reduced.[4]

The manner in which information has been reported on the economic positions of these two "super regions" is unfortunate. It has created misleading impressions about the two geographic areas' comparative levels of development and economic distress. The statements and articles imply policy imperatives that may be erroneous, harmful to many constituents of the population who are in poverty, and counterproductive to long-run balanced regional growth.

This paper examines the comparative levels of economic development as well as the economic disparities between the two regions. It concludes that the recent arguments regarding the relative economic positions of the Northeast and the South are, at best, tenuous; at worst, they are severe distortions of reality.

THE REGIONS

The two regions examined in this paper are the "Northern Industrial Tier" and the "Sunbelt-South". The Northern Tier is composed of the East North Central and Middle Atlantic State census regions and Connecticut, Massachusetts, and Rhode Island of the New England Region. Maine, Vermont and New Hampshire are not included because the industrial bases of these States differ in kind and degree from the rest of the major region.

The Sunbelt-South is composed of the West South Central and East South Central census regions and the South Atlantic with the exceptions of Maryland, Delaware and Washington, D.C. These latter three areas have been excluded in order to focus on those States which are considered generally as the "Old South".

It should be noted that the Southwestern and Far Western States, also typically considered part of the Sunbelt, have been excluded from this analysis. In part, this was done so that the differences among the "Sunbelt" States would be highlighted. In addition, a focus on the Southeast has been suggested by such titles as "The Second War Between the States" and the attention the Southeast has been receiving recently in the press.[5]

(NOTE.—Figures 1–17 omitted.)

POPULATION

It is common knowledge that between 1970 and 1975 the population of the Sunbelt-South increased more rapidly than that of the Northern Industrial Tier (8.9 percent versus 1.0 percent). Less well known is the fact that by far the greatest rate of increase was in Florida (22.9 percent), a State which, due to its large proportion of retirees, is in many ways an anomaly even in the South. Florida alone accounted for over 30 percent of the population increase in the Sunbelt-South. The rate of growth of this region was approximately 7 percent when Florida is excluded.

Migration

Recently attention has been focused on migration as a major factor causing this differential in growth rates. It has been noted that while the North historically experienced net in-migration from the South, over the last five years this trend has been reversed. By 1975 the Industrial North had lost through migration 1.8 percent of its 1970 population base; the Sunbelt-South had experienced a 4.6 percent increase over its 1970 population through in-migration.

These net migration figures mask some of the underlying dynamics of these movements. As indicated in Table 2, from 1973 to 1974 the Sunbelt-South experienced an in-migration of 358.8 thousand Social Security covered workers from the Northern Tier, but during the same period lost 266.7 thousand workers to the Northern region.[6] Thus, there were significant movements in both directions, but the South was the net beneficiary by 92.1 thousand workers. It is important to mention however, that the Industrial North drew 74 percent as many workers from the South as the North lost to the South.

*On leave of absence from the City and Regional Planning Department, Ohio State University, and the Department of Economics, Denison University, respectively.

Footnotes at end of article.

TABLE 1.—COMPONENTS OF POPULATION CHANGE BY REGION, 1970–75

	Number of persons			Percent of 1970 base		
	Total change	Natural increase	Migration	Total change [1]	Natural increase	Migration
Northern Tier	933,000	2,504,000	−1,571,000	1.0	2.8	−1.8
New England	168,000	211,000	−43,000	1.7	2.2	−.5
Middle Atlantic	52,000	807,000	−755,000	.1	2.1	−2.0
East-north central	713,000	1,486,000	−773,000	1.8	3.7	−1.9
Sunbelt-south	5,123,000	2,491,000	2,632,000	8.9	4.3	4.6
South Atlantic	2,841,000	976,000	1,865,000	[2] 11.2	3.8	7.3
East-south central	735,000	532,000	203,000	5.7	4.1	1.6
West-south central	1,529,000	965,000	564,000	7.9	5.0	2.9

[1] Percent change due to natural increase plus percent change due to migration equals total percent change in population between 1970 and 1975.
[2] Percent change in components does not sum to total percent changes due to rounding of data by the Bureau of Census.

Source: Current Population Reports, Estimates of Population of States, 1975, U.S. Bureau of the Census.

TABLE 2.—THE MIGRATION OF WORKERS BETWEEN THE SUNBELT SOUTH AND THE NORTHERN INDUSTRIAL TIER, 1973–74

[In hundreds]

Migration to	New England	Middle Atlantic	East-North Central	Total
Northern Tier:				
Migration from—				
South Atlantic	200	517	588	1,305
East-South Central	43	165	445	653
West-South Central	77	287	345	709
Total	320	969	1,378	2,667

Migration to	South Atlantic	East-South Central	West-South Central	Total
Sunbelt south:				
Migration from—				
New England	286	37	56	379
Middle Atlantic	1,092	189	262	1,543
East-North Central	778	522	366	1,666
Total	2,156	748	684	3,588

	In-migration	Out-migration	Net migration
Net migration between north and south:			
North tier	2,667	3,588	−921
New England	320	379	−59
Middle Atlantic	969	1,543	−574
East-North Central	1,378	1,666	−288
Sunbelt South	3,588	2,667	+921
South Atlantic	2,156	1,305	+851
East-South Central	748	653	+95
West-South Central	684	709	−25

Source: Social Security Continuous Work History—1-percent sample, U.S. Department of Commerce.

This net in-migration into the Sunbelt-South from the Northern Tier States is a reversal of the dominant trend prevailing in this Century. However, the extent to which it represents a new long-term trend—rather than a cyclical response to the recent severe economic recession—is unclear.[7] Workers, reacting to unemployment in highly industrialized areas, may be returning *temporarily* to their place of origin where a network of friends and relatives as well as marginal employment opportunities exist. Such a phenomenon is not without historical precedence: it occurred extensively during the Great Depression.

At this point the evidence is inconclusive regarding the degree to which the in-migration into the Southern States is a new, long-term trend or is a short-term response to the recent cyclical downturn in the Industrialized North. This uncertainty argues for, at least, a reasonable amount of caution in the creation of public policy based on the current migration experience.

Footnotes at end of article.

Natural increases

While net in-migration was a factor contributing to the population growth rate of the Sunbelt-South, natural increases in the population accounted for almost 49 percent of the population increase in this region between 1970 and 1975. When Florida is excluded (because 90.3 of its population increase was due to in-migration), the figure is even higher: 65.5 percent of the total population increase in the South was attributable to natural population increase. *Thus, even if no migration had occurred, population would have increased more rapidly in the Sunbelt-South.*

The cause of this difference in natural growth rates is located in differential fertility rates. While the differences in mortality rates is small, the fertility rate is 1.5 percentage points greater in the Sunbelt-South (Table 3).[8] The natural rate of increase in the South over the five-year period exceeds that of the North by 1.4 percentage points.

As a result of both migration and natural population increases, the share of the total population found in the Northern Tier decreased by 1.9 percentage points while the share of the South increased by 1.7 percentage points between 1970 and 1975. The proportion of the U.S. population located in the North has decreased, but at a relatively low average annual rate of four-tenths of one percent. Given this rate of decline and the extent to which it is attributable to low fertility rates, it is difficult to construe the change as a "flood tide"[9] of the Northern population to the South. It is also difficult to take this statement seriously given the fact the Northern Tier continues to contain 41 percent of the total U.S. population, and the South 30 percent of the population.

TABLE 3.—REGIONAL RATES OF BIRTH, DEATH, AND NATURAL INCREASE, 1970–75

Region	Birth rate	Death rate	Rate of natural increase
Northern tier	8.0	5.1	2.9
New England	7.2	5.0	2.2
Middle Atlantic	7.5	5.3	2.2
East-North Central	8.6	4.9	3.7
Sunbelt—South	9.5	5.2	4.3
South Atlantic	9.2	5.3	3.9
East-South Central	9.5	5.3	4.2
West-South Central	9.9	4.9	5.0

Source: Calculated from current population reports, U.S. Bureau of the Census, series P–26.

MEASURES OF COMPARATIVE REGIONAL WELL-BEING

Income

The most commonly employed measure of economic well-being is per capita income. When this measure is indexed as a percent of average per capita income in the United States, the income disparities between the Northern Tier and the Sunbelt-South are dramatically highlighted. While every State in the South fell below the U.S. average in 1975, only two States, Wisconsin and Indiana, did so in the North, each being 4 percentage points below the National average. In contrast, eleven of the 14 Southern States were more than 10 percentage points below this average and 4 of these were more than 20 percentage points below.

When per capita income figures are adjusted for cost of living differentials and compared as a percent of the United States average, the magnitude of the income gap between the two regions is somewhat diminished. In the North, Indiana and Wisconsin remain below the U.S. average and Massachusetts and Rhode Island fall below (10 and 6 percentage ponts respectively). In the South, three States, Texas, Florida and Virginia, had adjusted per capita incomes above the national average. However, nine of the 14 Southern States still had averages 5 percentage points below the U.S. average and four of these were 10 percentage points or more below.

Thus, adjusting per capita income figures for cost of living differentials does not change significantly the overall picture of relative regional well-being. Adjusted per capita incomes in the North are generally higher than those in the South.

A great deal of the recent controversy has centered on the differential regional impacts of Federal taxation and expenditures. While this question is examined in greater detail in a subsequent section, it is important to note here that the fiscal policy impacts on regional per capita incomes. At the outset, the argument concerning greater Federal expenditures in the Sunbelt-South should be laid to rest. While per capita Federal expenditures for all programs combined are greater in this region than in the Northern Tier, these expenditures are incorporated in the per capita income figures. (For example: retirement, welfare, military expenditures, etc.) Adding Federal expenditures to per capita income would be "double counting", i.e., adding in Federal expenditures twice. *Thus, even with the greater Federal expenditures in the South, per capita incomes in the Sunbelt-South are generally lower than those in the Northern Tier.*

The impact of Federal taxes can be addressed by examining disposable per capita income (per capita income minus per capita Federal taxes). Disposable income is below the national average in four States in the Northern Tier (Wisconsin, Indiana, Ohio, and Rhode Island), but only by an average of 3.25 percentage points. However, no State in the Sunbelt-South had a per capita disposable income above the U.S. average. Eleven States are five or more percentage points below this average and, of these, nine are 15 or more percentage points lower. *Thus, the impact of Federal taxes has not been to significantly decrease the regional per capita income gap, or to offset this "gap", as implied by much of the current literature.*

Adjusting per capita disposable income figures for cost of living differentials does not change the picture significantly. Four States in the Northern Tier remain below the national average with Massachusetts replacing Ohio. Massachusetts has the lowest adjusted disposable per capita income in the Northern Tier. Only three States in the Sunbelt-South (Texas, Florida and Virginia) had adjusted per capita incomes above the U.S. average. *On the basis of this evidence it seems clear that regional differences in rates of inflation have contributed to a diminishing of the regional per capita real income differentials.*

Although the North has had historically, and continues to have, substantially higher per capita incomes than the South, this differential has been declining over the past 45 years. *However, in 1975 the trend toward a convergence of regional per capita incomes was reversed.* In this year the per capita incomes of the two regions as a percent of the U.S. average diverged.

An examination of rates of change in disposable per capita incomes reveals that *between 1973 and 1975* States in the Northern Tier (with the exceptions of Michigan, Indiana and New Jersey) experienced a growth in disposable per capita income which was greater than the national average. In contrast six States in the Sunbelt-South had greater than average increases. The remaining eight Southern States experienced less than average per capita income growth.

In spite of these recent growth rates, over the five year period 1970–1975 the share of total personal income which accrued to the North decreased by 3.2 percentage points while the share captured by the South increased by 2.4 percentage points. It should be noted that these Southern gains were relative to the North, a region which did experience gains in total and per capita personal income greater than the National average. Even with these changes in relative income shares, 44 percent of the personal income generated in the United States in 1975 accrued to the Industrial North compared to the 25.4 percent which went to the Sunbelt-South.

Distribution of income

An investigation of the relative economic positions of the populations of the two regions also requires consideration of the distribution of income within each. The economic well-being of a population depends, in part, on the manner in which total income is distributed among constituent groups. For example, it is possible that a region whose population has a higher per capita income but a more unequal income distribution might be suffering greater economic distress than a region with a lower per capita income but a more equal income distribution.

It has already been noted that the South has a lower per capita income than the North. The South has a more unequal distribution of income as well. Even the relatively low per capita income of the South overstates the economic welfare of its population compared to that of the higher income Northern population.

According to the data provided in Table 4, in the Industrial North 20.1 percent of all families received incomes less than $6,000 in 1969. In contrast, 36.2 percent of all Southern families fell below this income level. This is a differential of 16.1 percentage points. In Alabama and Mississippi, two of the poorest Southern States, almost 50 percent of total families had incomes of less than $6,000 in 1969.

Poverty

An examination of the geographic distribution of the poverty population confirms the information on the relative income distributions of the two regions. In contrast to rather widely held beliefs, the problem of poverty is more pervasive in the South than in the North. In 1970, 36.9 percent of the poverty population resided in the Northern Industrial Tier, but 43.6 percent was located in the Sunbelt-South. This regional distribution is at variance with the view that the post-World War II migration of the Southern poor to the North resulted in a concentration of poverty in the North. The statement "the large cities of the Northeast and Midwest have become the Nation's new cottonfields . . . . the rural poor of the South and elsewhere now reside in the cities of the Northeast"[10] distorts the actual regional incidence of poverty in the United States. For example, while New York State had a relatively large share of the population below the poverty line (7.3 percent), a greater share of the poor (7.6 percent) resides in Texas.

The incidence of poverty in the South relative to the North becomes more apparent when examined in terms of the proportion of each State's population which is below the poverty line. A comparison of the two regions reveals that States which have a higher proportion of the poor than the average for the Nation are located in the South, not the North. In the South, 20.9 percent of the population was in poverty in 1970. The comparable figure for the North was less than half that of the South (9.7 percent). Indeed, one-third of the Southern States have populations of which 25 percent or more were living in poverty in 1970.

Footnotes at end of article.

TABLE 4.—PERCENT DISTRIBUTION OF FAMILIES BY INCOME, 1969

	Less than $1,999	$2,000 to $3,999	$4,000 to $5,999	$6,000 to $7,999	$8,000 to $9,999	$10,000 to $11,999	$12,000 to $14,999	$15,000 to $24,999	$25,000 to $49,999	$35,000 or more
Northern tier	4.2	7.1	8.8	11.8	14.2	14.0	15.6	18.8	4.5	1.
New England	3.3	6.1	7.9	11.0	14.0	14.5	16.1	20.3	5.2	1.0
Connecticut	3.1	4.9	6.5	9.4	12.9	14.5	17.5	23.1	6.6	1.5
Massachusetts	3.3	6.5	8.3	11.4	14.4	14.5	16.3	19.6	4.7	.9
Rhode Island	4.8	7.7	10.0	13.6	15.9	14.5	14.5	14.8	3.2	.8
North Atlantic	4.3	7.4	9.3	12.3	14.0	13.5	14.7	18.6	4.9	1.0
New York	4.7	7.6	9.2	11.6	12.8	13.0	14.5	19.7	5.6	1.2
New Jersey	3.4	5.9	7.8	10.4	13.1	13.6	16.4	22.5	6.0	1.1
Pennsylvania	4.3	8.0	10.3	14.6	16.3	14.2	14.0	14.4	3.2	.7
East-north central	4.3	7.2	8.5	11.5	14.5	14.4	16.1	18.8	4.0	.7
Ohio	4.4	7.2	8.5	12.1	15.4	14.8	15.9	17.3	3.5	.7
Illinois	4.3	6.9	8.2	10.8	13.2	13.9	16.4	20.6	4.9	.9
Indiana	4.2	7.5	9.0	13.2	15.5	14.8	15.6	15.9	3.0	.5
Michigan	4.2	6.8	7.7	10.3	13.8	13.9	16.6	21.4	4.5	.8
Wisconsin	4.2	8.3	9.2	12.0	15.7	15.1	15.6	15.8	3.3	.6
Sunbelt—South	9.2	12.9	14.1	14.7	13.5	11.0	10.6	10.7	2.6	.6
South Atlantic	8.2	11.9	13.9	14.7	13.7	11.3	11.1	11.5	2.8	.6
Florida	7.1	12.5	14.3	14.3	13.0	10.9	11.2	12.4	3.5	.9
Georgia	8.9	11.8	13.7	14.3	13.3	11.3	11.4	11.9	2.7	.6
North Carolina	8.8	12.2	15.2	15.5	14.5	11.7	10.6	9.0	2.0	.5
South Carolina	10.2	12.2	15.0	15.4	14.0	11.6	10.4	8.9	1.7	.4
Virginia	6.5	9.7	12.4	14.1	13.6	11.7	12.2	15.2	4.0	.6
West Virginia	10.3	14.6	14.1	15.9	15.4	10.9	9.3	7.8	1.5	.3
East-south central	11.9	14.6	14.8	14.8	13.1	10.4	9.4	8.6	1.9	.5
Kentucky	11.2	14.6	14.0	14.3	13.5	10.9	10.0	9.2	2.0	.4
Tennessee	10.5	13.4	15.1	15.2	13.8	10.8	9.7	9.0	2.1	.5
Alabama	11.4	14.4	14.7	15.1	13.2	10.5	9.5	8.9	1.9	.5
Mississippi	16.6	17.2	15.7	14.6	11.3	8.8	7.6	6.4	1.5	.4
West-south central	8.8	13.2	13.8	14.4	13.4	11.1	10.7	11.2	2.7	.6
Arkansas	12.6	18.1	11.2	15.6	12.4	8.8	7.4	6.2	1.5	.4
Louisiana	11.7	14.2	13.6	13.8	13.1	10.6	10.2	9.9	2.3	.6
Oklahoma	8.0	14.6	14.2	15.3	13.7	10.7	10.4	10.1	2.3	.6
Texas	7.4	11.7	13.1	14.1	13.6	11.7	11.8	12.7	3.1	.7

Source: Bureau of the Census, "Census of Population: 1970," vol. 1; "Characteristics of the Population," pt. 1, U.S. Summary section, p. 1-539.

Personal wealth

Personal wealth or assets is another measure of relative regional welfare. An examination of these data reveals that the distribution of national wealth and of the number of wealthholders in the Nation are both skewed in favor of the Northern Industrial Tier.

As Table 5 indicates, in 1972, 48.5 percent of total wealthholders with assets valued in excess of $60,000 resided in the Northern Industrial Tier and controlled 45.0 percent of the personal wealth in this asset category in the Nation. In comparison, the Sunbelt-South claimed only 22.6 percent of these wealthholders, with total assets amounting to 25.1 percent of the Nation's total of wealth in this category.

TABLE 5.—PERSONAL WEALTH BY REGION, 1972[1]

Region	Number of tax wealth-holders	Percent of United States	Total assets (dollars)	Percent of United States
Northern industrial tier	6,222.8	48.5	967,769	45.0
New England	656.8	5.1	126,913	5.9
North Atlantic	2,940.5	22.9	433,790	20.2
East-north central	2,625.5	20.5	407,066	18.9
Sunbelt-South	2,893.8	22.6	540,506	25.1
South Atlantic	1,444.0	11.3	278,566	12.9
East-south central	558.2	4.3	89,489	4.2
West-south central	891.6	7.0	172,461	8.0

[1] Estimated personal wealth of individuals with more than $60,000 gross assets in 1972.

Source: Personal wealth estimated from Estate Tax Returns, Internal Revenue Service, Department of the Treasury.

In the Northern Tier, one out of every 14 thousand individuals had assets in excess of $60,000 (1972 assets divided by 1970 population). The comparable figure of the Sunbelt-South was one in every 20,000 persons. The average value of assets per resident population in the North was $11.0 and $9.46 in the South.

Summary: Personal well-being

In sum, the relative per capita income in the Northern Industrial Tier is greater than that in the Sunbelt-South. Even with an adjustment to per capita incomes in order to reflect cost of living differentials, the per capita income of the North remains above that of the South. In fact, the size of the actual disparity in economic well-being indicated by the comparisons of per capita income, adjusted or unadjusted, is understated because of the more unequal income distribution in the South and the greater incidence of poverty in this less developed region.

UNEMPLOYMENT

A major cause of the recent controversy regarding the economic positions of the Northern Tier and Sunbelt-South is the difference in unemployment rates experienced by the two regions during 1975.[11] When the national unemployment rate was 8.5 percent, 9.9 percent of the labor force in the Northern States was looking for work. Furthermore, the States with the highest unemployment rates in the Nation were located in this part of the country: Rhode Island and Michigan. In contrast, while three States in the Sunbelt-South had unemployment rates of 9.6 percent or more in 1975, as a region the South had an unemployment rate slightly less than the national figure, 8.3 percent.

An examination of the unemployment experiences of the two regions between 1970 and 1974 lends an important perspective to the North's recent problems. Over this four-year period, the unemployment rate for this region did not differ greatly from that of the Nation. While the average unemployment rate for the U.S. economy was 5.4 percent, the unemployment rate for the Northern region averaged 5.6 percent. Of course, variations among the States did appear. Most notably, the average unemployment rate of the three New England States of Massachusetts, Connecticut, and Rhode Island was 6.5 percent.

As in 1975, the unemployment rate of the Sunbelt-South between 1970 and 1974 was substantially lower than that of Nation: it averaged 4.6 percent. While West Virginia and Louisiana had unemployment rates averaging above 6.0 percent, the remainder of these Southern States had less than five percent of their labor force out of work.

Even though the South has had relatively low unemployment rates and the Northeast, relatively high rates, this differential does not imply necessarily that the Sunbelt-South has been shifting its unemployment burden to the Northern Industrial Tier.

The shares of total U.S. unemployment absorbed by both the Southeast and the Northeast increased between 1970 and 1975. Almost 50 percent of all unemployed persons in 1975 were located in the Northern Tier, more than six percentage points higher than in 1970. In turn, the Sunbelt-South had 28.3 percent of all the unemployed workers, up 2.7 percentage points from 1970.

EMPLOYMENT

Given the relatively high unemployment rates of the Northern Tier in 1975, it is not surprising that concern has risen over the causes of this dilemma. A point frequently made in discussions of the problem is that the currently high unemployment rates reflect the historically low growth rate of employment opportunities in the North relative to those in the South.[12] For example, between 1970 and 1975, when total nonagricultural employment in the U.S. increased by 8.6 percent, employment in the North grew by only 1.3 percent and employment in the South increased by 16.7 percent. (Table 6).

The breakdown by industry of these aggregate figures reveals that the recent low employment growth rate in the Northeast stems in part from both the importance of Manufacturing to the regional economy and the large employment losses sustained by this industry during the recent recession. In 1970, the base year, employment in Manufacturing accounted for almost one-third of the total nonagricultural employment in the North, a larger proportion than was found in the Nation. Moreover, reflecting this industry's experience at the national level, Manufacturing in the Northern Tier had greater employment losses (in absolute terms) than any other major industry.

In turn, the South's employment expansion seems to have been attributable partially to the relatively low share of its total employment which is located in Manfacturing. In contrast to the North, in 1970, only 26 percent of all nonagricultural employment was in this industry. Approximately equivalent shares of employment were located in other industries (Wholesale and Retail and Government) which experienced relatively high rates of employment expansion in both the Southern and the National economies.

The impact of public employment

The Sunbelt-South has experienced a relatively high rate of growth in public sector employment (Table 6). While in the North, government employment increased by 11.8 percent, employment in this sector in the South grew at twice that rate (23.5 percent).

Footnotes at end of article.

TABLE 6.—PERCENT CHANGE IN NONAGRICULTURAL EMPLOYMENT AND LOCATION QUOTIENTS[1] FOR THE UNITED STATES, THE NORTHERN INDUSTRIAL TIER, AND THE SUNBELT SOUTH, 1970–75

Industry	Percent change in employment: 1970–75			Location quotient			
				Northern industrial tier		Sunbelt South	
	United States	Northern industrial tier	Sunbelt South	1970	1975	1970	1975
Total nonagricultural	8.6	1.3	16.7				
Mining	19.6	13.6	21.5	0.44	0.40	2.0	1.90
Construction	−2.2	−13.6	−.1	.84	.80	1.18	1.29
Manufacturing	−5.2	−12.7	14.6	1.17	1.16	.96	.96
Transportation and public utilities	−.1	−5.7	9.0	.95	.98	1.02	1.03
Wholesale and retail trade	12.7	6.4	21.6	.96	.97	1.00	1.00
Finance, Insurance, and real estate	14.5	6.7	29.1	1.04	1.04	.90	.95
Services	20.4	14.6	30.8	.99	1.01	.88	.89
Government	17.3	11.8	23.5	.87	.89	1.06	1.04

[1] A location quotient is the ratio of the proportion of a region's total employment which is located in a particular industry to the proportion of the Nation's total employment which is located in the same industry.

Source: U.S. Department of Labor, Bureau of Labor Statistics "Employment and Earnings," vol. 19 (May 1973), pp. 128–137; vol. 22 (May 1976), pp. 49 and 126–135.

When these figures are disaggregated by level of government (Federal, State and local employees), it is evident that for both regions (as well as for the Nation as a whole), public employment expansion was attributable to increases at the State and local levels (Table 7). The relatively low growth rate of government employment in the North was due to *both* a decline in Federal employment *and* a smaller than average increase in employment at the State and local levels. In the South, while the rate of increase in Federal employment was greater than the national average, the real expansion occurred at the State and local levels. State and local government employment in the South expanded by 27.6 percent between 1970 and 1975.

This relatively large expansion of State and local employment in the South may have been a necessary adjunct to the increases in

population and private sector employment over the period 1970–1975. For example, in 1970 when the North had .049 State and local employees per capita, the South had only .047 such employees per resident (Table 8). The expansion in the South permitted parity with the North by 1975: both regions had .055 persons employed in state or local government per resident—a figure which, it should be noted, was still lower than the national average.

In addition, neither the growth in Federal employment in the South nor its decline in the North appears to have been unduly precipitate. As a result of these changes, the North's share of Federal employment did decline slightly (from 30 percent to 29 percent) and the South's share did increase (from 28 to 29 percent). Yet, these changes in shares seem to reflect the simultaneous redistribution of the national population, for the number of Federal government employees per capita in each of the two regions remained constant. In both 1970 and 1975, the South had .013 and the North .009 civilian Federal employees per resident.

TABLE 7.—FEDERAL, STATE, AND LOCAL EMPLOYMENT BY REGION: 1975 LEVEL AND PERCENT CHANGE, 1970–75

Region	1975 level	Percent change 1970–75
CIVILIAN FEDERAL EMPLOYMENT		
Sunbelt-South:	804,500	5.4
South Atlantic	383,800	7.2
East-south central	170,800	10.5
West-south central	249,900	−.3
Northern industrial tier:	794,800	−3.0
New England	89,800	−10.2
East-north central	325,800	−2.3
Middle Atlantic	379,200	−1.7
U.S. total	2,744,800	1.1
STATE AND LOCAL EMPLOYMENT		
Sunbelt-South:	3,422,564	27.6
South Atlantic	1,564,505	32.0
East-south central	706,954	21.7
West-south central	1,151,105	25.8
Northern industrial tier:	4,804,256	12.8
New England	514,437	19.2
East-north central	2,252,147	14.9
Middle Atlantic	2,037,672	9.1
U.S. total	12,096,572	19.2

Sources: U.S. Bureau of the Census, Public Employment in 1970 Series GE 70–No. 1, 1971, table 5, p. 11; U.S. Bureau of the Census, Public Employment in 1975, Series GE 75–No. 1, table 6, p. 12.

TABLE 8.—FEDERAL, STATE, AND LOCAL EMPLOYMENT PER PERSON [1] BY REGION, 1970 AND 1975

Region	1970	1975
CIVILIAN FEDERAL EMPLOYMENT		
Sunbelt-South	0.013	0.013
South Atlantic	.014	.014
East-south central	.012	.013
West-south central	.013	.012
Northern, industrial tier	.009	.009
New England	.010	.009
East-north central	.008	.008
Middle Atlantic	.010	.010
U.S. total	.013	.013
STATE AND LOCAL EMPLOYMENT		
Sunbelt-South	.047	.055
South Atlantic	.047	.055
East-south central	.045	.052
West-south central	.047	.055
Northern industrial tier	.049	.055
New England	.045	.052
East-north central	.049	.055
Middle Atlantic	.050	.055
U.S. total	.050	.057

[1] Calculations are based on resident population. Significant differences did not appear when civilian population figures were used.

Sources: U.S. Bureau of the Census, Public Employment in 1970, Series GE70–No. 1, 1971, table 5, p. 11; U.S. Bureau of the Census, Public Employment in 1975, Series GE75–No. 1, table 6, p. 12; and U.S. Bureau of the Census, Population, Estimates and Projections, Current Population Reports Series P–25, No. 615, November 1975.

Dynamics of employment changes

The contrasting employment experiences of the North and South, mentioned at the outset of this section, have been attributed primarily to recent migration of firms out of the older industrial areas of the Northeast. For example, it has been stated:

"As long as the migration of industry and population was gradual from what was a relatively rich Northeast to what was a relatively impoverished South and Southwest, it helped to unify the Nation. But within the past five years the process has burst beyond the bounds that can be accommodated by existing political institutions".[13]

A second author has claimed that "throughout much of the U.S. history, economic investment, jobs and population have been shifting from the Northeast to the West and South".[14]

The problem with this point of view is that it does not coincide with the evidence. It is true that the Northern Tier's share of total U.S. employment declined between 1970 and 1974, and the South's share of employment increased. Between 1970 and 1975, the Northeast's share of all nonagricultural jobs declined by 3.1 percentage points and the South's share increased by 2.0 percentage points. It is not true that migration of firms over the past few years has caused these employment changes in the two regions.

Migration of firms has played a minor role in the changing employment situations of the Northern Industrial Tier and the Sunbelt-South. Over the past few years the primary cause of declining employment in the North has been the "death" or closure of existing firms.[15] In the South, the primary cause of the increasing employment has been the expansion of existing firms.

The data demonstrate these points quite clearly (Table 9). Over 50 percent of the employment losses which occurred in the Northern Tier between 1969 and 1972 was attributable to the death of firms. Only 1.5 percent was due to the outmigration of firms.

TABLE 9.—DISTRIBUTION OF EMPLOYMENT GAINS (LOSSES) BY BEHAVIOR OF FIRMS WITHIN REGIONS, DEC. 31, 1969 TO DEC. 31, 1972—Continued

Region	Total employment gains	Percent of employment gains due to—			Total employment losses	Percent of employment losses due to—		
		Births of new firms [1]	Expansion of firms	Inmigration of firms		Deaths of firms [2]	Contraction of firms	Outmigration of firms
Northern industrial tier	3,516,603	28.6	70.1	1.3	4,672,977	53.8	44.7	1.5
New England	419,614	30.4	68.9	.7	660,934	53.4	45.8	.8
East-north central	1,599,179	28.7	70.4	.9	1,976,375	53.6	45.8	.7
Middle Atlantic	1,497,810	27.9	70.1	2.0	2,035,668	54.3	43.2	2.6
Sunbelt	2,634,250	34.5	64.3	1.2	2,570,544	57.0	42.5	.4
South Atlantic	1,206,301	34.5	63.9	1.6	1,172,641	56.5	43.1	.4
East-south central	543,436	32.5	66.7	.5	518,122	59.2	40.3	.5
West-south central	884,513	35.8	63.4	.8	879,781	56.5	43.1	.5

[1] "The appearance in the 1972 file of a firm with a new DUNS number, for which the started was 1970–72" p. 4 of source.
[2] "The disappearance from the file of a firm with a particular DUNS number" p. 4 of source.

Source: Peter M. Allaman and David L. Birch "Components of Employment Change for States by Industry Group, 1970–72," Joint Center for Urban Studies of MIT and Harvard University, September 1975. The study uses Dun & Bradstreet data.

In the South, 64.3 percent of the employment growth was caused by the expansion of existing firms. Only 1.2 percent resulted from the immigration of firms to the region.

This same point regarding the relative unimportance of firm migration is demonstrated in Table 10. This table shows employment gains and losses as a percent of the 1969 employment base which resulted from births and deaths of firms, expansion and contraction of firms, and in- and out-migration of firms to and from the regions. These data indicate that if employment changes in the Northern Industrial Tier had been caused only by in- and out-migration of firms, then the number of jobs in 1972 would have been only 0.1 percent lower than in 1969. On the other hand, if only deaths of firms had occurred, employment in the Northern Tier would have been 11.4 percent lower than its 1969 base.

In the South, if migration of firms had been the only cause of recent employment growth, the number of jobs in 1972 would have been only 0.2 percent greater than in 1969. In contrast, if expansion of firms had been the only cause of employment change, there would have been 14.5 percent more jobs in 1972 than in 1969.

Whether employment opportunities in the North will continue to increase at their relatively low rates is not clear. While projections indicate that this will be the case,[16] low growth rates do not appear to be inevitable. Policy directives are possible which might alter the historical trends.

For example, two industries projected to grow rapidly over the next decade are Services and Finance, Insurance and Real Estate.[17] These are industries in which the North has specialized historically relative to the South (see Appendix Tables C 1 & C 2). Moreover, they are industries in which the New England and Middle Atlantic regions in particular (regions with the slowest and even negative growth rates in the North) have specialized relative to the Nation as a whole. It is possible that the slow growth in Manufacturing, projected for the next ten years, could be more than offset by increasing employment in these industries.

Footnotes at end of article.

TABLE 10.—EMPLOYMENT CHANGE BETWEEN DEC. 31, 1969, AND DEC. 31, 1972 BY REGION

Region	Total employment 1969	Net change 1969–72		Employment change as a percent of 1969 employment—Attributable to:					
		Number	Percent	Births of new firms [1]	Deaths of firms [2]	Expansion of firms	Contraction of firms	In-migration of firms	Out-migration of firms
Northern industrial tier	22,117,930	−1,129,933	−5.1	4.5	−11.4	11.2	−9.4	0.2	−0.3
New England	2,772,286	−214,846	−7.8	4.6	−12.7	10.4	−10.9	.1	−.2
East-north central	10,054,259	−379,890	−3.8	4.6	−10.5	11.2	−9.0	.1	−.1
Middle Atlantic	9,291,385	−535,197	−5.8	4.5	−11.9	11.3	−9.5	.3	−.6
Sunbelt—South	11,720,065	67,654	.6	7.8	−12.5	14.5	−9.3	.3	−.1
South Atlantic	5,343,026	36,490	.7	7.8	−12.4	14.4	−9.5	.4	−.1
East-south central	2,452,959	25,931	1.1	7.2	−12.6	14.8	−8.5	.2	−.1
West-south central	3,924,080	5,233	.13	8.1	−12.7	14.3	−9.7	.2	.1
U.S. total	45,339,792	−1,314,854	−2.9	5.9	−12.1	12.7	−9.6	.3	−.2

[1] See note 1, table 9.
[2] See note 2, table 9.

Source: Same as table 9.

DISTRIBUTION ASPECTS OF FISCAL POLICY

One of the functions of fiscal policy is to redistribute income among groups according to goals determined by society. One of these redistributive goals, however well met, has been to close the gap between "the rich" and "the poor." In part, the Federal government has attempted to meet this goal through the Federal income tax system: taxpayers with higher income levels also pay relatively higher proportions of their incomes in taxes. On the expenditures side, public policy has been directed toward raising the real income of the lowest socio-economic groups. Fiscal policy also serves to redistribute income among geographic regions.

Since the Sunbelt-South has a lower per capita income than the Northen Industrial Tier, it is not surprising that in 1975 the average tax payment per capita in the Southern States was $1,188 and the average tax payment per person in the North was $1,561 (Table 11). The fact that the South paid less, and the North paid more, than the national average ($1,412) reflects their relative income positions.

Table 12 indicates that, in 1975, Federal tax payments as a percent of personal income were slightly lower in the South than in the North. Given the progressive nature of the Federal income tax system, the small difference in the proportion of taxes paid (1.9 percentage points) by the two regions strongly suggests that, on average, the South is paying its "fair share."

This does not imply that there were no variations among the States in their relative burdens. For instance, in the South, both Texas and Kentucky paid 22.5 percent of their income in Federal taxes, even though the per capita income in Texas is more than $700 higher than in Kentucky. In the North a similar situation appears: Pennsylvania paid proportionately less in taxes than Indiana, even though Pennsylvania's per capita income was almost $300 higher. As a final illustration of the variations among States in relative tax burdens, Tennessee and Wisconsin paid almost equal proportions of their incomes in taxes, even though the per capita income of Tennessee is more than $700 less than that of Wisconsin.

TABLE 11.—FEDERAL GOVERNMENT SPENDING AND TAXES (PER PERSON),[1] 1975

Region	Federal Government	
	Spending [2]	Taxes
Sunbelt—South	$1,356	$1,188
South Atlantic	1,392	1,249
Florida	1,379	1,378
Georgia	1,402	1,217
North Carolina	1,124	1,145
South Carolina	1,240	1,041
Virginia	1,809	1,355
West Virginia	1,318	1,091
East-South Central	1,377	1,060
Alabama	1,374	1,026
Kentucky	1,327	1,094
Mississippi	1,599	908
Tennessee	1,296	1,147
West-South Central	1,295	1,187
Arkansas	1,202	907
Louisiana	1,236	1,064
Oklahoma	1,443	1,181
Texas	1,296	1,264
Northern industrial tier	1,260	1,561
New England	1,564	1,611
Connecticut	1,800	1,800
Massachusetts	1,456	1,535
Rhode Island	1,457	1,457
East-North Central	1,128	1,518
Illinois	1,230	1,704
Indiana	1,027	1,411
Michigan	996	1,539
Ohio	1,010	1,441
Wisconsin	996	1,331
Middle Atlantic	1,325	1,594
New Jersey	1,154	1,760
New York	1,449	1,636
Pennsylvania	1,241	1,426
National average	1,412	1,412

[1] Resident population.
[2] Excludes interest payments.

Source: "Federal Spending * * *," p. 881. Original figures given in U.S. Bureau of the Census "Population Estimates and Projections," current population reports series P-25, No. 615, November 1975; Community Services Administration, "Federal Outlays in Summary," fiscal year 1975, State summaries by Federal Agency Operations. Taxes were taken from preliminary 1975 figures provided by the Office of Management and Budget and the Tax Foundation Inc., "Memorandum on Allocation of the Federal Tax Burden and Federal Grants-in-Aid by State, Fiscal Year 1975," Feb. 15, 1975.

TABLE 12.—PER CAPITA PERSONAL INCOME AND PERCENT OF INCOME PAID IN FEDERAL TAXES BY REGION, 1975

Region	Per capita personal income	Federal taxes as a percent of income
Sunbelt—South	$5,176	23.0
South Atlantic	5,288	23.6
Florida	5,638	24.4
Georgia	5,086	23.9
North Carolina	4,952	23.1
South Carolina	4,618	22.5
Virginia	5,785	23.4
West Virginia	4,918	22.2
East-South Central	4,676	22.7
Alabama	4,643	22.1
Kentucky	4,871	22.5
Mississippi	4,052	22.4
Tennessee	4,895	23.4
West-South Central	5,347	22.2
Arkansas	4,620	19.6
Louisiana	4,904	21.7
Oklahoma	5,250	22.5
Texas	5,631	22.5
Northern industrial tier	6,265	24.9
New England	6,358	25.3
Connecticut	6,973	25.8
Massachusetts	6,114	25.1
Rhode Island	5,841	24.9
East-North Central	6,121	24.8
Illinois	6,789	25.1
Indiana	5,653	25.0
Michigan	6,173	24.9
Ohio	5,810	24.3
Wisconsin	5,669	23.5
Middle Atlantic	6,398	24.9
New Jersey	6,722	26.2
New York	6,564	24.9
Pennsylvania	5,943	24.0
National average	5,902	23.9

Sources: "Federal Spending * * *" and U.S. Department of Commerce, Bureau of Economic Analysis, "Survey of Current Business", vol. 56 (August 1976) table 2, p. 17.

It is important to note that the Federal Government spent *less* per person in both regions than in the Nation as a whole. *While the Southern States are among the poorest in the country, they received less than the national average in per capita Federal government expenditures.* The result of these expenditure patterns has already been shown. In spite of the Federal government's higher per capita spending in the South, these States still have, on average, a lower per capita personal income than the Northern States. Without the current flow of monies to the South, the income disparity between the two regions would be even greater. To imply that the North's share of expenditures received relative to taxes paid is unfair, is only reasonable if one simultaneously suggests that an even more inequitable situation exists for the South.[18]

Even though the Federal government's per capita spending in the Sunbelt-South is higher than in the North for all programs combined, these expenditures are not higher in the South for each program (Tables 13 and 14). In addition, the data indicate that neither region systematically received lower per capita expenditures than the national average. Finally, the data indicate that substantial variations exist among States within each of the two regions on all five expenditure programs examined.

For example, on average, both the North and South received less than the per capita national average for expenditures on Defense Contracts. However, Mississippi and Virginia within the South, and Massachusetts and New York within the North, received per capita expenditures on Defense Contracts that were higher than the national average.

The Sunbelt-South was well above, and the Northern Industrial Tier well below, the national average on per capita spending on Defense Salaries. Even so, within the South,

Footnotes at end of article.

one-third of the States were below the national average of $132 per person.

It is argued that infrastructure, or public works, investment is a catalyst for economic development of local areas.[19]

Highways and waste disposal facilities, for example, are major components of Federally provided regional infrastructure. In the case of Highways and Sewers, the South did receive greater per capita expenditures than the North ($48 versus $45). However, *both* regions were below the national average of $54.

Footnotes at end of article.

TABLE 13.—FEDERAL GOVERNMENT SPENDING ON DEFENSE CONTRACTS, DEFENSE SALARIES, AND HIGHWAYS AND SEWERS PER PERSON, FISCAL YEAR 1975[1]

Region	Defense contracts[2]	Defense salaries[3]	Highways and sewers[4]
Sunbelt South	$161	$188	$48
South Atlantic	152	222	51
Florida	137	131	40
Georgia	167	197	55
North Carolina	87	199	50
South Carolina	98	266	34
Virginia	297	473	49
West Virginia	60	20	120
East-south Central	170	134	48
Alabama	167	161	46
Kentucky	76	190	45
Mississippi	446	147	63
Tennessee	93	57	45
West-south Central	167	178	44
Arkansas	63	84	50
Louisiana	171	118	58
Oklahoma	128	244	39
Texas	192	198	40
Northern industrial tier	$178	$54	$45
New England	434	59	41
Connecticut	783	36	32
Massachusetts	314	56	46
Rhode Island	90	158	40
East-north Central	120	52	54
Illinois	60	62	66
Indiana	164	62	55
Michigan	89	34	66
Ohio	124	64	37
Wisconsin	55	18	38
Middle Atlantic	175	55	36
New Jersey	146	77	39
New York	213	31	27
Pennsylvania	135	77	47
National average	201	132	54

[1] See table 11, n.a.
[2] Includes civil functions prime contracts, military prime construction contracts, military prime R.D.T. & E. contracts, military prime service contracts, military prime supply contracts, and prime contracts of less than $10,000.
[3] Includes civilian pay, military active duty pay, military reserve and National Guard pay.
[4] Includes highway planning and construction, FHWA (DOT); and construction grants for waste water treat works WHM (EPA).

Source: See table 11.

TABLE 14.—FEDERAL GOVERNMENT SPENDING ON WELFARE AND RETIREMENT PROGRAMS (PER PERSON),[1] FISCAL YEAR 1975

Region	Welfare programs[2]	Retirement programs[3]
Sunbelt—South	$114	$398
South Atlantic	103	434
Florida	91	570
Georgia	139	351
North Carolina	101	330
South Carolina	119	337
Virginia	80	449
West Virginia	108	459
East-South Central	135	369
Alabama	132	383
Kentucky	150	378
Mississippi	158	352
Tennessee	114	360
West-South Central	115	368
Arkansas	144	434
Louisiana	144	316
Oklahoma	123	441
Texas	100	356
Northern industrial tier	120	382
New England	116	396
Connecticut	86	361
Massachusetts	128	403
Rhode Island	143	464
East-North Central	101	359
Illinois	117	360
Indiana	55	363
Michigan	123	343
Ohio	85	362
Wisconsin	111	375
Middle Atlantic	143	403
New Jersey	105	387
New York	181	394
Pennsylvania	108	427
National average	115	392

[1] Resident population.
[2] Includes food stamp bonus coupons FNS, other food stamp program costs FNS (DOA); food stamp assistance MA, unemployment insurance MA (DOL); supplemental security income SSA, medical assistance program SRS, public assistance—social services SRS, public assistance—maintenance assistance (State aid) SRS, (HEW).
[3] Includes military retired pay (DOD); veteran's disability compensation, veteran's disability pension (VA); social insurance—railroad workers, retirement (RRB); Civil Service retirement and disability fund (CSC); Social Security—disability insurance SSA, retirement insurance SSA, and survivors insurance SSA (HEW).

Source: See table 11.

This comparative level of spending should not be surprising since the purpose of Federal expenditures on Highways and Sewers is to construct new facilities rather than maintain those already in existence. Implied arguments that the Northern Tier does not receive its "fair share" of spending on these facilities are difficult to sustain in this context.[20] The need of the Nothern States, among the most highly developed in the Nation, lies not in the area of *new* highways and sewers. Rather, funds are needed for the maintenance and upgrading of ageing infrastructure already in place.

In view of the earlier evidence on the pervasiveness of poverty in the South relative to the North, it is curious to note that the South received less than the North in per capita expenditures on Welfare (Table 13). As an illustration, Mississippi has a larger proportion of its population in poverty than New York. Yet this Southern State received $23 per person less in welfare spending than New York, the State with the highest per capita level of spending in this category.

This does not imply that the Northern States should receive less money, rather that it is quite probable that the economic needs of the poverty population in the South are not being met.

This situation exists, in part, because of the low level of commitment to social welfare programs on the part of State and local governments in the South.[21] For this reason, the Federal Government is to be commended, not criticized, for expending proportionately more funds in the South on programs which do not require matching State monies than on programs which have this stipulation.[22]

Finally, the relatively high per capita expenditures on Retirement found for the Sunbelt-South are attributable to the large percentage of retirees residing in one State, Florida. If Florida is excluded, the South Atlantic States received $377 per person for retirement programs in 1975, an amount less than two out of the three Northern regions. Moreover, the Sunbelt-South received $372 per person, $10 less than the Northern Industrial Tier.

CONCLUSIONS

It is evident that, by almost any measure used, the Northern Industrial Tier possesses a significant lead in the level of economic development both in aggregate and per capita terms.

It is also evident that the Northern Tier States presently confront serious economic difficulties. The degree to which these are critical for both the region and the Nation should in no way be minimized.

Footnotes at end of article.

The improving economic performance of the Sunbelt-South indicates only that the wide disparities between the two regions are diminishing to some degree. The bottoming out or divergence in regional per capita incomes as a percent of the national average in 1975 suggests that the relative position of the South declined in that one year.

The United States is emerging from the worst recession since the Great Depression. It is inevitable that the highly industrialized regions of the economy would be impacted more heavily in the course of this recession. Therefore, conclusions on the relative performance of these two regions recently should be regarded with some caution. It may well be that the relative improvement of the Southern States is, in part, a cyclical phenomenon which may not be sustained through the full recovery of the economy.

Policy decisions based on the assumption that the experience of 1970 through 1975 represents a new trend may be ill-considered and counter-productive in the longer run.

An implicit and often explicit premise or goal of public policy in the United States has been to attempt to redress the imbalance in the distribution of economic welfare among regions. Undoubtedly, the Northern Industrialized States are undergoing economic difficulties which are unprecedented in a period of relative economic prosperity. *However, it is not clear that the situation of these States today is more adverse economically than that which the Southern, less developed, States have experienced historically even though they are now experiencing an increasing rate of income, employment and population growth.* At best, the evidence is mixed and fails to support the unequivocal claim that the Northern Industrialized States should benefit from a reallocation of Federal program benefits which diminishes the flow of benefits to States in the South.

The regional economies of the United States are highly interdependent. Rhetoric and biased studies which encourage a growing sense of economic competition between these two regions do a disservice to the overall goal of balanced economic growth for both regions. The economic futures of the two super-regions are inseparably intertwined. A balanced and carefully conceived

approach which mitigates economic distress in particular regions and harmonizes regional growth is essential. The current debate which focuses on the rate of growth of the Sunbelt as a partial explanation of the economic difficulties of the Northern States is detrimental to the goal of achieving National policies that facilitate overall growth among all regions of the United States.

APPENDIX A—POPULATION

TABLE A-1.—THE MIGRATION OF WORKERS FROM THE SUNBELT-SOUTH TO THE NORTHERN TIER, 1973-74; MIGRATION TO NORTHERN INDUSTRIAL TIER

[In hundreds]

Migration from sunbelt-south	New England				Middle Atlantic				East-north-central						Grand total
	Total	Conn.	Mass.	R.I.	Total	N.Y.	N.J.	Pa.	Total	Ohio	Ind.	Ill.	Wis.	Mich.	
South Atlantic	200	59	109	32	517	240	96	181	588	249	83	135	27	94	1,305
Florida	74	30	40	4	119	77	21	21	275	99	39	71	16	50	467
Georgia	29	3	21	5	91	52	15	24	77	29	10	22	5	11	198
North Carolina	28	11	11	6	87	32	12	43	68	20	8	22	2	16	186
South Carolina	31	2	25	4	57	27	9	21	28	7	7	8	0	6	118
Virginia	34	12	11	11	119	51	33	35	55	20	14	11	4	6	203
West Virginia	4	1	1	2	44	1	6	37	85	74	5	1	0	5	133
East-south central	43	11	19	13	165	59	54	52	445	126	106	128	17	68	653
Alabama	10	1	5	4	53	27	12	14	51	9	5	22	2	13	114
Kentucky	15	7	7	1	29	19	4	6	219	83	75	38	8	15	263
Mississippi	7	1	2	4	37	11	6	20	66	14	4	26	3	19	110
Tennessee	11	2	5	4	46	2	32	12	109	20	22	42	4	21	166
West-south central	77	16	49	12	287	150	44	93	345	92	40	116	23	74	709
Louisiana	9	5	3	1	46	32	7	7	44	13	10	10	2	9	99
Arkansas	14	0	14	0	14	6	7	1	55	11	5	22	4	13	83
Oklahoma	14	0	14	0	24	13	4	7	42	9	5	18	1	9	80
Texas	40	11	18	11	203	99	26	78	204	59	20	66	16	43	447
Total	320	86	177	57	969	449	194	326	1,378	467	229	379	67	236	2,667

Source: Social Security Continuous Work History 1 Percent Sample; Bureau of Economic Analysis, U.S. Department of Commerce.

TABLE A-2.—THE MIGRATION OF WORKERS FROM THE NORTHERN TIER TO THE SUNBELT-SOUTH, 1973-74; MIGRATION TO SUNBELT-SOUTH

[In hundreds]

Migration from northern tier	South Atlantic							East-south-central				West-south-central					Grand total
	Total	Fla.	Ga.	N.C.	S.C.	Va.	W. Va.	Total	Ala.	Ky.	Miss.	Tenn.	Total	La.	Ark.	Okla.	Tex.	
New England	286	119	54	58	22	29	4	37	12	8	3	14	56	7	4	6	39	379
Connecticut	85	42	12	13	7	10	1	14	6	4	0	4	23	2	1	4	16	122
Massachusetts	188	72	41	40	15	17	3	19	6	2	3	8	28	5	2	2	19	235
Rhode Island	13	5	1	5	0	2	0	4	0	2	0	2	5	0	1	0	4	22
Middle Atlantic	1,092	526	140	160	47	151	68	189	41	32	24	92	262	38	18	20	186	1,543
New York	597	306	83	93	29	64	22	104	20	14	12	58	151	23	13	11	104	852
New Jersey	225	100	36	37	9	34	9	34	9	5	3	17	51	8	3	3	37	310
Pennsylvania	270	120	21	30	9	53	37	51	13	13	8	17	60	7	2	6	45	381
East-north central	778	396	120	80	33	75	74	522	81	232	65	144	366	39	54	42	231	1,666
Ohio	274	119	37	18	7	29	64	148	17	75	25	31	83	17	17	4	45	505
Indiana	131	63	26	15	7	16	4	141	11	94	13	23	82	7	8	12	55	354
Illinois	169	91	28	23	9	18	0	153	30	44	18	61	111	6	13	13	79	433
Wisconsin	37	22	5	3	1	4	2	15	6	3	1	5	30	1	6	5	18	82
Michigan	167	101	24	21	9	8	4	65	17	16	8	24	60	8	10	8	34	292
Total	2,156	1,041	314	298	102	255	146	748	134	272	92	250	684	84	76	68	456	3,588

Source: Social Security Continuous Work History 1 Percent Sample; Bureau of Economic Analysis, U.S. Department of Commerce.

TABLE A-3.—SUNBELT-SOUTH POPULATION AND COMPONENTS OF CHANGE 1970 AND 1975

Region and State	July 1, 1975	Apr. 1, 1970	Change 1970-75		Components of Change 1970-75			
			Number	Percent	Births	Deaths	Net migration	
							Number	Percent
Sunbelt-South	62,711,000	57,582,200	5,128,000	8.9	5,468,000	2,977,000	2,632,000	4.6
South Atlantic	28,311,000	25,449,664	2,860,000	11.2	2,338,000	1,344,000	1,865,000	7.3
Florida	8,346,000	6,791,418	1,554,000	22.9	586,000	436,000	1,404,000	20.7
Georgia	4,926,000	4,588,000	338,000	7.4	465,000	224,000	97,000	2.1
N. Carolina	5,451,000	5,034,411	367,000	7.2	470,000	243,000	139,000	2.7
S. Carolina	2,818,000	2,590,835	227,000	8.8	264,000	125,000	89,000	3.4
Virginia	4,967,000	4,651,000	315,000	6.8	401,000	211,000	125,000	2.7
W. Virginia	1,803,000	1,744,000	59,000	3.4	152,000	105,000	11,000	.7
East south central	13,544,000	12,808,315	736,000	5.7	1,217,000	685,000	203,000	1.6
Alabama	3,614,000	3,444,297	170,000	4.9	328,000	180,000	22,000	.7
Kentucky	3,396,000	3,221,000	175,000	5.4	295,000	177,000	57,000	1.8
Mississippi	2,346,000	2,217,000	129,000	5.8	242,000	123,000	9,000	.4
Tennessee	4,188,000	3,926,018	262,000	6.7	352,000	205,000	115,000	2.9
West south central	20,856,000	19,324,221	1,530,000	7.9	1,913,000	948,000	564,000	2.9
Arkansas	2,116,000	1,923,322	193,000	10.0	181,000	114,000	125,000	6.5
Louisiana	3,791,000	3,642,463	148,000	4.1	363,000	178,000	−37,000	−1.0
Oklahoma	2,712,000	2,559,463	152,000	6.0	226,000	141,000	67,000	2.6
Texas	12,237,000	11,199,000	1,037,000	9.3	1,143,000	515,000	409,000	3.7

Source: Current Population Reports, U.S. Bureau of the Census Series P-25.

TABLE A-4.—NORTHERN INDUSTRIAL TIER POPULATION AND COMPONENTS OF CHANGE, 1970 AND 1975

Region and State	July 1, 1975	Apr. 1, 1970	Change 1970–75 Number	Change 1970–75 Percent	Components of change 1970–75 Births	Components of change 1970–75 Deaths	Net migration Number	Net migration Percent
Northern Tier	88,085,000	87,149,173	935,827	1.0	6,943,000	4,439,000	−1,571,000	−1.8
New England	9,840,000	9,671,110	169,000	1.7	696,000	485,000	−43,000	−4.4
Connecticut	3,095,000	3,032,217	63,000	2.1	216,000	138,000	−15,000	−0.5
Massachusetts	5,818,000	5,689,170	129,000	2.3	411,000	298,000	15,000	0.3
Rhode Island	927,000	949,723	−23,000	−2.4	69,000	49,000	−43,000	−4.5
Middle Atlantic	37,267,000	37,213,350	49,000	0.1	2,780,000	1,973,000	−755,000	−2.0
New York	18,122,000	18,241,584	−119,000	−0.7	1,373,000	956,000	−537,000	−2.9
New Jersey	7,316,000	7,171,000	140,000	2.0	538,000	357,000	−37,000	−0.5
Pennsylvania	11,829,000	11,800,766	28,000	0.2	869,000	660,000	−181,000	−1.5
East north-central	40,978,000	40,264,713	713,000	1.8	3,467,000	1,981,000	−773,000	−1.8
Ohio	10,759,000	10,657,423	102,000	1.0	910,000	527,000	−281,000	−2.6
Indiana	5,311,000	5,195,610	116,000	2.2	466,000	256,000	−94,000	−1.8
Illinois	11,145,000	11,112,859	32,000	0.3	950,000	575,000	−342,000	−3.1
Wisconsin	4,606,000	4,417,821	188,000	4.3	355,000	216,000	48,000	1.1
Michigan	9,157,000	8,881,000	275,000	3.1	786,000	407,000	−104,000	−1.2

Source: Current Population Reports, U.S. Bureau of the Census Series P-25.

APPENDIX B—INCOME

TABLE B-1.—PER CAPITA INCOME BY STATE, 1975

Region	Per capita income, 1975	Implicit PCI adjuster [1]	Adjusted per capita income, 1975	Per capita Federal taxes	Disposable per capita income [2] Unadjusted income	Disposable per capita income [2] Adjusted [1] income
NORTHERN TIER						
New England:						
Connecticut	6,973	0.9572	6,674	1,800	5,173	4,951
Massachusetts	6,114	.8692	5,314	1,535	4,579	3,980
Rhode Island	5,841	.9535	5,569	1,457	4,384	4,180
Middle Atlantic:						
New York	6,564	.9422	6,184	1,760	4,795	4,518
New Jersey	6,722	.9413	6,327	1,636	5,086	4,787
Pennsylvania	5,943	.9975	5,928	1,426	4,517	4,506
East-north-central:						
Ohio	5,810	1.0316	5,994	1,441	4,369	4,507
Illinois	6,789	1.0097	7,003	1,704	5,085	5,134
Indiana	5,653	1.0406	5,882	1,411	4,242	4,414
Michgan	6,173	.9985	6,164	1,539	4,634	4,627
Wisconsin	5,669	1.0118	5,736	1,331	4,338	4,389
SUNBELT-SOUTH						
South Atlantic:						
Florida	5,638	1.0901	6,145	1,378	4,260	4,643
Georgia	5,086	1.1122	5,557	1,217	3,869	4,303
North Carolina	4,952	1.1093	5,493	1,145	3,807	4,223
South Carolina	4,618	1.1116	5,133	1,041	3,577	3,976
Virginia	5,785	1.0536	6,095	1,355	4,431	4,568
West Virginia	4,918	1.1187	5,502	1,091	3,827	4,281
East-south central:						
Kentucky	4,871	1.1093	5,403	1,094	3,777	4,189
Tennessee	4,895	1.1085	5,426	1,147	3,748	4,155
Alabama	4,643	1.1008	5,111	1,026	3,617	3,981
Mississippi	4,052	1.1309	4,582	908	3,144	3,555
West-south central:						
Arkansas	4,620	1.1178	5,164	907	3,713	4,150
Louisiana	4,904	1.1014	5,401	1,064	3,840	4,229
Oklahoma	5,250	1.1053	5,804	1,181	4,069	4,497
Texas	5,631	1.1056	6,226	1,264	4,367	4,828

[1] Per capita income adjusted for regional cost of living variations. Per capita income by State inflated or deflated by the national cost of living indices to that of the State. The index used was the annual budget for an intermediate standard of living for a 4-person family. See appendix B, table 2. Bureau of Labor Statistics, Budget Studies, "News", Washington, D.C., May 5, 1976.

[2] As used here, disposable per capita income is derived by subtracting per capita Federal taxes from per capita income.

TABLE B-2.—*Cost-of-living adjustments*

REGION AND ADJUSTMENT

Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont:
Metropolitan, .9836.
Non metropolitan, 1.0101.

North Central: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin:
Metropolitan, 1.0036.
Non metropolitan, 1.0870.

South: Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia:
Metropolitan, 1.0856.
Non metropolitan, 1.1494.

West: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming:
Metropolitan, 1.0101.
Non metropolitan, 1.1111.
Alaska, .7194.
Hawaii, .8197.
Source: See Table B1.

TABLE B-3.—*Definition of poverty*

Poverty Status in 1969: The 1969 poverty statistics presented are based on a definition originally developed by the Social Security Administration (SSA) in 1964 and revised by a Federal inter-agency committee in 1969. The SSA poverty index provided a range of income cutoffs adjusted by such factors as family size (from one person to a family of seven persons or more), sex of the family head, number of children under 18 years old, and farm-nonfarm residence (see Table A). At the core of this definition of poverty was a nutritionally adequate food plan (economy plan) designed by the Department of Agriculture for emergency or temporary use when funds are low. The SSA poverty cutoffs also took into account differences in the cost of living between farm and non-farm families. Annual revisions of these cutoffs were based on price changes of the items in the economy food budget.

APPENDIX C—EMPLOYMENT

TABLE C-1.—PERCENT CHANGE IN NONAGRICULTURAL EMPLOYMENT AND LOCATION QUOTIENTS FOR THE UNITED STATES AND THE CONSTITUENT REGIONS OF THE NORTHERN INDUSTRIAL TIER, 1970–75 [1]

Industry	Percent change in employment, 1970–75 United States	New England	East north central	Middle Atlantic	Location quotient New England 1970	New England 1975	East north central 1970	East north central 1975	Middle Atlantic 1970	Middle Atlantic 1975
Total nonagricultural	8.6	2.2	3.9	−1.67						
Mining	19.6	(2)	15.0	11.8	0	0	0.56	0.50	0.44	0.40
Construction	−2.2	−23.1	−7.2	−17.3	.90	.76	.82	.82	.82	.78
Manufacturing	−5.2	−10.1	−10.5	−16.1	1.17	1.18	1.26	1.25	1.07	1.06

Industry	Percent change in employment, 1970–75				Location quotient					
					New England		East north central		Middle Atlantic	
	United States	New England	East north central	Middle Atlantic	1970	1975	1970	1975	1970	1975
Transportation and public utilities	−.1	−4.2	−2.4	−8.9	.77	.79	.91	.93	1.05	1.07
Wholesale and retail trade	12.7	7.2	9.9	2.3	.98	.99	.98	1.00	.94	.95
Finance, insurance, and real estate	14.5	10.7	11.8	2.1	1.10	1.13	.85	.87	1.24	1.22
Services	20.4	12.6	20.2	10.3	1.13	1.13	.89	.93	1.06	1.07
Government	17.3	13.3	10.8	12.4	.78	.81	.87	.86	.88	.94

[1] The location quotient is the ratio of the proportion of the region's total employment which is located in a particular industry to the proportion of the Nation's total employment which is located in the same industry.

[2] Combined with services.

Source: U.S. Department of Labor, Bureau of Labor Statistics, "Employment and Earnings," vol. 19 (May 1973), pp. 128–137; and vol. 22 (May 1976), pp. 49 and 126–135.

TABLE C-2.—PERCENT CHANGE IN NONAGRICULTURAL EMPLOYMENT AND LOCATION QUOTIENTS FOR THE UNITED STATES AND THE CONSTITUENT REGIONS OF THE SUNBELT SOUTH 1970–75 [1]

Industry	Percent change in employment, 1970–75				Location quotient					
					South Atlantic		East South Central		West south central	
	United States	South Atlantic	East south central	West south central	1970	1975	1970	1975	1970	1975
Total nonagricultural	8.6	16.4	13.9	19.0						
Mining	19.6	21.9	44.8	16.6	1.11	1.11	1.44	1.70	3.67	3.20
Construction	−2.2	7.5	16.1	22.7	1.24	1.29	1.00	1.13	1.22	1.38
Manufacturing	−5.2	−.8	0.2	7.4	1.02	1.00	1.17	1.18	.75	.77
Transportation and public utilities	−.1	8.7	6.7	10.5	.98	1.02	.86	.90	1.13	1.16
Wholesale and retail trade	12.7	20.7	20.4	23.2	.99	.99	.91	.92	1.08	1.08
Finance, insurance, and real estate	14.5	31.7	20.6	30.3	.90	.96	.79	.78	.96	1.00
Service	20.4	35.0	26.7	27.6	.86	.90	.83	.83	.95	.90
Government	17.3	29.2	18.8	19.1	1.01	1.05	1.08	1.06	1.10	1.02

[1] The location quotient is the ratio of the proportion of the region's total employment which is located in a particular industry to the proportion of the Nation's total employment which is located in that same industry.

Source: U.S. Department of Labor, Bureau of Labor Statistics, "Employment and Earnings," vol. 19 (May 1973), pp. 128–137; and vol. 22 (May 1976), pp. 49 and 126–135.

FOOTNOTES

[1] "The Second War Between the States," *Business Week*, May 17, 1976, p. 92 and 95.

[2] "Federal Spending: The North's Loss Is the Sunbelt's Gain," *National Journal*, June 26, 1976, pp. 878–891.

Representative Michael J. Harrington, "Regional Economic Trends: A Profile of Problems," August 1976, unpublished monograph.

[3] "Congressmen From Northeast and Midwest Establish Economic Coalition," *New York Times*, September 2, 1976, p. 17.

"House Group Wants to Stem Sunbelt Flow", *The Washington Post*, September 2, 1976, pp. B1 and B3.

[4] Press release, the Academy for Contemporary Problems, Columbus, Ohio, September 1, 1976, p. 4.

[5] "The Second War . . ."; *Time Magazine*, "The South Today", September 27, 1976, and Douglas Carter, "How Different is the South", *Washington Post* (October 10, 1976), pp. C1 and C2.

[6] These data are drawn from the Social Security 1/100 sample. Only those covered by Social Security are included. The data omit the self-employed, agricultural, railroad and public employees not participating in the Social Security Program.

[7] For example, see John F. Kain, "Implications of Declining Metropolitan Population on Housing Markets." In George Sternlieb and James W. Hughes, eds., *Post-Industrial America: Metropolitan Decline and Interregion Job Shifts* (New Brunswick, New Jersey: Rutgers Center for Urban Policy Research 1975), p. 224; and Calvin L. Beale, "A Further Look at Nonmetropolitan Population Growth Since 1970," August 1976.

[8] This finding is not surprising since in the North the labor force participation rate of women, the educational level of the population and the per capita income are all higher than in the South. These factors are negatively related to high fertility rates.

[9] Term used in "The Second War" p. 95.

[10] "Federal Spending: The North's Loss . . .", p. 879.

[11] See for example, "Congressmen from the Northeast. . . ."

[12] For example, see "The Second War. . . ." and "Regional Economic Trends. . . ."

[13] "The Second War. . . ." p. 92.

[14] "Federal Spending. . . ." p. 879.

[15] A firm can "die" for one of several reasons. For example, bankruptcy can occur in spite of the intentions of the owners. Alternatively, bankruptcy could be "purposeful": an owner could run-down the existing capital stock, declare bankruptcy and reestablish related operations in a new firm and location. Additionally, a conglomerate could close a firm which was unprofitable *relative* to its alternative investment opportunities.

[16] Bureau of Economic Analysis, U.S. Department of Commerce, *Survey of Current Business*, Volume 54, Number 41 (April 1974), p. 22.

[17] See U.S. Department of Labor, *Employment & Training Report of the President*, 1976 Table E–10, p. 314.

[18] For example, see the Press Release of the Academy for Contemporary Problems, p. 4 and "Congressmen from the Northeast . . ."

[19] For example, see "Federal Spending. . ." p. 882.

[20] "Federal Spending. . .," pp. 881–882.

[21] U.S. Bureau of the Census, 1972 Census of Governments, *Government Finances*, Volume 4, Number 5, p. 61.

[22] "Federal Spending. . .," p. 882.

SPEECH TO DEMOCRATIC CAUCUS, MONDAY, JANUARY 24, 1977

Mr. ROBERT C. BYRD. Mr. President, on Monday, January 24, I made a statement at the Senate Democratic caucus on President Ford's recommended pay increase and on a Senate code of conduct. I ask unanimous consent to insert that statement in the RECORD.

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

SENATOR ROBERT C. BYRD'S SPEECH TO DEMOCRATIC CAUCUS

Gentlemen, on January 17, President Ford submitted to the Congress a proposal to raise to appropriate levels the salary for all the major officers of the Federal Government except for the President. President Ford's proposal was based upon the recommendation of the Peterson Commission.

During my 24 years in Congress, I have never voted for a Congressional pay raise, but I believe that the time has come to face hard facts.

In the last 8 years, there has been only one 5% increase for the top officials of the Federal Government despite the fact that, during that period, the cost of living has increased more than 60%, general schedule Federal employees have had their pay increased by 66%, and compensation for private non-farm employment has increased more than 70%.

Because of this salary lag, the Federal Government is losing some of its best people. In the last 3 years, 4 of the 11 Institute directorships at the National Institutes of Health—including the Director of the National Cancer Institute—have become, and remain, vacant. 85 out of 87 outside candidates have refused the positions due to the low pay. The Social Security Administration lost 9 out of 19 of its most senior civil service employees at one time last year, and was unable to fill the position of Chief Actuary for more than a year, with 30 candidates refusing the job because of the low pay.

The Legislative Branch continuously loses some of its most able and experienced support personnel because of higher salaries available to them in the business community.

While some Members of Congress are more able than others to meet their commitments at the present salary levels, many members find that the present salary level, incumbent on serving in Washingon, D.C., caring for their families, and the added financial burden of the offices they hold, together with maintaining two residences—as many of them do—so severely strains their budgets that they are forced to go on the speaking circuit in order to make ends meet. In so doing, they are forced to absent themselves from committee meetings and Senate sessions, and the business of the people is sometimes delayed thereby.

This pay increase involves 2,496 individuals in high policymaking positions directly. Indirectly, 20,365 additional upper grade government personnel, whose pay is tied to Congressional salary levels, will be affected.

President Carter supports President Ford's proposed pay increase, the joint leadership

in the House supports it, and the joint leadership in the Senate supports it.

I have called this caucus together today to ask you to support the leadership in its efforts to implement the pay increase recommended by President Ford and President Carter.

I realize that it is difficult for each of us here to vote for a pay increase. But, unless we face up to the situation, this is a crisis in government that will continue to grow. It will not go away, and, more and more, only the wealthy will be able to render government service.

This is the first time, in my recollection, that the leadership will come down on all fours in support of a general pay increase for Executive, Judicial, and Legislative personnel. I urge each of you to join with the leadership in a united effort in this regard. After all, the people get just what they pay for, as a general rule, and I believe that it is in the best interests of the people that this pay increase go into effect.

President Ford coupled his pay increase proposal with a code of conduct proposal, also based upon the recommendation of the Peterson Commission. Without a code of conduct, the Congress cannot expect to give its members a pay raise without raising further institutional questions.

Consequently, last week, the Minority Leader and I appointed a temporary special committee to be known as the Special Committee on Official Conduct, composed of 15 members of the Senate—eight Democrats and seven Republicans—to propose a code of conduct for members, officers, and employees of the Senate in the performance of their official duties. I designated Senator Nelson to be the Chairman of the select committee, and the other Democrats on that committee are as follows: Mr. Ribicoff, Mr. Inouye, Mr. Eagleton, Mr. Nunn, Mr. Glenn, Mr. Clark, and Mr. Melcher. The resolution creating the committee mandates the committee to report legislation by March 1 establishing a code of conduct.

That legislation will immediately become the pending business before the Senate under a time agreement limiting debate thereon.

Your leadership, therefore, is not only committed to the pay increase but also to the enactment of a code of conduct for the Senate. The House of Representatives is already moving toward the enactment of a code of conduct for that body.

I believe that the great majority of the people of this country will be willing to accept the principle of a pay raise for Members of Congress, and policymaking officials in the Executive Branch, and members of the Federal Judiciary, especially in view of the fact that Congress is moving swiftly to enact, hand in hand with the pay increase, a code of conduct for itself. President Carter has already taken steps to establish a code of conduct to cover actions of officials in the Executive Branch.

In closing my remarks on this subject, I realize that not every Senator will see eye to eye with the leadership on this matter, but I urge each of you to give this your best judgment, lean over backwards if you can to support the leadership, and the leadership in turn will stand four-square and firm on behalf of the proposed increase and an official code of conduct.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in recess until the hour of 10 o'clock tomorrow morning.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

COMMITTEE REPORT ON SENATE RESOLUTION 4—REORGANIZING THE COMMITTEE SYSTEM OF THE SENATE

Mr. CANNON. Mr. President, pursuant to the order of the Senate on January 19, 1977, I now file the report of the Committee on Rules and Administration on Senate Resolution 4. This resolution has been reported with an amendment in the nature of a substitute for the resolution.

To simplify the procedure in handling Senate Resolution 4 when it is brought up for debate on the floor, I ask unanimous consent that the substitute amendment for the resolution be considered as having been agreed to and, as thus amended, be treated as original text for the purpose of further amendments.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The report will be received.

Mr. BAKER. Will the Senator yield further?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Referring now to the filing of the report of the Committee on Rules, I note there was no further action taken beyond the filing of the report, which is acceptable to the Senator. Do I understand, then, that no effort is contemplated by the majority leadership to waive the 3-day rule following the filing of the report?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. BAKER. So the practical effect of that would be to put over until Monday the consideration of that report.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. BAKER. I thank the majority leader.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 70–770, appoints the Senator from Colorado (Mr. HASKELL) to the Migratory Bird Conservation Commission, in lieu of the Senator from North Dakota (Mr. BURDICK), resigned.

The Chair, on behalf of the Vice President, pursuant to Public Law 79–585, appoints the Senator from Washington (Mr. JACKSON) as the vice chairman (temporary) of the Joint Committee on Atomic Energy.

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 assistant legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session.

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

SECRETARY OF LABOR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, without any action being taken today and without any time running against the time on the nomination, that the Senate proceed to the consideration of the nomination of Ray Marshall of Texas to be Secretary of Labor.

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

The nomination will be stated.

The legislative clerk read the nomination of Ray Marshall, of Texas, to be Secretary of Labor.

ORDER FOR RECOGNITION OF SENATOR THURMOND ON TOMORROW AND THURSDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized, Mr. THURMOND be recognized for not to exceed 15 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, I make the same request for Mr. THURMOND for Thursday.

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

ORDER FOR RECOGNITION OF SENATOR CHURCH AND SENATOR PELL TOMORROW, AND FOR A PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, following the recognition of Mr. THURMOND on tomorrow, Mr. CHURCH be recognized for not to exceed 5 minutes and that he be followed by Mr. PELL for not to exceed 5 minutes; that there then be a brief period for the transaction of routine morning business for the purpose only

of entering statements in the RECORD, and entering bills and resolutions, petitions, and memorials.

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

ORDER FOR TIME LIMITATION FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, with respect to the period for transaction of morning business tomorrow, I ask unanimous consent that that period be limited to not to exceed 10 minutes, with statements limited therein to 5 minutes each.

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

ORDER FOR CONSIDERATION OF NOMINATION OF RAY MARSHALL TO BE SECRETARY OF LABOR TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, following that period for the transaction of routine morning business, the Senate then proceed to the consideration of Mr. Marshall, with the time then to begin running.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, that just about states the program so far as I know it for tomorrow.

I yield to the Senator from Tennessee.

Mr. BAKER. We have a resolution from the Committee on Foreign Relations. Is it the intention of the majority leadership to call it up tomorrow?

Mr. ROBERT C. BYRD. Yes, I am glad the distinguished Republican leader reminded me of this.

ORDER FOR CONSIDERATION OF SENATE RESOLUTION 48 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, upon the disposition of the nomination of Mr. Ray Marshall tomorrow, the Senate resume legislative session immediately and without any intervening motions or debate, and that the Senate proceed immediately to the consideration of Senate Resolution 48, the resolution with respect to the release of Abu Daoud.

Mr. HELMS. Mr. President, reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator yield for that purpose?

Mr. ROBERT C. BYRD. Yes, I yield.

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.

Mr. ROBERT C. BYRD. Mr. President, I repeat my request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

NATURAL GAS SHORTAGE

Mr. ROBERT C. BYRD. I think I should state that it is possible, certainly to be hoped, that the Senate can find a way to act on the emergency legislation that will be sent up tonight or early tomorrow morning by the President to deal with the shortage of natural gas. I am in no position to state at this time what the prospects are, at least until we can see the legislation and Senators may have an opportunity to study it.

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

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. BAKER. I share the hope that we can turn to the prompt consideration of the President's proposal in this respect. There are few things that are more urgently important than the preservation of the health and comfort of the people of our country and the warmth of our citizens. From that standpoint, I can assure the majority leader that the Members on the Republican side of the aisle will do their very best to try to read, digest, and understand the proposal when it is sent to us by the President. We do not yet have a copy of it. Parenthetically, I hope the White House will get that to us yet tonight so we can study it overnight. Then we can consider the procedural question of whether or not to refer it to one of the committees, perhaps the Committee on Commerce, to proceed to its consideration. I hope we can arrive at an agreement whereby we can proceed to its consideration on tomorrow or the day following.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Republican leader. I share that hope. Perhaps tomorrow, we shall be in a position to see what the realities of the situation may be.

Mr. President, the Senate is recessing in executive session, is it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS TO 10 A.M. TOMORROW

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 recess until 10 a.m. tomorrow.

The motion was agreed to; and at 6:12 p.m., the Senate recessed in executive session until tomorrow, Wednesday, January 26, 1977, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate January 25, 1977:

DEPARTMENT OF JUSTICE

Griffin B. Bell, of Georgia, to be Attorney General.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE COAST GUARD

Coast Guard nominations beginning Allan H. Gifford, to be captain, and ending Robert W. Sprick, to be captain, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 1977.

EXTENSIONS OF REMARKS

DOES ANYBODY REALLY LIVE IN QUEENS?

HON. BENJAMIN S. ROSENTHAL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 24, 1977

Mr. ROSENTHAL. Mr. Speaker, many people are familiar with the borough of Queens as the home of Archie Bunker from "All in the Family." But Queens is much more than that: It is the home of two world's fairs—1939 and 1964—the New York Jets and the Mets; two of the world's busiest airports, Kennedy and LaGuardia; the Queens Botanical Gardens; and Flushing Meadow-Corona Park, the city's largest park.

Originally a collection of villages going back to 1683, Queens today consists of numerous communities that still retain much of their original character. According to Prof. Andrew Hacker of Queens College, many residents choose to live in Queens because "it is a set of suburbs within the borders of the city."

I wish to share with my colleagues the unique atmosphere of this borough which offers both city and suburban life for its citizens. For those who enjoy walking, there are scores of bakeries, clothes shops, movies, restaurants, and groceries which can fulfill this pleasure. On the other hand, Queens provides suburban breathing space for those who wish to live in such an environment. Proof of this is that a majority of its citizens reside in single- or two-family homes, many owning two or three cars. Queens is situated in such a fashion that both the bustling life of Manhattan and the more relaxed surroundings of the suburbs are easily accessible to its residents.

I am proud to represent, along with my colleagues JOSEPH P. ADDABBO, JAMES J. DELANEY, LESTER L. WOLFF, MARIO BIAGGI, and JAMES H. SCHEUER, the 2 million residents of Queens. Our county provides an alternative for those citizens who do not want to reside in the center of a city but wish to partake of its assets.

Professor Hacker has written a delightful, intriguing article about this borough which bridges city and suburbs. I wish to share his article, which was published in Newsday, January 9, with my colleagues: