authorized by House Resolution 18; to the Committee on House Administration.

MEMORIALS

Under clause 4 of rule XXII,

313. The SPEAKER presented a memorial of the Legislature of the State of Wisconsin, relative to procedures for calling constitutional conventions; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DUNCAN:

H.R. 13265. A bill for the relief of Dell Sin-Cheung Lau and his wife, Cheung Goo Yar Lau; to the Committee on the Judiciary.

By Mr. STEIGER of Arizona:

H.R. 13266. A bill for the relief of Maurice Marchbanks; to the Committee on the Judiciary.

PETITIONS, ETC.

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

191. By the SPEAKER: Petition of Bui Phuong Quan, Saigon, Vietnam, relative to a concession contract in Vietnam; to the Committee on Armed Services.

192. Also petition of the mayor and council of the Borough of Haworth, N.J., relative to the expansion of the Bergen County Sewer Authority plant; to the Committee on Public Works.

SENATE—*Thursday, February 17, 1972*

The Senate met at 12 o'clock meridian and was called to order by Hon. GAYLORD NELSON, a Senator from the State of Wisconsin.

PRAYER

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

Almighty God, the source of our strength and the guide of our destiny, grant journeying mercies to the President of the United States. Endue him with a measure of Thy grace that he may be both wise and strong. Impart to all who confer and to all who advise the spirit of conciliation and friendship and good will. Hold all consultations under the light of truth and the vision of peace with justice and liberty. May the leaders of all nations concert their best efforts for that understanding and concord which leads to the promised era when men study war no more and all their ways are the peaceable ways of Thy kingdom.

While others labor abroad, keep us diligent and faithful in our tasks at home. And to Thee shall be the everlasting praise and thanksgiving. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 17, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. GAYLORD NELSON, a Senator from the State of Wisconsin, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS AND JOINT RESOLUTIONS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that the President had approved and signed the following acts and joint resolutions:

On February 15, 1972:

S. 959. An act to designate the Pine Mountain Wilderness, Prescott and Tonto National Forest, in the State of Arizona;

S. 1838. An act to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities;

S. 2672. An act to permanently exempt potatoes for processing from marketing orders;

S.J. Res. 196. Joint resolution extending the date for transmission to the Congress of the report of the Joint Economic Committee.

On February 17, 1972:

S.J. Res. 153. Joint resolution to designate the week which begins on the first Sunday in March 1972, as "National Beta Club Week".

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. NELSON) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, February 16, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the executive calendar.

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

The ACTING PRESIDENT pro tempore. The nominations on the executive calendar will be stated.

U.S. DISTRICT COURTS

The second assistant legislative clerk read the nomination of Wilbur D. Owens, Jr., of Georgia, to be a U.S. district judge for the middle district of Georgia.

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

DEPARTMENT OF JUSTICE

The second assistant legislative clerk read the nominations in the Department of Justice, as follows:

Wilbur H. Dillahunty, of Arkansas, to be U.S. attorney for the eastern district of Arkansas for the term of 4 years.

William D. Keller, of California, to be U.S. attorney for the central district of California for the term of 4 years.

Harold Hill Titus, Jr., of Washington, D.C., to be U.S. attorney for the District of Columbia for the term of 4 years.

Ermen J. Pallanck, of Connecticut, to be U.S. marshal for the district of Connecticut for the term of 4 years.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

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

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

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

LEGISLATIVE SESSION

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

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

ORDER OF BUSINESS

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

ANNIVERSARY OF LITHUANIAN INDEPENDENCE

Mr. PERCY. Mr. President, today we commemorate the anniversary of Lithuanian independence, recalling how short-lived that independence was and how it was ended so abruptly by the aggression of the Soviet Union in 1940.

We recall, too, the courage of the Lithuanian people in sustaining their religious life, their cultural traditions, and their hopes for freedom during two decades of systematic repression. Together with the peoples of Latvia and Estonia, they continue to persevere under the most difficult circumstances.

I can say from firsthand evidence that the attempt to stamp out their culture over a period of years has been absolutely unsuccessful. I have noticed evidence not only of resilience and a desire on the part of the people to maintain their culture but also a recognition by the Soviet Union that this spirit will prevail.

In honor of the Lithuanian people, and of the Americans of Lithuanian heritage, I suggest that we take this opportunity to speak out for freedom, freedom for the peoples of Eastern Europe whose national lives have been so severely circumscribed by the authorities now in power.

The determination of Lithuanians to be free was dramatically shown to the world over a year ago when Simas Kudirka sought to defect to the United States. Free men pray for Simas Kudirka's well-being and ultimate freedom, for in his suffering we all suffer. Because I am convinced that we can be helpful to Simas Kudirka by bringing broad public attention to his plight, I called on Mayor Daley and the city council of Chicago last November 16 to rename a major street in Chicago in Kudirka's honor. At that time I wrote:

> The conscience of the free world was shocked by the harsh and inhuman treatment administered by the Soviets when Simas Kudirka was unjustifiably returned to their jurisdiction. Simas Kudirka has recently been sentenced to 10 years of hard labor by a Soviet court in total disregard for human rights, international law, and the pleas of millions of concerned individuals around the globe.

The mayor acknowledged my letter and an alderman introduced the suggestion in the city council where it was referred to committee. Since then, the suggestion has lingered in committee. In the name of the thousands of Chicagoans to whom the tragedy of Simas Kudirka is a personal tragedy, in the name of Simas Kudirka whose very life and future may depend on international public opinion which can only be sustained by such efforts, I call on the city council to act on this suggestion now.

Today we remember Simas Kudirka and his countrymen who continue to live within a system where they are politically, religiously, and culturally restricted. When I visited Lithuania a few years ago, I was greatly impressed with the undaunted spirit of the people. It is my fervent prayer that one day freedom will return to the Lithuanian people.

Mr. SCOTT. Mr. President. this is a glorious anniversary, yet a time of sorrow; 54 years ago yesterday, on February 16, 1918, Lithuania declared its independence, but those days of freedom were very short-lived. All the people of the Baltic States including Latvia and Estonia have been plagued by conquest and persecution.

This sad story is not any different today.

Any nation in our world community should have the right to have a free government if it so desires. The Lithuanians since 1940 have struggled to bring that right to reality. Thousands of these people have been exiled to cool the voice of dissent. However, that voice is still heard and it is stronger than ever.

This cry of freedom is heard today from priests in Lithuania who have been accused of such "crimes" as teaching catechism to young children. These courageous priests certainly deserve the hopes and prayers of all free peoples.

The people of the United States along with all Lithuanian-Americans will continue the belief that one day Lithuania will be free. With God's help and persistence, faith and courage of Lithuanians everywhere, freedom in the Baltics will come fifty-four years ago the light of freedom burned in Lithuania, this accentuates the fact that here in the United States where Lady Liberty holds her torch high, she cannot allow that light to die.

Mr. FANNIN. Mr. President, I wish to join my colleague from Illinois (Mr. PERCY) and others in this Chamber who are commemorating two very important anniversaries in the history of Lithuania. It was 721 years ago that Lithuania became a unified country, and it was 54 years ago that the modern Republic of Lithuania was established.

For seven centuries the people of this small but proud Baltic nation have been buffeted by the brutal forces of history. None of these forces have been more brutal than the Soviet suppression which began in 1940. Extermination and annihilation of the Lithuanian people have been a part of the Soviet policy in maintaining control of Lithuania.

Tens of thousands of Lithuanian freedom fighters have died while trying to restore the independence of their nation.

Although the tactics have changed, the fight for independence and freedom continues both inside of the Baltic nations and in other countries.

People of Lithuanian origin who have escaped from the Soviet-domination are not content to simply enjoy the fruits of freedom in the United States. These people are dedicated to focusing world attention on the plight of their countrymen and former countrymen still in Lithuania. They have the faith and determination to carry on this struggle for as long as it may take.

It was my privilege to be a Member of the 89th Congress which unanimously adopted House Concurrent Resolution 416. This resolution reasserted our belief that the people of Lithuania, Estonia, and Latvia are entitled to the right of self determination.

This resolution is as valid today as it was when we adopted it in 1966. The pity is that we have seen nothing in the past 6 years since it was adopted to indicate that the Soviet Union has altered its policy of enslaving the once-free neighboring countries.

Mr. President, our faith in the cause of freedom has not waivered. We will continue to protest, to point out to the world just how the Communist regimes operate to suppress free peoples. Lithuania, Estonia, and Latvia are small nations, but their cause is of the greatest importance.

Mr. ALLOTT. Mr. President, today is the anniversary of Lithuanian independence. As such it is a melancholy day, combining sadness and hope.

It is sad that we in this free Republic cannot share our freedom with the oppressed peoples of Eastern Europe. But the very fact that these peoples are so vigilant in keeping alive the spirit of liberty while suffering despotism is proof that the Soviet tyranny has not achieved any success in dimming the determination of the Lithuanians and others that they shall be free one day.

It is my hope that one day it will dawn on the dense Soviet leaders that their despotism has failed—failed miserably—to dampen the spirit of liberty, and of national identity, that has made the Lithuanian people a proud example of freedom-loving people everywhere. Then Lithuanian independence will again be a fact, and not just a glowing aspiration.

Mr. SCHWEIKER. Mr. President, it is an honor for me to join my colleagues in tribute of Lithuanian Independence Day.

February 16 marks the 54th anniversary of the founding of the modern Republic of Lithuania in 1918. At this time, we also commemorate the bringing together of all Lithuanian persons into one unified country in 1251 by their great leader Mindaugas the Great.

The Baltic people have a rich heritage and Lithuanian-Americans throughout our country have contributed to their respective communities by keeping the spirit of their independence alive, and by actively maintaining their traditions. I have been in close contact with many Lithuanian-Americans from my own State of Pennsylvania, and it is a privilege to honor them in the Senate today.

Mr. President, as the sponsor of S. 23, the Ethnic Heritage Studies Centers Act of 1971, I have seen first-hand the deep respect that all ethnic and minority groups in this diverse country have for their backgrounds. This respect and pride adds a measure of dignity and depth to the lives of all our citizens, and it has encouraged me to work even harder to press for programs to assist these groups in the study and understanding of their ethnic heritages.

The commemoration of Lithuanian Independence this week, here in the Senate and across the nation, is an example of how the spirit of ethnic pride can be a positive force which brings constructive cooperation to our communities.

The knowledge of the hard work and national pride which led to the formation of the nation of Lithuania brings a sense of respect and personal pride even today for all Baltic people, and it is a personal pleasure to join in commemoration of

that day, and in tribute to all Lithuanians, both here in America and abroad.

Mr. HRUSKA. Mr. President, it is time once again to take proper note of an auspicious event in the history of freedom-loving nations—the establishment of the Republic of Lithuania 54 years ago.

The anniversary is noteworthy because the independence of that and other Latvian nations was so short-lived. A few short years after they were established, their proud and fiercely independent peoples were swept into slavery by the Soviet Union. That slavery has endured now for more than 30 years but it has nevertheless failed to extinguish the spark of freedom which still lights the hopes of these valiant people.

The spark burns on, as it does in Czechoslovakia, Poland and all of the other European countries who struggle under the yoke of Communist oppression, cruelly meted out through the cynical charade of puppet governments.

The Lithuanians, like their neighboring states, are a proud people, a peaceful people. They had lived at peace for many years. Their language is the oldest in Europe.

It was into this peaceful land that the Communist aggressors struck in their now-familiar imperialistic fashion, eliminating those who dared oppose them and establishing a puppet government through a typical bogus election.

The Soviet domination over these lands for more than three decades belies its pious talk of human rights and its empty endorsement of international covenants designed to preserve such rights. The Communists know nothing of and care less for human rights. They have made a practice for all of these decades of extinguishing and denying human rights among all the people who have had the misfortune to fall under their domain.

Freedom is systematically and cynically denied behind the Iron Curtain.

All appeals for decent and humane treatment for their captive peoples are turned blithely aside by the Soviets who will not be deterred by humanity and reason on their march to world domination.

We in this body and all freedom-loving people throughout the United States must pause from time to time and reflect on the fate of the people of Lithuania, Estonia, and all of the other countries which suffer under Communist tyranny.

Those people have not given up their hopes and striving for a return of freedom. They will never give up until their goal is achieved. They merit our support in every possible way.

To them we say that our hopes and prayers are with their struggle. We pledge our support for their cause and trust that the day will ultimately come when they and all nations of the world will be truly free.

(The remarks Mr. PERCY made at this point on the introduction of S. 3185 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

HUGE WESTON ATOM SMASHER PASSES ITS FINAL MAJOR TEST

Mr. PERCY. Mr. President, I would like to give the Senate a very brief report on a scientific device which is a major accomplishment and was the subject of a great deal of debate on the Senate floor as to where the world's largest atom smasher was to be constructed.

I would merely like to ask these questions and try to answer them.

Was the site selected by the Congress of the United States the right site?

The site is in Weston, Ill., an area some 30 miles from the center of downtown Chicago. I feel that the site was properly chosen. The community has warmly accepted the project and has given every cooperation. The site is near O'Hare Field where scientists from all over the world can very easily visit the world's largest atom smasher.

Question was raised in the debate on the floor of the Senate as to whether it would be possible in the State of Illinois to have full compliance with equal opportunities for all workers regardless of race, color, or creed.

There has been no question about the fact that the very large staff at Weston has been assembled on the basis of scientific accomplishments and on the individual's ability to contribute to the project. There has been no discrimination of any kind that has been charged against this project that I know of.

The third question is whether the atom smasher could be completed on schedule.

A major effort of this kind required the expenditure of some $250 million. It was estimated that the schedule would call for the atom smasher to get under way by July of this year. I am pleased to report to the Senate that the completion of this scientific instrument is so far ahead of schedule that just last Friday it actually accomplished a final major test and successfully accelerated a beam of protons of 100 billion atom particles.

The tremendous power of the test beam far exceeds the power of any other accelerator ever built. This is the largest scientific instrument ever conceived and built by man. Its completion makes the Chicago area the world's center for high energy physics research effort.

Until now Russia held the lead in high energy accelerators.

The scientific team under the able and inspired leadership of Dr. Robert R. Wilson, National Accelerator Laboratory Director, has achieved a level of competence now on the atom smasher itself which indicates that we are not only well ahead of the schedule, but that we will achieve results far in excess of those originally envisioned for the project. We have met the test of reliability. It has been constructed in accordance with national policy and it is on schedule. I am very happy to report that it will not only be constructed within the cost of the estimate that had been given to Congress, but it appears that it will achieve another world's record. It is actually going to be constructed, I believe, at a cost somewhat less than the original estimate.

For this I certainly pay tribute to Dr. Wilson and his entire team who have accomplished this and to the AEC and other agencies that have fully supported and backed it.

Mr. President, I ask unanimous consent that an article entitled "Weston A-Smasher Passes Big Test," written by Ronald Kotulak and published in the Chicago Tribune, be printed in the RECORD.

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

WESTON A-SMASHER PASSES BIG TEST

(By Ronald Kotulak)

The world's largest atom smasher, which has been under construction 30 miles west of Chicago since 1969, has passed its final major test by successfully accelerating a beam of protons to 100 billion electron volts.

The tremendous power of the test beam far exceeds the power of any other accelerator ever built. The test, which occurred last Friday, means the accelerator may be boosted up to its designed power of 200 B.E.V. within a few weeks, said Dr. Edwin L. Goldwasser, deputy director of the National Accelerator Laboratory.

"We feel that there are no more serious problems that remain and we now expect that the instrument will work as designed," he said.

The facility is the largest scientific instrument ever conceived and built. Its main feature is a main ring, 1.25 miles in diameter, around which subatomic particles travel at near the speed of light [186,200 miles per second].

Scientists are eagerly awaiting the full operation of the machine, which is expected in June, because they anticipate it will open up a new era in man's quest to understand the atom.

Completion of the instrument will also make the Chicago area the world's center for high energy physics research.

WORLD'S MOST POWERFUL

Even at a power of 100 B.E.V., the machine ranks as the most powerful accelerator in the world. The biggest atom smasher in America is the 33 B.E.V. instrument at the Brookhaven National Laboratory on Long Island.

Until now, Russia held the lead in high energy accelerators with its 76 B. E. V. accelerator located at Serpukhov.

Led by Dr. Robert R. Wison, National Accelerator Laboratory director, scientists, and engineers on the project incorporated a number of innovations at no additional cost which may enable the accelerator to more than double its designed power.

Dr. Goldwasser said that when special cooling equipment is hooked up, the instrument may attain a power of 500 B. E. V.

HEAD OF SCHEDULE

The first startup of the proton beam was not expected until July. But the construction schedule had been pushed so far ahead of schedule that at one time it was hoped to start the machine last July.

However, unexpected trouble occurred last summer when some 300 of the main 1,000 magnet rings developed short circuits and had to be repaired. The short circuits were caused when microscopic cracks developed in the protective coating over the magnet coils, allowing moisture to seep in.

The $250 million accelerator is located on a 6,800-acre site near Batavia. It works this way:

Protons, the elementary particles that exist in the nuclei of atoms, are injected into the big accelerator by a series of three smaller booster accelerators.

SPEEDS ARE FANTASTIC

The particles travel at fantastic speed around the four-mile in circumference ring, making 70,000 revolutions in 1.6 seconds. When they reach their maximum speed, they are diverted into a target area where they smash into target atoms.

The target atoms are broken into smaller particles which physicists study to learn more about the elementary building blocks of nature.

One of the first experiments scheduled on the big machine is a search for the quark, believed by some scientists to be the fundamental particle from which all other particles are made.

Other experiments will seek the magnetic monopole, the lost chord of electricity, and others will attempt to study the properties of the neutrino, a mysterious particle that theoretically exists everywhere.

PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. In accordance with the previous order, the Senate will now proceed to the transaction of routine morning business for not to exceed 30 minutes, with a 3-minute limitation on each Senator. Is there morning business?

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Hackney, one of the reading clerks, announced that the speaker had affixed his signature to the enrolled bill (S. 3122) to extend certain provisions of the Federal Water Pollution Control Act through June 30, 1972, and others through April 30, 1972.

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized.

(The remarks Mr. BEALL made when he introduced S. 3186 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the 3 minutes to which I am entitled in the morning hour be allotted to the Senator from Illinois.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Illinois is recognized.

ILLINOIS OLYMPIC CHAMPIONS

Mr. PERCY. Mr. President, I express deep gratitude to my distinguished colleague, the Senator from Arizona (Mr. GOLDWATER), who is also deeply interested in the accomplishments of young people, who is admired and respected by young people, and who is, I am sure, deeply interested in the accomplishments of our olympic team abroad.

I address the Senate today to bring to the attention of my colleagues the fact that all Americans are proud of the accomplishments of the young Americans who represented this country at the Winter Olympics in Sapporo, Japan. We thrilled at their skill and grace as we watched the telecasts from halfway around the world.

Those of us in Illinois were particularly proud of the fact that three young ladies from our State brought home to the United States five of the eight medals won by this country. I want my fellow Senators to know of Illinois' pride in her champions.

Half of the U.S. medals were won by two young speed skaters from Northbrook, Ill., a town of 27,000 citizens which lies on the outskirts of Chicago. As this week's issue of Time magazine points out, Northbrook might well be called the Speed-Skating Capitol of the World thanks to the achievements of Anne Henning and Diane Holum.

Miss Henning won a gold medal for her prowess in the 500-meter race, then went on to capture a bronze medal for her performance in the 1,000 meters.

Her friend and teammate, Diane Holum, also of Northbrook, set an Olympic record in the 1,500-meter competition. If that performance were not enough for one young lady, Diane then won a silver medal in the 3,000-meter competition.

I should like to point out, Mr. President, that these young constituents of mine, from a town of 27,000 people, earned half the medals won by a country of over 200 million people. That is surely reason enough to make the citizens of Northbrook proud of the effort they have made to turn their town into a home of champions.

The fifth Illinois medal—in this case a bronze—was won by Janet Lynn, of Rockford, for her dazzling performance in the figure skating competition. As the Chicago Tribune said so accurately, "Our Cinderella girl was some pumpkins" as she turned in an exhibition of such grace and beauty that it had the Japanese audience standing and cheering. Although she was not among the top three skaters in the school figures, Janet's performance in the free-skating phase went unmatched by any of her competitors.

Along with the more than 11 million other citizens of Illinois, I wish to congratulate Diane, Anne, and Janet for their triumphs at the Olympics. My special admiration for these girls is enhanced by the fact that, from my own minor attempts on the ski slopes, I have an idea just how difficult it must be to make oneself into a winter sports champion. I think all Americans realize and are grateful for the years of sacrifice and discipline these young ladies have devoted to making themselves champions. They have made this a proud time for Illinois and the whole country.

Their accomplishments could not have been achieved without the support of their very able coach, Ed Rudolph, without the support of the citizens who backed them and supported the skating rink through bond issues, without the teachers who helped them make up their school work, and without the support and encouragement of their classmates.

Mr. President, I ask unanimous consent to have printed in the RECORD the article published in Time magazine entitled "Northbrook, Ill., Speed-Skating Capital."

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

[From Time magazine, Feb. 21, 1972]

NORTHBROOK, ILL., SPEED-SKATING CAPITAL

To the casual visitor, Northbrook, Ill., is just another quiet bedroom community on the outskirts of Chicago. To the 27,000 citizens who live there, it has always been the busy, bristling "Speed-Skating Capital of America." Until recently there may have been some doubters of that heady claim. Not now. Not after two of the town's favorite daughters, Anne Henning and Dianne Holum, skated off with gold medals in the 1972 Winter Games. Indeed, the local Chamber of Commerce has already begun to engrave its stationery with a new slogan: "Speed-Skating Capital of the World."

Why Northbrook? For one thing, there is Ed Rudolph, 60, a onetime high school skating champion who has devoted nearly 20 years to training Northbrook youngsters in his sport. A landscape contractor who also serves as the Northbrook park commissioner, Rudolph began his program by designing baseball diamonds that could be frozen over in the winter for skating. With strong financial and moral support from the townspeople, he has since been instrumental in adding a modern indoor facility that is in operation 24 hours a day throughout the weekends.

Beginning each May, Rudolph's charges spend five months in "dry training": calisthenics, running and bicycling. Then they hit the road for West Allis, Wis., and the only Olympic-sized artificial rink in the U.S. Traveling in a car pool run by their parents, they visit the bleak Wisconsin state fairgrounds every day for six straight months, spending three hours a day on the ice and three hours in transit.

Anne Henning, a cheery, curly-haired blonde who never travels without her lucky Snoopy button and a large supply of peanut butter, does not miss the social life that is ruled out by her training regimen. Says she: "There are lots of boys in the training group too, you know." Dianne Holum, a fiercely dedicated competitor who worked as a waitress last year to help finance a three-month training stint in The Netherlands, adds: "I don't mind the sacrifices. An Olympic gold medal is a life's ambition come true." Even so, the demands are such that many young skaters have to drop out of school and study with a tutor. To pay the $1,000 to $2,000 a year that it takes for the care and feeding of a skater, some Northbrook mothers take parttime jobs. Is it worth it? Anne's father, Bill Henning, thinks so. "The U.S. is the only country in the Northern Hemisphere where speed skating is not a major sport," he explains. "Our hope is to make it one."

ORDER FOR ADJOURNMENT TO 11 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 11 a.m. tomorrow.

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

ORDER FOR ADJOURNMENT FROM TOMORROW TO MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business

tomorrow it stand in adjournment until 12 o'clock meridian on Monday next.

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

ORDER FOR RECOGNITION OF SENATOR PEARSON AND SENATOR MONDALE TOMORROW—ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND FOR UNFINISHED BUSINESS TO BE LAID BEFORE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the distinguished Senator from Florida (Mr. CHILES) tomorrow, the distinguished Senator from Kansas (Mr. PEARSON) be recognized for not to exceed 15 minutes, that he be followed by the distinguished Senator from Minnesota (Mr. MONDALE) for not to exceed 15 minutes, at the conclusion of which there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Chair lay before the Senate the unfinished business.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

Mr. HART. 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.

THE ABM DEBATE

Mr. HART. Mr. President, in November 1969, the Operations Research Society of America appointed an ad hoc committee to explore "the professional conduct of the debate" over deployment of the Safeguard antiballistic missile system.

The study was undertaken at the suggestion of one of the non-Government proponents of deploying Safeguard. In making his suggestion, the proponent also brought to the society's attention a statement in a report by a Senate Armed Services Subcommittee.

Prof. Robert E. Machol, president of the society, said the society interpreted the subcommittee's statement "to constitute a rather plaintive request to scientists to set their own houses in order."

The ORSA ad hoc committee published its findings in the September 1971 edition of the society's journal, Operations Research.

Among its several sections the report lists guidelines for professional practice for ORSA members.

As a layman I have no competence to judge the suggested standards.

However, another part of the report—the section which reviewed a small part of the public debate over Safeguard deployment—is of concern to me.

In this section, the ad hoc committee reported that it reached "the disturbing conclusion that when prominent experts outside the administration supported their opinion on Safeguard deployment with arguments or results of an operations-research nature these analyses were often inappropriate, misleading or factually in error."

That language is broad, and indeed has been used by some supporters of Safeguard, including one White House official, to attack or question, directly or indirectly, the credibility of the entire debate against deployment.

Let me add at this point that a careful reading of the full report makes clear that the study was sharply limited to two of the many questions involved, that the study did not take a position on the question of deploying Safeguard and that the committee did not have jurisdiction to act as a tribunal over participants in the debate.

Unhappily, the broad language of the conclusions, quoted in part above, does not indicate those limitations, and quite predictably, I think, the conclusions have been used as a general criticism of the overall anti-Safeguard debate.

Perhaps it is only a little facetious to suggest that the operations research analysts who wrote the report should have consulted some public relations analysts on writing their conclusion.

If they had, they might not have released the report, or might have at least drastically rewritten their findings.

To be fair to the ad hoc committee, I will quote what Professor Machol, in a letter to Senator Cooper, Senator Symington and me, wrote:

> Let me state for the record that I find the article by Alsop, which praises the report, as disturbing as I find some of the distorted articles which attack it, such as those in the Boston Globe.

Professor Machol goes on to write:

> I should think, however, that all Senators would unite behind the principal objective of the report, namely to insure that the Senate of the United States obtains a more adequate basis for its decisions on technical matters.

To the extent that the guidelines suggested in the report can accomplish that goal, I support the objective of the report with a caveat pointed out with grace and humor by a distinguished professor of chemistry:

> University faculties, if they are alive, are rife with doctrinal disputes. By long experience they have learned that their existence, their freedom and their usefulness depends on limiting their self-investigation to the most elementary and obvious forms of "grave misconduct". Professional societies should limit themselves in the same way. Of all professional groups only the church pretends competence in settling doctrinal disputes and even then with the expectations of divine guidance and, it would seem, with mixed results.

I must admit to serious reservations about whether such a limited study whether it was adequately done, and whether it serves the goal of giving Congress a better basis on which to make decisions on such questions as deploying Safeguard.

Despite the disclaimers included in the committee's report, I find that I must not only react to the report itself, but also to the way it has been used by others—an entirely predictable use, I repeat for emphasis.

I believe I should react for several reasons.

First, the scientists criticized in the report joined the debate at the requests of Senators, including me, who opposed deployment of the Safeguard.

Second, I was interested to learn if the report would weaken any of the assumptions I made in reaching my conclusion to oppose deployment.

Third, given the wide publicity the report received, I was interested to determine, if I could, whether the study was adequately done.

And finally, as one who believes strongly that the debate on Safeguard, insofar as it opened up to public discussion what theretofore had been private decisions of Pentagon planners, was an important experience for Congress, I was concerned that the report might inhibit rather than encourage non-Government scientists from entering public debate in the future.

Before attempting to comment on the report, Senator COOPER, Senator SYMINGTON and I asked a number of scientists to respond to a series of questions about the study.

Rather than attempt to summarize their answers, which range from specific responses to the questions to broader tions and each of the replies be printed at the end of our remarks.

Also, rather than attempt to comment on the technical competency of the study, as far as it went, I think it would be fair and more revealing to let the readers make their own judgments based on the correspondence we received in response to our questions.

However, whether one supports or opposes deployment of Safeguard, whether one agrees with the nature of the questions we asked, I think the letters merit close reading by anyone who believes it is important that questions of armaments, nuclear weapons, and Pentagon spending receive close public scrutiny.

And now to my own reactions.

The ad hoc committee limited its study to two questions:

> 1. Vulnerability of minutemen and bombers without additional protection, and
> 2. The operational feasibility of certain defensive tactics.

The time frame of the study was also limited, from January, 1969 through September, 1969.

The general limits were suggested in the proponent's letter proposing the study.

If the society felt it important to conduct a study of the debate, and if the committee felt inclined to adopt limits suggested by one of the protagonists, would not fairness dictate at least a review of a portion of the debate suggested by an opponent of deployment?

Equally important, in selecting a limited time frame the committee was necessarily precluded from considering new information developed and new rationales offered by the administration as it sought Senate approval of the decision to deploy.

These shortcomings should have been obvious.

If the opponents of deployment named in the study were not interested in proposing other areas to review, the committee could have approached other opponents for suggestions.

If the committee were not prepared to undertake a broad-based study of the entire question, it should have questioned seriously both the fairness of a partial review and the uses to which such a partial review might be put.

An overall review of the debate would have pointed up, I believe, shifts in arguments used to support deployment.

This overall view is particularly important in considering the question of the vulnerability of our land-based nuclear deterrents.

That vulnerability is based on the degree of accuracy attributed to the Soviet ICBMs.

The manner in which the administration chose to release or declassify data forced opponents to make use of ball park figures.

To suggest that opponents of deployment should not make their case because they lack or cannot use all the information possessed by the Pentagon is to argue that in many cases no opposition should be made at all.

Similarly, to criticize from an operations research point of view the performance of opponents under those conditions also is to suggest that Pentagon decisions should be accepted without question.

And frankly, as a layman, I question whether an operations research critique of the debate is greatly relevant. As one of the scientists who responded to our questions observed, weapons operations research, even when based on information gathered under combat conditions, is still more art than science. In view of the many assumptions and unknowns involved, the Safeguard debate moves even further into the area of art. Remember, the greatest unknown—whether Safeguard would work under nuclear attack—can never be fully answered.

Therefore, it is perhaps too much to ask scientists "to put their house in order" on such questions.

In reviewing the report and the interim debate, I remain convinced that the case deploying Safeguard is yet to be made.

In brief, I do not believe the credibility of this Nation's nuclear deterrent is threatened; if our deterrent is threatened, I do not believe that Safeguard as designed will provide a credible defense; and finally, even if Safeguard works as advertised, it could be overcome.

And as is noted in some of the letters we received, at least some proponents of deployment now agree with the conclusion we can get a better defense than Safeguard for our land-based deterrent.

However, more important is the question of the effect the committee's report might have on discouraging scientists from participating in such debates in the future.

As I said previously, to suggest that scientists should refrain from debate unless they have or can use all the data available to Government scientists is to leave those who might oppose a Government project—military or nonmilitary—at the mercy of Government decisions on how, when, and what information is released.

The dependence, under present procedures, would be a most dangerous concept, far more dangerous to the common good than any error made in presenting assumptions which question a decision.

In this regard, I would like to quote a letter to use from Professor Harvey Brooks, of Harvard. Professor Brooks wrote:

> In every field of American politics experience has taught us over and over again that political asymmetry eventually leads to conflict and political irresponsibility.
>
> Thus, in my opinion, the administration itself has a stake in insuring that responsible opposition to its technological programs has adequate access to analytical resources and military-technological data so that it can make its case in the political arena.

Professor Brooks' letter is among those to be printed at the conclusion of our remarks.

In 1969, Professor Brooks was chairman of a Committee of the National Academy of Sciences which issued a report entitled, "Technology: Processes of Assessment and Choice."

The following paragraph from that report is pertinent to this discussion.

> One would wish to incorporate more institutionalized criticism into the decision-making process for military technology—criticism designed deliberately to broaden the criteria of technology assessment well beyond the strictly military context. Unless this is done, there is a real danger either of great social or environmental damage, or, conversely, of a broad public reaction against all forms of military technology, which might endanger the security position of the United States.

Certainly, this is a proposal which should receive serious consideration by Congress, but until we have found a way to incorporate more institutionalized criticisms in our system, we must and should rely on experts from outside of Government.

We should encourage rather than discourage their participation in the decisionmaking process.

If the ad hoc Committee of the Operations Research Society has discouraged such participation, it is regrettable that the study was undertaken. In any case, its findings should have been more precisely described and limited.

To the extent that the performance of opponents of Safeguard encourages other scientists to come forward on other questions in the future, I welcome their very real contributions, not only to Safeguard debate, but to the broader question of correcting the political asymmetry which exists in the area of Governmental technological decisions.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement on this subject by the Senator from Kentucky (Mr. COOPER) who is absent on official business.

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

STATEMENT BY SENATOR COOPER

The September 1971 issue of *Operations Research*, the Journal of the Operations Research Society (ORSA), set forth for its members guidelines for the practice of operations research. In an appendix to this issue, appendix three, criticisms were made concerning the quality of the testimony made by several distinguished scientists who appeared before the Senate Armed Services Committee during 1969 on the question of the ABM.

I have no fault to find with ORSA's objectives. The stated intentions of the report seem to have been to establish for the future guidelines for its members and an outline of procedures to follow when dealing with a question of operations research. I am concerned, however, that the ORSA report has been unfortunately used to cast doubt on the integrity of witnesses who appeared before the Senate on the issue of the ABM who were not members of ORSA and who testified two years before any guidelines has developed. Based upon the ORSA critique, some newspaper reports and other commentators have made it seem that the testimony of some scientists misled Senate Committees and the Senate during its consideration of the ABM issue.

In particular, the testimony of Professor George Rathjens of MIT, formerly an ACDA official, and the writings of Dr. Jerome Wiesner, now President of MIT and formerly Science Advisor to President Kennedy, were called into question. The testimony and articles by other scientists were also brought under criticism.

Senator Hart, Senator Symington and I were concerned that if these personally harmful critical reports were permitted to stand unexamined that they might have an adverse and inhibiting effect upon the willingness of scientists to appear in public testimony or to engage in public debates on important matters of public policy raised by questions of science and technology. Many witnesses were called to testify at very short notice and had to contend with the very difficult problem of testifying in public testimony without being able to discuss classified information. As became clear in classified sessions, some secret material was open to very serious doubt as to its correctness. In no way do I believe the witnesses attempted to deceive or mislead and there is nothing upon which even an implication can be based. They advocated certain positions pro and con but we requested that they express their views, as well as explain the facts contained in certain problems raised by the Senate.

Because of our concern, that the ORSA report might cause scientists to be reluctant to testify in the future because of fear of reprisal, Senator Hart, Senator Symington and I wrote to a representative group of scientists, all of whom were involved in the ABM debate between 1968 and the present and asked them to study the ORSA report, respond to certain questions we posed concerning that report and to express their views of the matter. Our purpose in requesting this information was to provide a basis of judgment for our own view of the ORSA report. I believe the Senate will be interested in their replies, because not only do these replies place the ORSA report in a larger perspective but these replies also provide further information concerning the inadequacy of the Safeguard ABM system for the purpose of missile site defense.

To my knowledge, no one in the Senate is a member of the Operations Research Society. I do not wish to criticize the Society in any way except insofar as the impact of the ORSA Report reflects upon the Senate and its responsibilities. I do believe it necessary to call attention to some aspects of the ABM debate that those who wrote the ORSA Report neglected to address in their Report.

First, Dr. Rathjens testified before the Armed Services Committee and the Foreign Relations Committee at the request of Senator Hart, Senator Symington and myself.

In addition, Dr. Wiesner was called upon for his view and advice as were dozens of other scientists. Dr. Wiesner and Dr. Rathjens and many other distinguished scientists responded to our call and agreed to give their views, to help inform the Senate as fully as possible about a very crucial and complex subject, the ABM issue. We invited the scientific community to go public, so to speak, to discuss the issue not only from the point of view of technological problems, but on the basis of their experience as public officials and as individual citizens. I think it correct to say that the debate on the ABM over the past four years has been of a very high order. It helped raise the level of understanding of the main issues for the Senate, the Congress and the country and it confirmed our view that it is necessary to insure that scientists will continue to respond to what is a very obvious need—to inform the public of implications for public policy of new technology.

It should be noted that formal testimony before the Armed Services Committees and the Foreign Relations Committees accounted for only a small portion of the contributions made by the scientists who responded to the Senate's call for their expert advice and counsel. These scientists who were for the most part opposed to deployment of the Sentinel/Safeguard ABM system for the purpose of missile site defense, as well as those scientists who argued for such a deployment, took considerable time from their busy schedules to meet on a great many occasions with Senators and their staffs. These meetings took place over a period of four years and ranged over the whole spectrum of issues contained in the ABM debate.

In view of the fact that the scientists who testified before the Armed Services Committee came at our request, and in addition, conferred both privately and through various Committee auspices over a period of four years, we are somewhat at a loss to understand why those who wrote the ORSA Report did not inquire what purposes the Senate had in mind in holding Hearings on the ABM or what our impressions were of the quality of the information and advice given by various witnesses who were called upon.

Senator Margaret Chase Smith of Maine, the ranking Republican member of the Armed Services Committee, remarked following the testimony of Dr. Panofsky, Dr. York, Dr. McMillan, Mr. Paul Nitze, Dr. Seitz, Dr. Wohlstetter, Dr. Rathjens and Professor Chayes as follows:

"Mr. Chairman, it has been my privilege to serve in the Congress for nearly 29 years. Most of that time, to serve on the Armed Services Committees of the Senate and House. During that time, I have never been more proud to be a member of any committee than I was yesterday to be a member of this Committee.

"Never have I seen a more constructive and productive committee hearing and meeting where the witnesses were outstanding in their responsiveness and any extremely valuable information they gave, on the deadly serious subject before us on which we must vote, and I think today's hearings seem to be starting out on the same tone.

"To me the sessions yesterday epitomized our way of democracy at its very best. Dissent expressed and accord, intellect projects positively rather than negatively, constructively rather than destructively, in which dedicated American leaders demonstrated their ability to disagree agreeably and criticize constructively."

Following the testimony of Dr. Wohlstetter and Dr. Rathjens, the Chairman of the Armed Services Committee, Senator Stennis was moved to say,

"You have made a great contribution to the Senate, to the Congress, to the people of the nation, in reaching a decision about this whole important matter. I know you have helped me greatly. I am sure you have helped each member of the Committee."

I think the comments by these two distinguished Senators reflected the attitude of sincere gratitude of the Senate as a whole for the service rendered by the scientific community no matter what their point of view.

Because of the great contribution to the understanding of the issue made by the scientific community including those criticized in the ORSA Report, we find the criticism to be disproportionate to the positive contributions made. In short, I find these criticisms something of a tempest in a teapot. For example, I find it difficult to understand why such a narrow set of questions were addressed, or why only part of one year's debate of a four year debate that continues, was chosen. I agree that questions addressed by the ORSA Report were important, but on these questions we were not in any way misled because of any individual testimony or private consultation. We came to our position on the ABM issue after consideration of all the evidence we could obtain, pro and con, provided over a period of years.

Further, in my view, there were many other questions of greater importance that the authors of the ORSA Report did not address. The ORSA critique concentrated upon the arguments pro and con about when a threat would constitute a danger to the United States ICBM force. A more important technological issue was whether Safeguard would provide effective defense whenever that threat developed.

The ABM was not simply a technological issue. If it were, the Safeguard ABM probably would have been scrapped for the reasons stated by opponents of the ABM in 1968, 1969, 1970 and last year, now accepted as generally correct even by the Pentagon. But the ABM issue was not only a question of whether a particular system of machines would work well enough to meet certain ranges of probable threats. It was and still is a far more complex issue encompassing foreign policy, overall defense strategy, national priorities, national values and institutions as well as international relationships and institutions.

Among the many issues considered, we in the Senate were interested in the nature of the Chinese threat and Chinese nuclear capabilities as well as Soviet capabilities and actual deployments. We examined the various assumptions about possible Chinese and Soviet threats in the coming decade as well as various assumption about how the United States could meet such threats including the deployment of other systems both offensive and defensive. In view of available deployment alternatives, the Safeguard ABM was a very poor choice in our view.

All of these considerations, coalescent in the question of how the SALT talks might affect any proposed deployment. The main issue at SALT is to determine whether attempts at numerical superiority are now recognized as futile by the two great superpowers and whether a system of nuclear parity can be made into a pattern of international agreement and order. It now seems probable that the initial outcome of the SALT talks will support the contention of those that opposed widespread deployment of the ABM on the grounds that it would be a destabilizing factor and would only contribute to the escalation of the arms race.

I think it fair to say that the Senate, through its several committees, examined a greater range of questions than contained in the ORSA Report. And because of this, in my view, the ORSA critique was limited in usefulness because it did not have a broad enough scope nor did it determine what the full scope of Senate inquiry was during the period 1968 to the present time.

It is in the spirit of admiration and gratitude that I want to take this opportunity to praise once again those scientists who contributed so much to enlightening the Congress and the people about a subject that was once the sole province of a small cabal.

A democratic society such as ours can meet the challenges of an increasingly complex technological world if we are enabled to understand the main issues raised by scientific progress. It is necessary to understand in order for the Congress and the Executive to make rational decisions required to control the progress of technology for the benefit of mankind rather than to unknowingly contribute to his annihilation—and it is upon the scientific community that the task of educating the country's leaders falls.

This country owes much to the courage and integrity of the many distinguished scientists who responded to requests of the Senate and the country to explain the issues in the strategic debate about the ABM and other nuclear weapons system. Their learning and public concern about the implications of the awesome decisions now before the country concerning nuclear weapons is worthy of our gratitude. Such men as Dr. Wolfgang Panofsky, Dr. George Kistiakosky, Dr. Hans Bethe, Dr. Richard Garwin, Dr. Donald Hornig, Dr. James Killian, Dr. Herbert York, Dr. Jerome Wiesner, Dr. Edward Teller, Dr. George Rathjens, and Dr. Albert Wohlstetter, to name only a few, have faithfully served this country in positions of the highest responsibility; they are the men who helped invent and develop the nuclear weapons now in our arsenal and they are the men who perhaps better than anyone else, know the awesome destructive forces of the weapons they have created.

But in the face of that experience, they have established an important precedent for the Congress and the country. They have given the Congress and the country the benefit of their knowledge, and they have presented their views with intelligence, integrity and conviction. That there should be differences of opinion and differences in assumptions and different recommendations for strategic policies to be followed is not surprising. But for those of us who must judge, it is essential to have all sides of a question. I think it fair to say that in the ABM debate, for the first time in an issue concerning nuclear weapons, we have had the benefit of full, informed and detailed debate from many points of view. The country has benefited by the service that these men have rendered and I am confident that this practice of encouraging full testimony in both public and executive sessions on such vital matters of public policy will remain the rule. Our nation can only be strengthened by following such a rational course.

THE ABM—LET US NOT STIFLE DISSENT

Mr. SYMINGTON. Mr. President, I join my colleagues, Senator HART and Senator COOPER, in inserting in the RECORD replies received from scientists in answer to our request for comments about the extraordinary and unfortunate report issued last fall by the Operations Research Society of America with respect to the debate on the antiballistic missile system—ABM.

This so-called study attempted to pass judgment on the quality of testimony that was presented to the Congress by various scientists. It charged that much of said testimony offered by those who were in opposition to the Sentinel/Safeguard ABM system was misleading.

Shortly after this report was issued I stated on the floor that it was regrettable an attack of this character had been launched against scientists who have given so much of their time and knowl-

edge in effort to present the facts as they see them about this ABM system.

The benefit of outside expert opinion, particularly on matters of such technical complexity as this ABM system, is of substantial value in the promotion of full debate and understanding of such issues when they come before the Congress; and it would indeed be detrimental to the decisionmaking process if these experts were intimidated in making their views known, in giving the Congress and the public the benefit of their specific expertise.

Many of the replies we have received echo this concern about the future effect of this ORSA attack.

Dr. G. B. Kistiakowsky writes:

In the ABM debate the participation of experts provided the Congress and the public with an almost unprecedented exposure to the many facets of a major defense policy. Its formative process was especially enriched by the non-Government experts who are not restricted in their public views by the official government positions.

In addition, Dr. Wolfgang Panofsky stated that he considered this ORSA report an unfortunate precedent in that it might be interpreted as a mechanism of intimidating witnesses requested to testify before the Congress.

Those of us who participated in hearings and floor debates on the ABM over recent years welcomed, encouraged, technical advice from objective knowledgeable scientists on the complexities of this and various other defense systems. These men gave unstintingly of their time and knowledge both in public sessions and in private consultations. They made a significant contribution to one of the more important debates incident to the security of the United States.

As many of the letters received point out, however, a major shortcoming of the ORSA report is the fact it places primary emphasis on but a small portion of the technical issues, and ignores the other inputs in the decisionmaking process. As Dr. Harold Agnew expressed in his letter:

The important inputs are determined by people and politics, not by scientific facts.

Even if the disgraceful ORSA charge that many of the outstanding scientists who were involved in the ABM debate misled Members of Congress and the public were accurate—which those of us who know these men know also is not the truth—it is clear that the votes in the Senate as to whether or not the ABM system should be deployed were based primarily on a number of nontechnical considerations.

As Prof. Abram Chayes pointed out:

One of the major achievements of the ABM debate was that it broke the stranglehold of technical experts, usually Defense Department controlled, on issues of major military policy and weapons deployment. The teaching of that experience is that these are central issues of public policy capable of being understood and evaluated by the members of the Congress and by the informed citizenry. The principal considerations are not technical and scientific but have to do with values, priorities and judgment.

Let us hope that the Congress will be able to continue to have the benefit of unintimidated outside experts, technical and nontechnical on matters of such vital importance to the security of this Nation. We should all be grateful to these objective scientists who have contributed their knowledge with sincerity over recent years to this ABM debate. I would also thank those who took the time to answer our questions about this ORSA report; and would hope all Senators would read the full text of these replies which are being inserted in the RECORD today.

Mr. HART. Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the letter which we jointly addressed to a number of scientists, a copy of the questions we submitted to them, and the replies we have received to date.

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

U. S. SENATE,
Washington, D.C., November 4, 1971.

DEAR ———: A copy of the September 1971 issue of a journal entitled "Operations Research" has been brought to our attention. It is critical of the testimony of certain scientists who testified, at our request, about the ABM.

We would appreciate your reading this report, and thereupon giving us a candid analysis of its findings, including your judgment with respect to the validity of its assertions and charges.

To us this type and character of report is a serious matter. Before commenting upon its findings, however, we would appreciate the benefit of your views. Answers to the enclosed questions would be helpful, as well as any other observations you may consider important. We would be grateful if you could send your response to this request by November 15.

With kind regards,

Sincerely,

PHILIP A. HART,
STUART SYMINGTON,
JOHN SHERMAN COOPER.

SOME QUESTIONS CONCERNING THE REPORT OF THE ORSA AD HOC COMMITTEE OF PROFESSIONAL STANDARDS ENTITLED "GUIDELINES FOR THE PRACTICE OF OPERATIONS RESEARCH" CONTAINED IN OPERATIONS RESEARCH, VOLUME 19, NO. 5, SEPTEMBER 1971.

1. Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time; its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite?"

2. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

3. In projecting the vulnerability of Minuteman, much was believed to depend upon whether one considered reprogramming of Soviet missiles for failure and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" were plausible Soviet tactics for the mid-seventies?

4. Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?

5. Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?

6. Did the Ad Hoc Panel make full use of all the information available to the responsible Committees—the Armed Services and Foreign Relations Committees—both classified and unclassified, concerning the Soviet threat and Safeguard AMB performance capabilities against a range of Soviet threats?

7. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

8. Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of *all* witnesses pro and con who were called before the two Committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc group on Safeguard for FY 1971 (the O'Neill Report) submitted to the Secretary of Defense on January 27, 1970?

9. Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?

UNIVERSITY OF CALIFORNIA,
LOS ALAMOS, N. MEX.,
November 9, 1971.

Senator PHILIP A. HART,
Senator STUART SYMINGTON,
Senator JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

DEAR SENATORS HART, SYMINGTON, and COOPER: Before I attempt to answer the questions sent to me in your letter of November 5, 1971, please allow me to express my own personal prejudices against or for operations research.

Let me begin by stating that in my opinion operations analysts are very competent individuals who are many times used to work problems backwards. That is, you tell them the results you want or they decide the results they desire and they then, using the very latest computers, mathematics, logic and selection of necessary data, obtain the desired answer. The same people, using the same techniques but with a different selection of input data, could also in a "scientific" and scholarly manner obtain exactly the opposite results. In effect, done properly, operations research or analysis in this context is a form of debate using mathematics.

Matters such as ABM are really very subjective basic issues. If one believes that we need a credible strategic deterrent, and this can also be debated, but assuming that we do, one can then examine how best to achieve it. One can build more offensive systems, or improve what one has by improving their penetration capability over the target area, increasing their prelaunch survivability by either passive or active defense, increasing their yield, etc. Choose the course you wish to follow and your operations analyst, given the proper support, will "prove" your case in his opinion and in your opinion. But he won't convince his counterpart who just "proved" the opposite. I read the conclusions and recommendations of the "Guidelines for the Practice of OR" paragraph (4) to say just this. Present your backer's case in the best light for him. Lawyers do this all the time in both civil and criminal suits. They only bring out or use the facts they want brought out. As you probably have gathered by now, I firmly believe that basic gut issues such as does one attack or retreat or does one build an ABM or not, should be decided by common sense. Sometimes one will be correct, sometimes one will be wrong; the ratio determines how good a leader one is. Operations research shouldn't be used in this context because it is so input dependent and the important inputs are determined by people and politics, not by scientific facts.

I don't mean to damn all analysis. As with

"neutral lawyers" (which means they have no client), operations analysts can and do perform highly objective analyses when there is the freedom to chose between alternatives. Quantitative "truth" in such cases may narrow the range of choices—but a final choice is still often highly subjective in a political environment. Such objective analysts will *not* be called to testify unless their conclusions unequivocally support the beliefs of the individual who is in the position of extending the invitation to testify.

For example, the very excellent article by Bethe and Garwin in the March 1968 Scientific American gave all the facts on why an area defense was not practical. This was written in an honest and objective fashion but the objective was actually two-fold and never spelled out. The authors were first against any ABM deployment at this time. This was their "gut" feeling—their main objective. They used as their target area defense and they made what I believe to have been a very sound case against ABM for area defense. However, they did not mention the feasibility of protecting our strategic deterrent with a "Hardsite" system. On corresponding with these colleagues, for whom I have the highest personal respect with regard to their integrity and ability, they readily admitted Hardsite was feasible and could be done and their arguments did not apply to it. However, they didn't believe such protection was required "at this time."

Question. Were they dishonest? I don't think so. Just as lawyers trying a case presented the facts they needed to prove their case. By implication, however, they certainly misled a lot of people into believing no ABM could be effective against anything. Should they have been critized for their tactics? I leave you to decide. I suspect those for ABM would say yes and those against would say no. People on issues of basic philosophy such as this are simply not objective.

Now to freely admit that I am also not without prejudice, let me give a condensation of my ideas on ABM.

I have always been an advocate of an ABM system. So having made that "gut" decision one asks what kind of ABM? I have always said I would only field a system which is now vaguely called Hardsite and into which we hopefully are backing. Senator Symington might say, "Harold, Why the hell did you defend Safeguard if you believe in Hardsite?" My answer remains that I believe in ABM and a cobbled up Safeguard is the only hardware the DoD can provide today. I believe that if we kill Safeguard we kill ABM and that I believe would be wrong. Safeguard has some components of a Hardsite system and could complement a real Hardsite system. It is clearly not the best way to do Hardsite but it will be better than nothing. The cold facts are that for reasons I won't attempt to explain and probably couldn't anyway our "scientific leaders" made a very bad blunder some years ago and have been redoubling their efforts thru every means possible to make their decision appear to be correct. We can't simply damn the DDR&E because when the Secretary of Defense stated he wanted to provide protection for our strategic deterrent, and against a low level Chinese attack, and against an accidental launch, he prescribed that a "camel" be constructed. The "emperor" of that time didn't have any clothes on and yet his operations analysts could consistently prove that he did and still are trying to prove that he did.

My basic problem with ABM and even our strategic offensive forces is that if we ever have to use either we have failed. What good does it do me to actually respond to a Soviet, or Chinese, or *n*th Nation first strike? All we are trying to do is to prevent such an exchange. I believe an ABM system can be part of the deterrent. Clearly the "better" the system the better chance of achieving the deterrent and stability. An effective ABM introduces an uncertainty into the planning of a potential aggressor. This uncertainty is to me part of the overall deterrent. I certainly have to agree with Senator Symington, however, that if one only has a few radars or missiles it doesn't introduce much of an uncertainty. That's why I like what is now called "Hardsite" with redundant radars and lots of local defender missiles. See enclosed, "What's Wrong with Sentinel." This monograph caused the DoD a great deal of heartburn when I sent it to Secretary Resor and the JCAE.

With this rambling prelude allow me to attempt to answer your questions which, although I'm sure you believe to be objective questions, are to me (again a subjective reaction on my part) formulated by your staff in such a manner as to make it difficult to get answers not desired. I watch "Perry Mason" and he does it all the time and wins. One must keep in mind that the purpose of the report was not to analyze the effectiveness of ABM, but to examine the professional tactics and efforts of the named individuals.

1. Question 2 clearly answers question 1 in the minds of the questioners, however, I'll try. First that wasn't the objective of the Ad Hoc Committee report as I understood it. The question of need to me is political not technical. If you had said "assumed" Soviet threats rather than "probable," I'd say yes, otherwise no. One doesn't need all the high power logic, etc., to prove Hardsite is and will always be better for the defense of Minuteman but remember the other two objectives imposed upon the system by a past DoD official.

2. One is using operational analyses for the wrong purpose. The purpose of the Ad Hoc report was a response to a request by Dr. Wohlstetter to review what he termed "professional conduct" relative to the ABM debate. I personally believe he was off base to request the ORSA to do this and they should have refused. It would have been better to have had someone do a thesis or review paper on the events rather than a pseudo "Kangaroo Court." I happen to be in accord with Wohlstetter's philosophy on ABM but agree with Rathjens, Weinberg, and Wiesner position, that they don't come under ORSA's jurisdiction.

3. They are plausible but you are correct in stating they are not proper subjects for operational research. These are the "gut" decisions which a good strategist makes correctly and wins.

4. I don't know what they had in mind. Had they spent enough money they could in principle have handled any threat. In the end they would have relied on the SPRINTS and lots of MSRs, which is a form of Hardsite. Full implementation of Safeguard could handle the objectives prescribed by the DoD.

5. I don't know. I only hope so. This again is a have you quit beating your wife question. For defense of only our land based strategic deterrent, Hardsite is appropriate. The Safeguard designers had a task imposed on them other than Minuteman defense. It was a mistake in my opinion but the manner in which this question is phrased doesn't allow this to be explained properly.

6. I don't know. Again I don't believe this was their task. As I understood it they were to determine if Rathjens, Weinberg, Wiesner, and Wohlsetter behaved in a "professional manner".

7. As far as I can tell. However, I really don't believe their task was an appropriate one for the ORSA.

8. Not as I understand their task. Their task was only to review the methods and conduct of the aforementioned individuals as professionals.

9. I don't know. But I suspect that when in doubt they leaned toward a member of their clan.

Sincerely,

H. M. AGNEW,
Director.

HARVARD UNIVERSITY,
Cambridge, Mass., November 19, 1971.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: This is in reply to your letter, signed also by Senator Symington and Senator Cooper, asking for comments on a recent article in "Operations Research," the journal published by the Operations Research Society of America, on the ABM question.

As you perhaps know, I was in close contact with the ABM problem through my position as vice president of Bell Telephone Laboratories, responsible for military systems, until I retired from there somewhat over four years ago. Since then I have been out of touch with the field, and have in fact tried to stay apart from the controversy which has surrounded it in recent years. Under the special circumstances represented by your letter, however, I will try to comment as well as I can. You will note that I am commenting without up to date special knowledge of the Safeguard system itself. (When I retired, the ABM project was still called "Nike X".) In particular, I have no access to recent intelligence information about the strategic posture of the USSR vis-a-vis the U.S., which should be critical in evaluating the urgency of a Safeguard development.

The attached sheets give responses to the specific questions raised in your letter. In addition to the Operations Research article itself, I have had available to me a rebuttal memorandum written by Dr. Rathjens. I assume you are familiar with it. You will note that while my answers do not in all respects quite support the position adopted in the OR paper, they do say that on the whole the contentions of the paper have enough validity to be taken seriously. I assume that this is really the question at issue here.

This by-passes a number of questions which one might raise. These include, for example, the competence of the OR organization itself and the appropriateness of its action in entering this controversy. These issues seem to me to be unimportant. I am not myself a member of the OR Society, nor am I acquainted with many of its members, including any of the ad hoc group. However, they carry the reputation of being a competent, well established society, and I saw nothing in the report itself to the contrary. In any event, the central question for you must be whether the responsible senatorial committees—which I take to be the Armed Services and Foreign Relations—did or did not get the best possible advice.

I suspect, judging from my own experience in weapons systems analysis, that the major factors impeding the committees' work were probably failure to estimate the true intellectual size of the ABM problem and failure to break it down as much as possible into identifiable sub-problems with, in particular, a sharp line between technical and political or policy questions. It is difficult for a layman to appreciate the scale of the analytic work which must go into a project like the ABM. Major contractors like Bell Laboratories have substantial groups doing nothing else, and there are, of course, still other groups in the Department of Defense proper. An individual without such support has a very hard task. (This is one of several reasons why I felt I should not express opinions about the ABM after leaving Bell Labs.) Even the problem of digging up and validating primary data as a starting point for some particular study may be a major effort. I gather from the ORSA report that Wholstetter received substantial help from DoD in gathering such primary data, whereas Rathjens had to make do with less. This by itself is probably enough to explain why the ORSA group came down so hard on Wohlstetter's side. It is not necessary to raise any questions of inherent competence.

The sheer size of the analytic problem sharply limits what can reasonably be hoped

for from "outsiders" like most of the opponents of Safeguard. Obviously most of the work must come from DoD and its contractors. An outside group should be chary about trying to introduce full scale competitive analytic structures of its own. Not only is this likely to be non-feasible but it is almost sure to lead to acrimony. The national interests will be best served if the work is done in a more cooperative, harmonious atmosphere.

This still leaves a great deal for an outside group to do. It can, for example, challenge a DoD analysis on the basis that it is incomplete,—that it does not cover important contingencies. It can also concentrate on the points at which critical decisions on technical or operational feasibility were made. It is really these judgments, and not the mere "arithmetic" so to speak, of the situation which determines the validity of an analysis. These are also likely to be issues which relate most closely to basic science and engineering, and thus be those on which an outside group would be most competent to speak. Thus one would expect much of the contributions of such a group to be simply a call for a more thorough study of certain critical points. Ironically it seems to have happened just the other way around in the Safeguard hearings. Much of the thrust of the ORSA critique is to the effect that the anti-Safeguard position involved too many hasty or inadequately studied assumptions about what might or might not be feasible.

The ORSA report is in a sense "pro-Safeguard," but I don't think it should be regarded inevitably as an argument for the deployment of Safeguard. As a matter of fact, if I were a prudent Soviet planner—as prudent as Soviet planners are supposed to be—the uncertainties it discloses might well cause me to reject the notion of a preemptive attack whether or not there was a Safeguard system. In any case, a decision on our part to go ahead with Safeguard would have to come later, after a review of our overall nuclear position and of possible alternative courses of action indicated that this was the wisest course.

What the report does do is to make a strong plea for orderly logical procedures, with maximum distinction between technical and policy issues. As we all know, the controversy over Safeguard has been bitter. Much of it involves a mixture of technical and political, or policy, arguments. Many opponents of Safeguard feel very deeply that the nuclear path is the wrong one for the world to take, and that the introduction of a new nuclear weapons system, like Safeguard, must therefore be regarded without further ado, as a mistake. Thus a technical review of the system degenerates into a search for arguments to prove that the system won't work—or maybe won't work. For a presumably scientific discussion, there is a surprising amount of opinion as opposed to demonstrable fact. Opposition to the ABM becomes a crusade. To a perhaps lesser degree, a similar statement could of course be made on the pro-ABM side.

All of this seems to me to be very unfortunate. It almost forecloses any rational understanding of the technical problem. Moreover, it tends to draw the scientific community into active political partisanship on basic questions affecting the country's future. Thus in the public eye scientists seem to be in the position of claiming to be wiser than most men, not only on technical issues but on fundamental national values. I cannot believe that this will not boomerang disastrously on the scientific community as a whole as soon as the country begins to notice.

The ORSA group's report helps us retrieve this situation by its emphasis on a systematic logical approach. I think it is a salutary step.

Sincerely yours,

HENDRIK W. BODE.

RESPONSES TO NUMBERED QUESTIONS

1. In a very broad sense the questions before the Congress involved the place of Safeguard in our total nuclear armament as a reflection of our long-term national goals and problems. Any satisfactory discussion of these problems would naturally involve classified intelligence reports on the enemy's immediate strategic armament and apparent potentialities, and intentions for the future, *n*th country possibilities, and classified information on the state of our own military establishment generally.

It is obvious that the ORSA report did not cover all this ground, nor was it intended to. I may say that I found this in fact one of the strong points of the report. One of the disappointing features of the Safeguard controversy, to my eyes, has been the fact that so much of it was a hodge-podge of technical arguments, emotion-laden policy discussion, and pure politics that nothing came out with any clarity. By limiting itself to factual issues, the report lays a foundation on the basis of which one can go further if he wishes.

2. On the other hand, the restricted scope of the inquiry did not prevent the committee from coming to a meaningful judgment on the most primary question involving the use of Safeguard. That is, if we do nothing at all, is there any possibility that the enemy can execute a preemptive strike which will eliminate Minuteman as a component of our posture of assured deterrence? Uncertainties in such a discussion must, of course, be resolved in Safeguard's favor, since it is *assured* deterrence with which we are concerned. I think the OR report did come to a meaningful conclusion here. On the other hand, one must remember that the primary job of the committee was to evaluate the professional level of earlier studies and not to come to new factual determination of its own.

3. "Shoot-look-shoot" and pin-down tactics generally seem to me to be plausible tactics for the Soviet to pursue. I thought that the treatment of this problem by the OR committee was quite convincing. I particularly noticed the completeness with which they demolished the assertion from some of your advisors that the attack would necessarily come in waves, allowing intervals for launching. Although some physical uncertainties may remain, there seems no reason to doubt that the question is basically accessible to an operations research approach.

I find myself in fact quite astonished that the "shoot-look-shoot" question should even come up at this late date. We regarded shoot-look-shoot and pin-down tactics as accepted possibilities at least five or six years ago when I was still active in the ABM field. On the other hand, I was also surprised that the discussion did not touch on other possible sources of uncertainty. For example, in the absence of a program of full scale above-ground tests, it is hard to believe that we can really have reliable estimates of the vulnerability of a Minute Man silo to a nearby high yield nuclear blast.

4. It doesn't seem to me that the word "misleading" is quite appropriate here. In view of the complexity of the whole situation, the clarity which comes from specific numbers seems to me to be a natural goal to aim for. In principle, of course, a wider range of computations would be advantageous.

However, I see no physical reason why the effectiveness of Safeguard should be sharply reduced by modest departures from the reference case, although it might be important to reproportion the system somewhat. As a simple mental exercise, suppose that the enemy's offensive missiles and our own Minuteman and Safeguard were all doubled, would not one expect a doubling in the number of our surviving deterrent missiles also?

5. Since I have been out of contact with the controversy, I don't know what the proponents of Safeguard "now concede" or have conceded in the past. I do on the other hand feel that the language of this question is misleading. It sounds too much like a trial, and in any case puts a false light in the actual technological history. A better perspective would be the following: Technically, the radars and associated data processing equipment have always been the heart of the ABM problem. They control the system in all sorts of ways,—traffic handling capacity, precision of intercept, vulnerability,—and also its cost. In the mid-1960's, after great effort, we made several revolutionary, I thought, advances in this field. They allowed us for the first time to think seriously about an actual ABM defense against heavy and skillful enemy attack. Since I left the field soon thereafter, I don't know the subsequent history, but to have what I would still suppose the most sophisticated and advanced parts of the system referred to in such bleak terms comes as quite a shock. It makes me wonder whether your committees could possibly have had adequate inputs on the engineering aspects of the system.

Since the radar and data processing equipment are so critical, there is an excellent a priori case for continued research, at some level, in these fields, and I assume that this is a part of the long term plan for Safeguard. On the other hand, the difficulty of the field means that progress may be slow and uncertain, and immediate systems decisions at any stage should obviously be based on technology which is already fairly well in hand.

Normal military planning frequently starts with a minimum viable system to be augmented later as needed to counter a growing enemy threat. In Safeguard, such augmentation might, I suppose, take the form of more defensive missiles or more radar equipment to provide greater traffic handling capacity or more survivability through internetting and redundancy. The most expedient step at any time, however, will naturally depend on a judgment of what seems to be technically within reach.

6. Of course I have no idea what information was available to the responsible committees.

7. Yes, I think so. I thought their discussion of budgetary questions, including ways in which the various parts of the Safeguard development might be charged was weak, but I don't think this was central to the inquiry. As a taxpayer, I know it all comes out of my pocket in the end.

8. See answer to No 6. I have never seen the O'Neill Report and I have no idea what all the witnesses before the two Senate committees may have said. However, in principle I believe that the answer must be negative. What we are concerned with here is not an evaluation of ORSA's own procedures and certainly not their judgment on the overall Safeguard deployment question, but merely their contention that the competence of the operations research activities in a purely professional sense and the reliability of the testimony received by the Senate committees in consequence left something to be desired. To establish this, they didn't need to review everything that went on,—only enough cases to prove their point—and there was obvious wisdom in choosing material with a distinctive operations research flavor.

9. Possibly not. I did not read the material with this particular question in mind. To repeat the point made under No. 8, the nub of the question is not ORSA's "fairness" but whether there is substance to their charge that the two committees did not receive operational research assistance measuring up to professional standards.

HENDRIK W. BODE.

LEXINGTON, MASS.,
November 29, 1971.

Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
Hon. JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

GENTLEMEN: This is in reply to your letter of November 15, 1971, requesting comments on "Guidelines for the Practice of Operations Research" published in the September 1971 issue of Operations Research.

The undersigned are members of the ORSA Council who took exception to the publication of the critique of the 1969 ABM debate appearing as Appendix III of this report. The basis of our dissent is described in our Minority Statement, which appears as Appendix IV–H, copy attached. Briefly, we feel that the Society, as a Society, should not engage in quasi-judicial investigations of this type. We believe that critiques of professional practice should be published by the Society in its journal as authored, refereed papers according to the usual scientific practice.

We wish to say, in defense of the report, that Appendix III was in no way intended to be an evaluation of the Safeguard system. This is clearly stated in the report (page 1175). Furthermore, we completely believe that Appendix III was in no way politically motivated and was unquestionably produced out of a concern for the quality of public debate on scientific issues. At the time of the decision to publish the report we pointed out some of the possibilities of misinterpretation to our colleagues. Subsequent events have more than justified our concern.

Appendix III is the work of its six authors. It would be a grave error to assume that the Society as a whole endorses it. An even more serious error would be to assume that a majority of the membership agrees with Mr. Wohlstetter's position on the ABM.

With respect to the specific questions in your letter, most of them deal with highly technical issues related to the ABM. We are not knowledgeable in these matters.

However, in response to your first two questions, we would say that the narrow scope of the critique does not permit a reasonable evaluation of the professional behavior or competence of the protagonists on either side of the ABM issue; further, it completely precludes any appraisal of the merits of ABM.

Sincerely yours,

DAVID M. BOODMAN.
JOHN D. C. LITTLE.
GEORGE L. NEMHAUSER.
THOMAS E. OBERBECK.
ROBERT M. OLIVER.

A MINORITY STATEMENT ON APPENDIX III—TREATMENT OF OPERATIONS-RESEARCH QUESTIONS IN THE 1969 SAFEGUARD DEBATE

The undersigned ORSA Council members feel that the Society itself should not take on the quasi-judicial function of investigating and reporting on professional behavior of individuals. Furthermore, we believe that, although critiques of professional work have a place and should be encouraged, they should be performed by individual authors or groups of authors as regular signed articles and should go through the normal refereeing process.

It seems to us that the traditional scientific publication process, in which scientists report, criticize, and rebut under their own names, is adequate to monitor professional standards. If the Society through its committee and Council enters into formal investigations, it takes on a judicial function with a much stricter and more demanding set of ground rules than is normally required of individual authors. Great impartiality and access to all sides of the issues are immediate prerequisites, particularly when the Society evaluates the conduct of nonmembers.

These prerequisites are extremely difficult to meet, especially in complex situations like that of the 1969 ABM debate. For example, when classified material is involved, both sides of a debate may be constrained into awkward circumlocutions about data and sources.

Perhaps the greatest obstacle to performing a judicial function, however, is full access to relevant documents, events, and people. A court of law solves this problem by subpoena, an action that is impossible for a scientific society. An impartial investigation is handicapped if it lacks the cooperation of the relevant individuals to clear up questions about methodology and data. Such participation may be difficult or impossible to obtain, particularly if the study or debate includes nonmembers of the Society who do not wish to cooperate. Refusals are possible and, in fact, have occurred in the present case (see Appendix IV–D). As a result, the investigating committee may be denied crucial information for its role as impartial judge.

The second major concern we have had about Appendix III relates to refereeing. The committee who wrote the report worked extremely hard to prepare it in a way they feel to be beneficial to the Society. However, as their own guidelines say, "The careful refereeing of scientific literature prior to publication is an essential part of this [the scientific] process." It seems remarkable, therefore, that the document has not been given a formal independent critical review. The major reasons advanced for not doing so are first, that the committee's report, because of its special nature, is not subject to the normal refereeing process and second, that the review has essentially been done by Council members, some of whom have submitted extensive comments.

With respect to the report not being subjected to normal refereeing, we can only say that the document is a serious, controversial technical paper and we feel that there is all the more need for review. With respect to its already having been done, we feel that this view misses certain important characteristics of the refereeing process. In the first place, the content is outside the technical competence of many of the ORSA Council. Secondly, a referee accepts responsibility for doing a specific job, which is a task quite different from that of a person who has been sent a 123-page manuscript and invited to comment. Finally, a referee has the protection of anonymity and reports to an editor who has the authority to accept, reject, or recommend changes prior to publication. In the present case, the report had already been accepted for publication by the Council before the question of refereeing came under discussion.

In summary, we feel strongly that the natural give and take of scientific publication with independent review serves the need tion with independent review serves the needs of the profession for appraising and criticizing technical work. We do not feel the Society should conduct time consuming judicial investigations of the type represented by Appendix III.

DAVID M. BOODMAN.
JOHN D. C. LITTLE.
GEORGE L. NEMHAUSER.
THOMAS E. OVERBECK.
ROBERT M. OLIVER.

HARVARD UNIVERSITY,
Cambridge, Mass., December 13, 1971.

Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
Hon. JOHN SHERMAN COOPER,
U.S. Senate, Committee on Foreign Relations,
Washington, D.C.

DEAR SENATORS HART, SYMINGTON, and COOPER: I am happy to respond to your inquiry of December 3 regarding the issues raised by the ORSA report. I do not feel as well qualified to reply as most of your respondents. I have not been directly involved in the ABM debate. I have not studied the ORSA report, and have seen only the 26-page reply by Wiesner et al. to it and the replies of Professor Rathjens and Professor Bode to your questions. I have also seen a memorandum from Professor Rathjens analyzing what he considers to have been his own errors in the debate. I should add that I have in the past been a participant in PSAC discussions on the ABM and on civil defense, but not since about five years ago. I am also a director of a company that has a major responsibility for one of the ABM subsystems, although I do not feel this connection influences my views of the merits of the controversy, especially since I am opposed to deployment of the present ABM system on both technical and political grounds. The majority of my personal associations have been with ABM opponents, which may somewhat have influenced my views.

In one sense I have almost nothing to add to the answers to your questions as forwarded by Professor Rathjens on December 7. I find myself in considerably closer agreement with his views than with those of my own colleague Professor Bode, although both are in my opinion fully responsible and entitled to serious respect.

Before replying specifically to your questions I would like to make some general comments on the debate, although I must confess at the outset I have not read the testimony before committee in detail. I think the debate raises a very serious political problem for our democracy. The proponents of ABM within the Administration had enormous resources of information and analysis available to them. They were, in fact, in a position to use this information selectively to substantiate their position. I say this without intending to imply that they actually did so. Most of the people involved in this analysis at the working level were in effect under Administration discipline. Congress did not have direct access to their work, but could view it only through the filter of official Administration spokesmen. Even the views of the President's Science Advisory Committee were not directly accessible because of executive privilege. Most of the opponents of ABM who testified were individuals having extensive background in military-strategic analysis and in the technology most relevant to the ABM. Nevertheless, they were mostly out of first-hand association with military planning. Their expertise was, potentially at least, somewhat obsolete. They had very little time, and virtually no analytical resources, to prepare their testimony. What is surprising to me, therefore, is that they made so few errros, and the Administration witnesses made such a poor case. That is, however, perhaps only a fortunate accident. The asymmetry of the resources brought to bear in this debate represents a serious potential threat to democratic decisionmaking. This threat may manifest itself in two ways. On the other hand, the fact that the Administration has all the cards in terms of analytical resources gives it an *a priori* advantage in selling its case to Congress and the public. However, it seems to me equally likely that the very one-sidedness of the debate will tend in the long run to call forth irresponsible and uniformed opposition which might in some future setting seriously jeopardize the national security of the United States. A loyal opposition without adequate resources will eventually be replaced by an irresponsible, and perhaps disloyal, opposition which makes its case by demagoguery and appeals to unreason, because there is no loyal opposition to produce facts and reasoning. In every field of American politics experience has taught us over and over again that political asymmetry eventually leads to conflict and political irresponsibility. Thus, in my opinion, the Administration itself has a stake in insuring that responsible opposition to its technologi-

cal programs has adequate access to analytical resources and military-technological data so that it can make its case in the political arena. The present public disenchantment with science and technology owes its origins in part to the fact that there have been inadequate channels through which the pros and cons of major technological issues could be presented to the public and responsible Congressional leadership in a balanced and comprehensible manner. Your committee made a noble try in this direction in the case of the ABM, but could not be wholly successful, given the present organization and habits of the Executive Branch.

Over two years ago I chaired a committee of the National Academy of Sciences which, under contract with the House Science and Astronautics Committee, prepared a report entitled, "Technology: Processes of Assessment and Choice." I would call your particular attention to the section entitled "Military Technology," pp. 111–114. This advocates the creation of a specific mechanism for independent assessment of decisions in the area of military technology. I quote from the last two sentences:

"One would wish to incorporate more institutionalized criticism into the decision-making process for military technology—criticism designed deliberately to broaden the criteria of technology assessment well beyond the strictly military context. Unless this is done, there is a real danger either of great social or environmental damage, or, conversely, of a broad public reaction against all forms of military technology, which might endanger the security position of the United States."

The only such institutionalized criticism now lies in the Congress, but without adequate analytical resources the value of this forum is seriously jeopardized. It seems to me that your committee might perform a great public service by inquiring into this general issue.

Let me now address myself to your specific questions.

1. I do not believe the technical scope of the Ad Hoc Committee was sufficiently broad to permit evaluation of the fundamental questions before Congress. While it might be argued, as some have done, that it was sufficient for the proponents of ABM to show that there existed plausible assumptions that would lead to unacceptable survival of Minuteman in the absence of Safeguard, I cannot agree. This argument simply overlooks the enormous military risk involved in an only partially successful first strike. I should think they would require a very high level assurance of nearly total destruction under a wide variety of conceivable assumptions, not just one plausible case. Indeed, it is exactly this sort of conservatism, which demands safety under all circumstances, that guarantees the perpetuation of the arms race. Each side bases its planning on the worst possible case from its viewpoint. It is sometimes difficult to keep in mind we are not talking about a current situation but about a projection of technological capabilities and intentions on both sides some six years or more into the future. Furthermore, the tendency has been to focus on a particular date, such as 1976 or 1977, failing to take into account the dynamic evolution of military development and deployment on both sides. Indeed I feel that even the issues mentioned in your question 1 are too restricted from the standpoint of the decisions which were under scrutiny.

2. It was possible to make a meaningful judgment on the particular issues covered by the ORSA report. If they had restricted their final conclusions to these issues, few of us would have had any quarrel with the outcome. The difficulty is that at the end they appear to have slipped from a judgment on the narrow issues to a much more sweeping conclusion, a proceeding which could be characterized as either consciously or unconsciously dishonest.

3. The questions of reprogramming and pindown certainly involve more than operations research, especially since there is absolutely no operational experience to go on. It would appear to me that an enemy would have to be pretty desperate to rely on reprogramming for an assured first strike capability. The question is not whether reprogramming is feasible, but whether its feasibility could be established with sufficient confidence in advance to persuade enemy leaders to proceed with a first strike. The ABM opponents were, perhaps, too negative on this point as to feasibility, but I do not think this changes the basic situation.

4. I am persuaded that the Rathjens analysis on this particular point is valid. It is really a question of underlying approach. The Administration apparently assumed that it was only necessary to prove that there existed a particular band of threats against which Safeguard would be effective. I do not think this was so much deliberately misleading as based on a particular military philosophy. Apparently the idea was that it was worthwhile to deploy against any plausible threat, and that later the system could be expanded or modified to meet a broader and broader range of threats as the technology evolved. They assigned great importance to "getting a foot in the door" in this new technology even though its initial capability might be extremely limited. There is some plausibility to such an argument, although it seems to have been implicit rather than explicit in the Administration's presentation. It also seems to involve the assumption that the threat is a "given," a static situation independent of our own deployments.

5. The answer depends upon what you mean by "conceded." They have not conceded anything publicly, but certainly all current planning and analysis of which I am aware starts from the implicit assumption that the opponents were essentially correct in their original criticisms. Indeed it is rather ironic that most of the technological improvements in ABM, starting from the original Nike-Zeus, have been essentially invented by its opponents.

6. I am not sufficiently familiar with the details of the debate to comment responsibly on this question.

7. I subscribe to Professor Rathjens' comment on this question and cannot improve upon his judgment.

8. The Ad Hoc panel was really at liberty to use any ground rules it wished. However, if it was honestly intent on evaluating the technical competence of all the testimony, then I can see no excuse for its omitting discussion of the pro-ABM testimony. The problem is that the conclusions were by implication based on an evaluation of *all* the testimony, whereas only that of the opponents was evaluated in detail, apparently with the implicit assumption that the burden of proof lay with them and them alone.

9. No.

I regret that I am unable to provide you with a more comprehensive analysis of the ABM debate. I fear my contact with the problem has just been too limited.

Sincerely yours,

HARVEY BROOKS.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., December 6, 1971.

Senator PHILIP A. HART,
Senator STUART SYMINGTON,
Senator JOHN SHERMAN COOPER,
U.S. Senate, Washington, D.C.

GENTLEMEN: This is in response to your letter of November 15, 1971 relating to the Operations Research Society of America's review of testimony in the ABM debate. *Treatment of Operations-Research Questions in the 1969 Safeguard Debate*, 19 Operations Research 1175 (1971). It is proper that you should take an interest in this matter, because I think the ORSA report raises grave questions both as to the substance of the results and the propriety of the study.

I have not answered directly each of the questions you put, because I am not an expert in operations research. Instead, I will point out a few glaring instances where the Report or Dr. Wohlstetter seem guilty, even to the uninitiate of the same kinds of misfeasance with which ORSA charges others. Thereafter, I shall address some of the broader questions raised by the Report as to the proper role and function of professional societies like ORSA and as to the relation of technical and scientific evidence to public issues like the ABM debate.

I

The ORSA report charges the opponents of ABM with misleading statements, failure adequately to disclose assumptions, and failure to relate data and assumptions to appropriate time periods. Each of these failures appears in the ORSA Report itself and in testimony or argument attributed by it to Dr. Wohlstetter; and it doesn't take much expertise to discover them. Let me point briefly to some of the most significant:

1. An example of misleading argument is the Report's presentation of its material on "Vulnerability of Land Based Missiles without Additional Protection." The discussion proceeds as though the opponents of Safeguard argued that the Minuteman force was relatively invulnerable over an indefinite period.

In fact, one of the principal elements of the opponents position was that a fixed land based missile force would inevitably become obsolete over the coming decade, *with or without* an ABM defense, given the increasing accuracies that could be expected for offensive missiles. The most Safeguard could do, even if it worked as planned, was to extend the period of obsolescence by a matter of at most a year or so. The opponents argued that this was not enough to justify the money and other costs of ABM deployment.

This issue is never suggested in the Report although it was much more important and more fundamental than the exact year in which obsolescence might occur with or with out Safeguard—which must in any case be a matter of conjecture within broad limits. The question here addressed is another version of the one you raise in your letter: Was the Administration misleading in choosing a particular level of threat against Safeguard, and not considering larger or smaller threats. The answer is that it obviously was: A significantly smaller Soviet missile force could not have successfully attacked Minuteman, even on the administration's and Dr. Wohlstetter's calculations, which specify a necessary minimum of about 500 SS-9's. A significantly larger force—i.e. the result of a deployment at the assumed rates for a somewhat longer period—could have overwhelmed Safeguard, in either Phase I or Phase II, especially given the softness of the radars. This set of questions, is hardly limited at in the ORSA Report although they are central on the issue of vulnerability and much more subject to confident judgment than the exact CEP the Soviets may be expected to achieve by a date six or seven years in the future.

2. Next, consider an example of an insufficiently developed and thus misleading assumption of Dr. Wohlstetter. In calculating the hypothetical number of Minutemen that might survive a hypothetical attack, Wohlstetter includes the assumption of "Methods that are familiar to us for using extensive and timely information as to which missiles have failed so that others can replace them, the techniques known as shoot-look-shoot." And again he said "There are very familiar, well known methods of arranging it so that

you can reprogram missiles to replace a very large proportion of your failures . . ." Rathjens replied: "There is no basis that I am aware of for believing the Soviet Union employs such a technique, and I do not believe we do." The ORSA Report agrees, but says Wohlstetter "does not claim that either we or the Soviets have such techniques now."

This may be true as a matter of literal parsing of Wohlstetter's language. But I submit that the ordinary citizen or even Senator would not gather from Wohlstetter's testimony that these "very familiar and well-known methods" have never been tried out in practice anywhere and that the United States, after study, rejected the techniques for its own forces. The Report devotes a number of pages to trying to demonstrate that it would not be hard to get an operational reprogramming system with the necessary reliability, without, I must say, convincing me. (Moreover, the Report does not even address the issue of the necessary level of confidence that would have to be achieved before such a technique could become, in any sense, an available option for political leaders). And it asserts, without citation of authority that the United States rejected the system on grounds not related to feasibility or cost. This may be true. But Wohlstetter did not canvass these issues fully in the ABM debate; in fact he chose language that seems calculated to obscure them. As such, he seems to me guilty of the offense of using not fully articulated assumptions in a way that was likely to mislead the Congressional and public audience.

3. For a final example, there is the stress placed in the Report on the need for "careful attention to the time in the future for which the calculations are made." But Wohlstetters' calculations of Minuteman vulnerability use 1969 values for the hardness of the missiles. In other words, Wohlstetter attributes continuous gains in MIRV capability and missile accuracy to the Soviet force over the period until the mid or late 1970's, while holding the United States constant at late 1960's vulnerabilities. Indeed, the whole argument about "kill probability" to which the Report devotes so much time and on which most of its charges are based, turns out to be an argument about how hard United States silos were in 1969. As such, it is almost irrelevant to the question of vulnerability in the mid to late 1970's, because the degree of hardness could be substantially increased. This was indeed one of the alternative options for the defense of Minuteman put forward by the Safeguard opponents and I believe it has been adopted by the Department of Defense since then. These ramifications are not even suggested, much less analyzed fully in the ORSA Report.

Incidentally, the issues covered in the Report boil down in large part to a difference in assumptions as to SS-9 performance in the relevant time period. The Report seems to think the more pessemistic assumptions of Dr. Wohlstetter were sounder than the more moderate assumptions of the opponents. Newspaper accounts have appeared of a special study of SS-9 performance for the Department of Defense and CIA by Thomson-Ramo-Woolridge that seems to substantiate the opponent's assumptions rather than those put forward by Dr. Wohlstetter and generally endorsed by the ORSA Report. I do not know whether this study was available to the ORSA Committee. In any case, it seems to me that the appropriate Congressional Committees might well wish to examine into the TRW study.

From these rather gross deficiencies, as they appear to me, in the Report itself, I should like to turn to an issue that seems to me much more fundamental: the role and function of professional organizations in matters of this kind. The ORSA Report disclaims any intention to examine into the ethics or motivations of persons in the ABM debate. But the Committee ends up making far-reaching charges of professional misconduct against some of them—primarily those who opposed ABM deployment. So far as I know, none of the persons so charged is even a member of ORSA, which raises a preliminary question of the jurisdiction of the Society in the premises. But even as to members, I think it is unprecedented for a society like ORSA, through one of its committees, to make and decide officially charges of unprofessional conduct. In these circumstances, the vehemence of the charges and their concentration on ABM opponents—all of whom are distinguished scientists having long experience and familiarity with theoretical and practical problems of weapons systems—cannot help but give rise to the suspicion that the entire inquiry was politically motivated.

Of course, statements and arguments of ABM opponents are not sacrosanct. They are subject to comment, analysis and criticism by all the usual channels of scientific, professional and public debate. And there could be little objection to the Society appointing a panel to evaluate the validity and accuracy of the methods used. But this is a far different thing from hearing and deciding charges of unprofessional conduct.

A charge of that kind is a very grave matter. Most professional societies are not empowered to consider such questions. Although I have not examined the ORSA constitution, I would be very surprised if it granted express authority for this kind of action.

So far as I know, medicine and the law are the only professions that exercise disciplinary powers over their own members. Both of these, it will be observed, are publicly regulated and involve intimate fiduciary relationships, so that maintenance of professional standards is presumably of high moment. Yet, as to the legal profession, with which I am somewhat familiar, no bar association, so far as I know would presume to exercise authority to decide on charges that an individual has engaged in unprofessional conduct except under authority granted by statute or by rule of court. Even then, charges are heard under the strictest procedural safeguards, and are subject to court review. So far as I know, few if any of the elements of fair procedure summed up in the notion of due process of law were employed in the ORSA study.

III

Finally you should consider the broader implications of the ORSA Report and the premises on which it was based for the process of public decision making in a democracy. One of the major achievements of the ABM debate was that it broke the stranglehold of technical experts, usually Defense Department controlled, on issues of major military policy and weapons deployment. The teaching of that experience is that these are central issues of public policy capable of being understood and evaluated by the members of the Congress and by the informed citizenry. The principal considerations are not technical and scientific but have to do with values, priorities and judgment.

Even as to questions of high scientific or technical content, the techniques of operations research are not particularly significant. None of the weapons discussed in the ABM debate had ever operated as a system even under test conditions much less in anything approaching the conditions that would prevail in an actual nuclear war. Assertions about the performance of these systems under those circumstances are unavoidably extrapolations and even analogies from fragmentary and sometimes only remotely relevant experience. Such conclusion are far more matters of judgment than of numerical calculation. In fact, unless very carefully used, operations research techniques can be more misleading than helpful on these fundamental questions of policy. For operations research tends to give fictitious significance to quantitative values than can, in the nature of things, be little more than educated guesses. And it tends to magnify the importance of those considerations that are susceptible of quantitative statement, while diverting attention from those factors, usually far more important to the decision, that cannot be quantified.

In my view the ORSA ABM Report, about which you inquired, stands as an object lesson of these deficiencies.

Sincerely,

ABRAM CHAYES,
Professor of Law.

STANFORD UNIVERSITY
Stanford, Calif., November 24, 1971.

Hon. JOHN SHERMAN COOPER,
Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
U.S. Senate, Washington, D.C.

DEAR SENATORS COOPER, HART, AND SYMINGTON: I am responding to your request for my comments on the analysis * by the Ad Hoc Panel of ORSA of the testimony during the 1969 ABM debate by some of the scientists who were invited by the Congress. Before answering your list of specific questions, I would like to make one general point: The report of the Ad Hoc Panel focuses primarily on the question of whether or not the Minuteman force will survive in the face of a growing Soviet missile threat. However the report has little to do with the Safeguard system since it ignores the central and most important issue during the ABM debate; that is, will Safeguard be effective in protecting Minuteman?

The vulnerability of Minuteman is primarily a matter of judgment, not of operations research, in projecting the Soviet threat—its growing size, its improved accuracy, and in what ways it might be extensively MIRV'd. There was no disagreement during the testimony before Congress that the U.S. land-based retaliatory force could be vulnerable in the future. What was in dispute was whether Safeguard could effectively defend Minuteman. The main criticism of the anti-ABM scientists was that Safeguard would be effective against only a very narrow band of threats. This criticism was in fact substantiated in a study commissioned by and submitted to the Secretary of Defense on January 27, 1970 (the so-called O'Neill Report entitled "Report of the Ad Hoc Group on Safeguard for FY '71"). This report concluded: "If the only purpose of Safeguard is defined to be to protect Minuteman, Phase IIA as defined in March 1969 should not proceed."

The ORSA report, in keeping with its own "Guidelines for Professional Practice," should have focused on this more important issue of whether Safeguard will do the job asked of it rather than arguing at so great a length on the range of projections for the growing threat. On page 1128 the ORSA study says that an operations analyst in dealing with the problem posed by an operating organization should "become thoroughly familiar with all aspects of the organization's operations *relevant to the problem.*" (Italic added for emphasis.) On page 1129, the report goes on to say that the analyst should "take great care in formulating the problem of issue to be addressed *keeping in mind the client's needs.*" (Italic added for emphasis.)

If the ORSA Ad Hoc Panel had followed its own guidelines, the target of its criticism for practicing poor operations research should have been the DOD officials and technical staff and the scientists testifying in support of Safeguard. It is they who proposed and endorsed a system for defending Minuteman that is so poorly designed from a technical viewpoint, a system so mismatched to this

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*"Guidelines for the Practice of Operations Research" published in the September 1971 issue of "Operations Research."

mission that, in the last analysis, technical arguments in support were withdrawn, conceded, or muted before the Congress and the system was sold primarily as a "bargaining chip" for SALT as its only redeeming virtue. I believe that a strong U.S. with a credible defense establishment is vital for peace and stability in the world. I am therefore particularly distressed at this performance by the technical branch of DOD!

I will now address directly the list of questions you raised concerning this report:

1. Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time; its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite?"

My answer is "no" because the ORSA report ignored the basic technical and operations research question—i.e., would Safeguard protect the Minuteman system against probable Soviet threats? I think this was the crucial issue of the 1969 debate. The projected rate of growth of the Soviet threat—its improvement in accuracy and the increase in numbers of warheads that can destroy hardened Minuteman silos—is a matter of judgment, not of hard analysis; and in making such projections, one cannot ignore how each side by its own actions and weapons programs may very well alter the plans of the other. However, the ABM debate showed convincingly that Safeguard with its one vulnerable, large, and very expensive radar (the MSR) for controlling the entire engagement at each Minuteman field of 150–200 missiles could defend Minuteman against only a very narrow band of threats. Moreover the MSR radar could be destroyed and consequently the entire defense blinded by the smaller, cheaper, and less accurate Soviet SS–11 missiles that pose no threat to the U.S. missile silos themselves. Therefore, independent of whether one projects the threat against Minuteman following the calculations and arguments of Dr. Wohlstetter or Dr. Rathjens, Safeguard with its own vulnerabilities and limitations is poorly designed for the mission of defending the U.S. retaliatory missiles; and it was just this mission that was emphasized in the testimony of DOD spokesmen. Therein lies the real failure of operations research in the ABM debate. Judgments of whether the Soviet Union in a first-strike role could confidently plan to count on accurately reprograming its missiles and plan to pin-down the entire U.S. force of 1,000 missiles were not the central issues in this debate because they in no way affect the conclusion that the Safeguard will be effective against only a very narrow band of threats. The issue is whether or not the U.S. can design an effective missile defense should it need one in the face of the growing Soviet ICBM force. Present intense efforts by the DOD to come up, albeit belatedly, with a properly designed system for this—called "Hardsite"—is evidence of the correctness of the ABM critics on this score.

2. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

No, for reasons discussed above.

3. In projecting the vulnerability of Minuteman, much was believed to depend upon whether one considered "reprogramming of Soviet missiles for failure" and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" were plausible Soviet tactics for the mid-seventies?

This is certainly an issue that transcends operations research alone—it involves extensive strategic analysis, and projections of presumed vulnerabilities of U.S. strategic forces. My answer is "No."

On page 1185 of Appendix III, which is the heart of the technical criticism by the ORSA report, Dr. Wohlstetter speaks of the "quite likely tactics" of the shoot-look-shoot tactic postulated for the Soviet attack. I wonder what basis of fact he has for speaking of the "quite likely tactic" since shoot-look-shoot requires immediate real-time changes of targets within the missiles at launch time, with no delays beyond a few seconds. This is a very sophisticated requirement for the computer and guidance system. Furthermore the Soviets would have to reprogram for failures not only of the boost stage but also for failures in the guidance and warhead separation stages of the bus for a force that is deploying MIRV's as assumed in this analysis. Such a tactic would require extensive tests in salvo firings of missiles before the confidence levels of 95% single warhead kill probabilities quoted by Dr. Wohlstetter could be achieved—if ever, which I seriously doubt. Has ORSA considered whether Dr. Wohlstetter has made a plausible case for this scenario in the same way as it criticized anti-ABM scientists for not making a "plausible case" against the pin-down attack?

With respect to the pin-down tactic, there is no valid reason for the U.S. to find itself in such a position in the late 1970's that our entire missile force is in fact so completely vulnerable to the pin-down tactics as the ABM supporters have made it out to be. The essence of the pin-down problem is this: how many warheads must be delivered and how well coordinated a pattern both in time and position is required if this tactic is to be relied on *with confidence* in a first strike to destroy U.S. missile and bomber forces simultaneously? The Soviets would have to have hard information of U.S. missile design to use this tactic and, unless the U.S. force is designed with a ridiculous and unnecessary vulnerability, the yield and precision requirements will be exorbitant. On page 1217 the report says "The Committee does not feel that discussion by Panofsky on the infeasibility of coordinated strikes against U.S. bombers and missiles satisfactorily refutes Foster's claim." One of the problems of responding to that claim is that one has to enter into some sensitive classified matters about the U.S. missile force and whether or not it is vulnerable to pin-down. I wonder what wisdom the ORSA Committee had in making this judgment. I believe that if the U.S. finds itself with a gross pin-down vulnerability in the time frame of the initial Safeguard system deployment, then our DOD would be guilty of dereliction of duty. This is a serious issue, above and beyond poor operations research. Moreover, I for one do not believe that the U.S. planners and defense officials can be justly accused of dereliction of duty on this score and therefore I think the ORSA criticism is off target in its criticsm of anti-ABM scientists for poor operations research.

4. Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?

Yes, it is correct (see answer to Question 1) that Safeguard is effective against only a very narrow band of threats. Since this is the central issue of the ABM debate it should have been more heavily stressed by its supporters during the debate as it was by the ABM opponents. Referring to the CRSA report on this subject, in Appendix II the letter and statement of Dr. Wohlstetter has to be recognized as an enormous projection from present Soviet offensive capabilities. It is quite correct that all reasonable assumptions as to possible accuracies and reprogramming should be included in evaluating Minuteman survivability. Nevertheless, the central point is that the Soviet Union continues to deploy larger numbers of vastly improved missiles they can at their choosing make the U.S. Minuteman force vulnerable: *and Safeguard can do very little about it.* Moreover, when you consider the cost of the Safeguard system with its few vulnerable radar eyes which can be destroyed by the cheaper, less sophisticated SS–11 missiles you see that Safeguard is an all-around bad investment.

5. Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?

In effect, yes. The U.S. is now proceeding with research and development work on such a system for defending our retaliatory missiles. This is explicit recognition of the fact that Safeguard can do only a very limited job and that the U.S. will have to deploy a new type of "Hardsite" system designed specifically to defend the hardened Minuteman silos if such a defense is deemed necessary and is authorized in the face of a growing Soviet offensive threat. Although it has been argued that Safeguard has the value of providing a nucleus around which to build a mixed Hardsite-Safeguard defense of Minuteman, I view that as an accommodation to the deficiencies of our present program rather than one of its virtues based on any hard analysis. Moreover I reject as unfounded the claim frequently made that we had to start in 1969 with Safeguard because it would take longer to develop and deploy a system for defending Minuteman missiles. Against a limited technology threat of the type that we might face in the mid-to-late 1970's other more suitable systems were available.

6. Did the Ad Hoc Panel make full use of all the information available to the responsible Committees—the Armed Services and Foreign Relations Committees—both classified and unclassified concerning the Soviet threat and Safeguard ABM performance capabilities against a range of Soviet threats?

No. The classified DOD analysis of the Safeguard draw-down—i.e., how many additional Soviet missiles are required to destroy the U. S. Minuteman force if Safeguard is deployed relative to the number required without Safeguard seems to have not been used. It is this curve that leads to the central conclusion that Safeguard is effective against only a very narrow band of threats.

7. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

My quarrels with the report are over its emphasis and major omissions as described in the above responses.

8. Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of *all* witnesses pro and con who were called before the two committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc group on Safeguard for FY 1971 (the O'Neill Report) submitted to the Secretary of Defense on January 27, 1970?

Yes. The Ad Hoc Panel report covers only the 1969 ABM testimony before the Congress. However this report was accepted by the ORSA Council at its meeting of May 5–6, 1971, which means that there was almost a full year after the 1970 ABM discussions which could also have been reviewed for new information and further evidence—such as in the O'Neill report that I referred to earlier.

9. Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?

No.

In conclusion I would like to add that I opposed and continue to oppose the Safeguard system for three reasons:

(1) I judge it to be ineffective for defending Minuteman;

(2) It is built of the wrong type of hardware. In particular with its very large phased array radars that are properly components of a nationwide city defense ABM system, it will further complicate the arms race that President Nixon and this Administration have devoted such intense efforts to terminate at SALT; and

(3) I fear it will give a misleading assessment of the U.S. strategic power to those who actually believe in its efficacy.

Since the Safeguard system has now become a mere "bargaining chip" to the Administration in its defense of the program and to the Congress in its support of it, who indeed failed in meeting professional standards of operations research?

I believe the most important contribution of the ORSA report lies in the Ad Hoc Panel's discussion on page 1134 of the need for an improved competence within the Legislative Branch of the U.S. Government "to initiate, conduct, and evaluate operations research and systems-analysis studies of its own choosing." The report points out that such analysts could provide Congress with competent objective advice on the testimony presented to the Congress by experts from other agencies or from individual citizens. I hope that the experience of the ABM debate, as well as other recent debates, viz. the SST program, in which a difficult and vital technical component enters, will help persuade Congress of the need to create in the Legislative Branch a parallel to the advisory boards (such as the President's Science Advisory Committee) that have served the White House and the Executive Branch so effectively.

I hope these comments will be helpful to you.

Very truly yours,

SIDNEY D. DRELL,
Professor and Deputy Director.

INSTITUTE FOR DEFENSE ANALYSES,
Arlington, Va., December 6, 1971.

Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
Hon. JOHN SHERMAN COOPER,
Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR SENATORS HART, SYMINGTON, AND COOPER: this is in reply to your letter of November 16, 1971 requesting my comments on the report in the September 1971 issue of "Operations Research" and related matters.

I believe that it would not be appropriate for me to offer comments on the propriety or validity of the report since, first, I have not had available to me all of the correspondence and other documents (such as the O'Neill report) which are referred to in the report. Second, the controversy raised by the report has evolved into an exchange of personally-directed charges and countercharges among individuals with whom I have had, and in most cases still have, personal and professional relationships, so that any opinions and judgments I might offer could be influenced or thought to be influenced by such relationships.

I am not a member of the Operations Research Society of America and had no knowledge of the activities leading to its report prior to publication. However, I have long been concerned with the problems of providing competent, objective, and useful analyses to support government decision-making. My own general views on the proper standards of objectivity and full disclosure of facts and assumptions in analyses in support of government decision-making are contained in a speech on "The Value and Limitations of Analysis in Government Decision-Making," which was presented at a meeting of the Military Operations Research Society on November 19, 1969. The most pertinent sections of this speech are marked and underlined on pages 10, 12 and 15. They may be of interest in connection with your current inquiries.

With best regards,
Sincerely,

ALEXANDER H. FLAX.

THE VALUE AND LIMITATIONS OF ANALYSIS IN GOVERNMENT DECISION-MAKING

(By Alexander H. Flax)

It is a great pleasure to have been invited to address the Military Operations Research Society at this meeting. I would like to discuss this evening the value and limitations of studies and analyses directed to the senior government decision-makers. Note that, with respect to analyses, I do not use the term "abuses," but only limitations—this is because I am speaking of decision-making and it is only the decision-maker who can allow abuses to occur. He has the same responsibility for assessing the validity of analyses which are presented to him as bases for decisions as he has for accepting, rejecting, or modifying other judgments and recommendations submitted to him for this purpose, however these judgments and recommendations may have been arrived at.

I am very much impressed by the diversity of talent and experience in various disciplines relevant to the analysis of military problems which is represented here. However, having just spent six years near the center of the DOD decision-making process prior to the demise of the last Administration and being now associated with an organization whose stock-in-trade is analyses, I think it may not be regarded as presumptuous for me to address this subject even to so knowledgeable and sophisticated an audience as this.

I will be concerned here with analyses which are intended to influence decision-making at the national level—analyses aimed, directly or indirectly, at the President, Congress, BOB, DOD, and the Military Departments. Most of the problems and concerns at this level have a considerable orientation to the future rather than to current problems of operations. These problems and concerns most often deal with future systems, future forces, future programs, and future environments. Current problems of operations with equipment in being, in situations which are more or less known, may be the area in which operations research has its most obvious payoff, but that is not what I am going to talk about tonight—your sessions these past two days have dealt with many problems of this kind.

If any of you have a system of classification and definition which clearly differentiates among operations research, operations analysis and systems analysis, what I say tonight may frustrate or even infuriate you. Nevertheless, for most senior government decision-makers no such distinction is apparent and since I want to discuss the subject from the decision-maker's standpoint, I will make no distinction.

The idea that the powers of logical analysis might be of utility in managing the affairs of state goes back to antiquity. The famous text from Plato runs: "Until kings are philosophers or philosophers are kings, cities will never cease from ill." But this idea has hardly found acceptance until the 20th Century, At our own Federal Constitutional Convention, John Dickenson, delegate from Delaware, enunciated a healthy skepticism of logical analysis applied to government when he said: "Experience must be our only guide. Reason may mislead us."

Benjamin Jowett, eminent Victorian, Master of Balliol College at Oxford and translator of Plato (once humorously described as "the last man to know all knowledge") says: [1] "Plato does not propose for his future legislators any study of finance or law or military tactics but only of abstract mathematics. We cannot understand how Plato's legislators or guardians are to be fitted for their work of statesmen by the study of the five mathematical sciences. We vainly search in Plato's own writings for any explanation of this seeming absurdity."

And as all students of formal logic and a good many others know, reason itself can tell us nothing about people, things, and institutions without data derived from the external world. Reason alone can lead only to tautologies. In the words of Bertrand Russell (whose authority in formal logic is as unimpeachable as his authority in politics, ethics and morals is not): "Tautologies are primarily relations between properties, not between the things that have the properties." Going on to cite an example, Russell says: "Pentagonality is a property of which polygonality is a constituent; it may be defined as polygonality plus quintuplicity." This statement, I hasten to add, is from a book published in 1948,[2] before Russell declared war on the U.S., so I doubt that in using pentagonality as an example of a property, he intended a double meaning to, in effect, accuse our Defense Department of something of greater enormity than duplicity.

What has changed in the 20th Century? Why do we now increasingly look to analyses to provide a basis for practical decision-making? What has changed is that this is the century of the Scientific Revolution. The demonstrated success of the so-called "scientific method" has impressed everyone, no less so (and perhaps more so) those who have very little knowledge of what it is all about.

Insofar as most people are concerned, this demonstrated success is the success of the natural sciences applied to technology and medicine. Of course, there is the broad generic definition of science as "any body of organized knowledge," and this is a cause of some confusion because, in this sense, any system of classification or organization of knowledge may then also be equated to natural science. The success of natural science does not flow primarily from any new principles of formal logic or reason. It comes from the utilization of data derived from observation and experiment expressed in more or less precisely defined and measurable form.

The attempt by other disciplines to appear as much like natural science as possible has been called scientism. Jacques Barzun, former Dean of the Faculties at Columbia, has said: [3] "Of this superb work of the Intellect, scientism tries to carry over as much as it can into other subject matters," and he cites examples of scientism in fields ranging from sociology to literary criticism.

Now the perhaps shocking question I want to pose to you is whether a good deal of systems analysis, operations analysis, and operations research as it is now being practiced for use at the decision-making level is not verging on scientism. Let me make it clear that I am not opening another discussion of judgment versus analysis. This argument is in my view almost devoid of content, since in any reasonable and practical analysis of a complex problem, a considerable amount of judgment enters.

I will set aside at the outset that branch of applied (and sometimes pure) mathematics which, to confuse matters, is called operations research. This branch of applied

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[1] *Works of Plato*, Tudor Publishing Co., New York.

[2] *Human Knowledge, Its Scope and Limits*, Simon and Schuster Inc., New York, 1948.

[3] *The House of the Intellect*, Harper and Bros., New York, 1959.

mathematics includes aspects of such subjects as probability and statistics, renewal theory, queing theory, linear programming, and game theory. This discipline is all very fine in its own right and to the extent that any actual operation (in military problems—usually transportation or logistic supply and maintenance) fits the mathematics, it is very useful. However, all too often we see attempts to force real problems into the Procrustean bed of a set mathematical model. We also see instances in which the real-life processes being analyzed by these mathematical techniques might very well fit the models, but for which the absolute values and functional relations describing the so-called "constants" have never been established.

I will here turn away from consideration of mathematical formalisms to the consideration of what analysis purports to give to decision-makers. First, it is claimed that analysis is a "scientific method" or "scientific approach" or "scientific tool" to aid the decision-maker. For example, P.M.S. Blackett[4] quoting "Scientists at the Operational Level" (a paper he wrote in 1941) said:

"The object of having scientists in close touch with operations is to enable operational staffs to obtain scientific advice on those matters which are not handled by the service technical establishments.

"Operational staffs provide the scientists with the operational outlook and data. The scientists apply scientific methods of analysis to these data, and are thus able to give useful advice.

"The main field of their activity is clearly the analysis of actual operations, using as data the material to be found in an operation room, e.g. all signals, track charts, combat reports, meteorological information, etc."

Alain Enthoven in a 1963 speech to the Naval War College said:

"I would like to say that the art of weapons systems analysis, like the art of medicine, should be based on scientific method, using that term in its broadest sense. . . .

"What are the relevant characteristics of scientific method as applied to the problem of choosing strategies and selecting weapon systems? There are several. First, the method of science is an open, explicit, verifiable, self-correcting process. It combines logic and empirical evidence. The method and tradition of science require that scientific results be openly arrived at in such a way that any other scientist can retrace the same steps and get the same result. Applying this to weapon systems and to strategy would require that all calculations, assumptions, empirical data, and judgments be described in the analysis in such a way that they can be subjected to checking, testing, criticism, debate, discussion, and possible refutation.". . . .

Blackett regarded operations research as primarily an empirical discipline, as indeed did most of the World War II practitioners. In discussing anti-submarine warfare carried on by aircraft, after enumerating some twenty or so variables which could influence the problem, he said: "to attempt an a priori solution of this problem is clearly absurd. But if past operations are studied to give actual values of the yield, reasonably accurate predictions may be possible by the variational method."

Yet, I am sure many of you have observed the multitude of analyses over the past decade (on ASW and other subjects) which purport to do just what Blackett considered absurd. In fact, there are far more of these than there are studies based on "past operations."

Enthoven, on the other hand, also refers to experimental data and empiricism in systems analysis, but hardly any examples are offered or are easily found. We are really being asked to consider systems analysis scientific enough because it involves (at least in its ideal form) a clear statement of assumptions or premises and the logical deduction of conclusions from assumptions. In fact, it is primarily logic rather than experiment on which it relies.

It is interesting to note that by 1968, Dr. Enthoven, in defining what systems analysis is to a hostile House Armed Services Committee, had dropped all claim to be applying the "scientific method" to military problems. The words "science" or "scientific" do not appear in his statements to that Committee. Systems analysis by then had become a management tool or technique which no longer claimed the authority of "science," perhaps such a claim could not be sustained in the light of what had transpired between 1963 and 1968.

Let us look at the history of the physical sciences to see what logic may lead to when the premises from which the logic starts have no basis in empirical data and the conclusions are not tested against empirical data.

Aristotle's formal logic was not particularly faulty even by modern standards, at least for the purposes for which he used it. His physics was inferior to Newton's not because it was less logical, but rather because his experimental or observational basis was woefully lacking in comparison to Newton's. In more recent times the Raleigh-Jeans law for the spectral distribution of black-body radiation was certainly more logical (i.e.: derivable in mathematically rigorous form from then-accepted fundamental principles) than Planck's law derived from the quantum hypothesis—Planck's law just happened to check experiments. And again the concept that parity was not conserved in physical processes could not be justified because it was more logical than the principle of conservation of parity; in fact, conservation of parity could be regarded as intellectually and aesthetically more satisfying. (Why should the universe be either "right-handed" or "left-handed"?) Experiment alone could establish that parity was not conserved in all cases.

In military analyses, strategic systems became, after World War II, the main focus of attention. These systems, particularly at the time when ballistic missiles became the main components of the opposing forces, and ballistic missile defense did not need to be taken into account, lent themselves to rather simple quantitative analyses. The necessary input data—warhead yield, circular probable error and range—were explicitly given in equipment specifications and could be verified by engineering-type tests.

Much has been made of the use of computers for such analyses but actually, as you are all aware, the essential results of a ballistic missile exchange under standard assumptions as to strategy (first strike or assured destruction) can be obtained from calculations on the back of an envelope or two. Unfortunately, the sometimes overdramatized accounts of the accuracy of computer calculations of strategic nuclear-exchange has led many intelligent but not very well-informed individuals to assume that military analysis has now been reduced to an exact science.

I am sure that it would astound many of them, if they were told that the decision-makers in the Defense Department had never been exposed to a meaningful quantitative analysis of realistic military operations involving diverse ground and air operations with conventional weapons and that even the data and methadology for a reasonably acceptable analysis of this type did not exist anywhere.

The difficulty of quantifying military operations (or any other activities for that matter) increases radically with increase in the number of elements granted some latitude for independent decision and action and with increase in the number of sequential steps in the operation in which such independent decision and action may be exercised. The stylized strategic missile exchange is a game in which there is virtually no latitude for independnt decision and action except at the top and even there the options are very limited, as are the number of sequential steps. Ground force operations with a multitude of small units are at virtually the opposite extreme. The nature of the problem suggests statistical approaches, but unfortunately that results in losing a good bit of the information the decision-maker wants. The statistics of large numbers (the central limit thereon, for example) tend to average to almost every question a dull gray rather than black and white.

Perhaps in complex situations such statistical results are closer to the "truth" (however, it may be defined) than the results of more deterministic analyses but, if so, analysts have much more to learn about how to present such results and decision-makers have a great deal still to learn about how to use them. This is an important point to which I shall return shortly.

As one who has been exposed to a virtual deluge of operations research, operations analysis and system analysis reports over the past several years, I can tell you that, at the national level, such studies and analyses have many shortcomings which make them far less useful and less influential than they ought to be. Rarely are the specific quantitative results or specific conclusions of such studies of real value. Nevertheless, aside from the fact that the now-accepted rituals for obtaining program approval or solving a major problem demand submittal of a study, the study reports do often provide a structured format for enumerating the factors of importance to the decision and they do usually contain in convenient form a collection of raw and half-digested factual data essential to consideration of the question. For example, such analyses typically contain an "Instant Expert's Table" in which an effort is made to tabulate in one or a few tables all relevant quantitative data bearing on the problem under consideration. This kind of tabulation permits all sorts of people who have no real knowledge or understanding of the matter under consideration to get the feeling that they are dealing with the fundamental questions in a "quantitative" way. However, when reviewed and commented on by the "experts," the tables also serve the very useful purpose of flushing out fundamental differences in the way in which proponents and opponents of the various alternatives choose to present their data.

One of the greatest drawbacks encountered by decision-makers in using reports of analyses is the failure of the authors to follow the rule of full disclosure (in the SEC sense). Contrary to what is usually claimed, assumptions, particularly secondary assumptions which may have an important effect upon the results of the analysis, are not made clear in any prominent position in either the summary or in qualifying the conclusions. More often, key assumptions are to be found buried deep in the text together with such commentary as may be given to the degree of certainty or uncertainty connected with those assumptions. Computer programs now most often serve as devices which may unobtrusively plant assumptions in analyses. Of course, if the assumptions being hidden so transparently make the analysis invalid that they would be immediately recognized by the reader if they were clearly pointed out, nothing much is lost by the author in hiding the assumptions—nothing, that is, except possibly the confidence of the decision-maker to whom the report is addressed. Because when it becomes apparent that important assumptions having a major influence on the answer are hidden, the reader must assume either that the author was not being candid or that he lacked the competence to recognize the significance of his

[4] *Studies of War*, Hill and Wang, New York, 1962.

assumptions. In either case, he does not come off very well when the hidden assumptions are discovered.

So the first thing wrong with most analyses for decision-makers is that reports and briefings of analytical studies do not clearly show the relationships of the assumptions and data to the conclusions, in spite of all claims to the contrary. Closely related to this deficiency is the fact that most analyses for decision-makers ought to be based on a calculus of uncertainties not certainties. Great lip-service has been paid in the past twenty years to the notion that all analyses should be done with clear indications of the sensitivity of the analyses to variations in the input assumptions and data. Again, I must say that there are few good examples of this kind of analysis to be found. I do not mean by this that analyses are not often conducted in which input parameters are varied over a wide range; but just varying the parameters over a range is really not sufficient, the more so, if conclusions are stated based on only the chosen point values of the input parameters.

The decision-maker must know how much confidence he can have in the results of the analysis. Such a question often shakes analysts who usually reply that quantitative statistical confidence levels can be only stated for phenomena which can be described by certain classes of statistical distribution functions and the analysis that they have just completed doesn't fall into that category. Nevertheless, if the analysis is to be useful in decision-making, it is important for the user to have some feeling for the extent to which it can be relied on. There are, of course, many ways of indicating the degree of confidence a decision-maker can have in an analysis; the extent to which such analyses or closely related ones have been conducted before and verified by empirical results is certainly one factor; the extent to which input data are certain; sensitivity analyses, referred to above, properly presented; the formal statistical theory confidence levels, to the extent that it can be applied to the data; and direct comparisons of alternative means of computing the desired results from basically different data and methodologies.

All of these constitute ways in which the decision-maker can be made aware of the strengths and weaknesses of analyses and most of them are never found in reports reaching the senior management levels in the Pentagon. As you may have gathered, there is an undercurrent in what I have said above which bears on the question of objectivity. Advocacy is an ancient and honorable art—among lawyers. I see no reason why operations analysts cannot be advocates if they want to be. I do think that when they are advocates there should be some way of announcing it, of saying that a particular systems analysis or operations analysis report is being prepared to make the best possible case for some particular position. This can almost always be done in a straightforward way by choosing the most favorable extreme values of uncertain factors entering the analysis. Also, opponents of a position should be allowed to write devil's advocates reports, provided only that they state explicitly what position they are trying to tear down or what contrary position they are trying to defend. Professional standards should demand that all other analytical reports be as objective as the authors know how to make them and present all sides of the question under study.

Let me give a simple example of an analysis which strains one's credulity. One report which I was exposed to in the Pentagon purported to show that supersonic combat aircraft cost between 1.5 and 2 times as much as subsonic combat aircraft for the same weight empty. In order to prove this, aircraft of the late forties and early fifties such as the F-84, the F-86, and the F-89, which were subsonic, were compared with the aircraft of the late fifties and early sixties, such as the F-102, 104, 105, and 106, which were supersonic. Anybody who knows anything about the evolution of military aircraft development, and particularly the application of avionics to aircraft, over the past twenty years is well aware that such a comparison is specious. Furthermore, it was unnecessary to compare aircraft drawn from the two different eras, since there were in production at the same time the F-5 which was supersonic and the A-4 which was subsonic, both at approximately the same empty weight, (also the A-6 and the F-4), and therefore more valid data could easily be adduced. Apparently it did not appeal to the analysts to make such comparisons, but if they had, they would have found that the cost factor of 1.5 was not borne out by recent experience.

A general practice in the cost area that one frequently encounters in studies presented at the decision-making level involves comparison of the cost of equipment which has been developed and is in the inventory with the promised cost of new equipment of higher performance, which has yet to be developed. Substantial cost or at least cost-effectiveness advantages can almost always be shown for the new equipment. The only realistic approach would seem to be to state the price of the new equipment in terms of a range of costs rather than a specific estimated cost. Yet, again, very few analyses do this.

Analyses prepared by protagonists on the two sides of a question often provide decision-makers with some indication of the ranges of uncertainty. One of the striking recent examples of analyses concerned with advocacy may have come to the attention of some of you (some of it appeared in the newspapers). As a matter of fact the analyses in question are now well beyond their first generation. But in first generation analyses, done separately by the Navy and the Air Force, comparisons were made of the relative cost-effectiveness of land-based and carrier-based air power. They were done by reputable organizations and reputable people and they were passed up through all the official channels to the very top of the Department of Defense. I could leave you to guess how the conclusions differed but I will state the obvious. The Navy analysis showed an overwhelming advantage for carrier-based air power on a cost-effectiveness basis while the Air Force analysis, to no one's surprise, showed the contrary. Needless to say the reports of both these analyses embodied deep in their interior all sorts of auxiliary assumptions which were favorable to one side or the other. Finally, neither analysis presented much in the way of empirical data. These analyses epitomized much of what is wrong with analyses being handed to decision-makers today and reflect on the problem of professional standards for the practitioners of the art of analysis for decision-makers.

Having criticized and cast doubt on the validity of many of the analyses offered up as advice and assistance to senior decision-makers, I would like to try to restore my standing with this group and with my own associates by saying that in this complex society of ours, no decision-maker should be without all the help he can possibly get from analysis. What we need to do, however, is to improve the validity and utility of analysis and to restore it as an empirical discipline whenever possible. In my opinion we have gone downhill to a considerable degree since the heyday of operations research in World War II; the validity and utility of the analyses in the solution of major national problems has gone down—at least in a relative sense. Although there are many difficulties, some of which I have alluded to above, many of them would be considerably alleviated if greater emphasis were placed on the use of empirical data and the enunciation of clear statements of the degree of uncertainty in analyses. We should return once more to making, to the maximum degree possible, analysis for decision-making an empirically-based discipline. This means (because of the future orientation of much important analysis) learning how to extrapolate empirical data by simulation or other means, and developing better ways for stating bounds of uncertainties.

Moreover, the statement of uncertainties in analyses arising from shortcomings in input data, methodology, or definition of objectives in quantitative form should extend, when appropriate, to outright admission that the uncertainties are so large that no meaningful qualitative conclusion can or should be drawn from the analysis. There is no God-given law to the effect that every question of interest to mankind is susceptible of solution by logical and quantitative analysis. As Hans Reichenbach, speaking of philosophic doctrines, has said:[5] "Yet it is an unfortunate matter of fact that human beings are inclined to give answers even when they do not have the means to find correct answers," and also, "The history of speculative philosophy is the story of the errors of men who asked questions they were unable to answer; the answers they nonetheless gave can be explained only from psychological motives."

It may be that organizations such as this should set about establishing professional standards for full disclosure, objectivity, and ways and means for presenting the degree of uncertainty in analyses. The categorization of studies and analyses as advocacy, devil's advocacy, and objective efforts might help decisionmakers a great deal. Actions to improve the validity and objectivity of analyses could prove to be mutually reinforcing. For example in highlighting the uncertainties which afflict a given study, emphasis could be placed on the operational experiments, simulations, or data gathering which would help to alleviate these uncertainties. Full disclosure of all the important factors which influenced the results of a given study would help to highlight the important uncertainties. Clear identification of all these shortcomings might well help provide incentives for analysts to improve their ways of doing business overall.

It is important that we get on with a fundamental restructuring of ways in which analyses for decision-makers are done and presented. What was once a problem only in big military programs, systems and strategies is now becoming a much more widespread problem in government.

The recent moves toward application of Planning, Programming and Budgeting techniques by the civil agencies of government, at the federal, state, and local levels, along with a parallel movement by these agencies toward wider application of operations research techniques to problems of current operations, has resulted in a number of important, and often easy, victories for analytical techniques. This parallels the early situation in military operations research and has led to some rather optimistic appraisals of the extent to which existing techniques of analysis can be applied to solve a broad spectrum of technological, social, economic and political problems in the civil sphere.

However, we are increasingly faced with problems that require policymaking, action, and often funding, at the national level rather than by private enterprise and local governments alone. Generally, these new problems of non-military nature, tend to be much more complex and much more difficult to analyze than those we have heretofore faced. Most often in the civilian sphere the values and utilities are multiple and incommensurable; they cannot be clearly enunciated in simple terms and there are no

[5] *The Rise of Scientific Philosophy*, University of California Press, Berkeley, 1951.

simply-stated "requirements" in the military sense, unsatisfactory as these often are. Experimental or observational data are very difficult to come by and there is a significant "indeterminancy principle" attached to the conduct of social, economic, or political experiments, in that the experiment almost always causes significant, and not always definable, changes in the system being experimented on while the data gathering is in process, so that the data obtained relate to an undetermined state of the system.

At the same time the pressure is on the military establishment to reduce costs and increase effectiveness in order to make money available for needed civil programs. Military budgets and analyses for decision-making in military programs are being questioned at every turn by the Executive Branch, Congress, and the public.

In both military and civilian problems, the demands which are being made on analyses are great. Will the response be adequate? New and innovative approaches are necessary in both the form and substance of analytical studies. The challenge is yours to meet.

DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING,
Washington, D.C., November 29, 1971.

Hon. JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COOPER: This is in reply to your letter of November 15 signed jointly with Senators Hart and Symington. I have read the report of the Operations Research Society of America and agree that it does merit continued study. It covers an important and serious matter.

However, because this report has become a matter of controversy between a respected professional society and other professionals, I believe it would be inappropriate for me to comment on the details of the ORSA Ad Hoc Committee or on the facts pertaining to the controversy.

After reviewing the ORSA report I continue to believe that the statements and analyses presented by the DOD with respect to the threat and the Safeguard ABM system were valid and correct.

In particular, the reprogramming of missiles for failure and the "pindown" concept are technically feasible and obvious military tactics. Whether or not the Soviets would adopt them we, of course, cannot know.

Sincerely,

JOHN S. FOSTER, Jr.

YORKTOWN HEIGHTS, N.Y.,
December 10, 1971.

Hon. JOHN SHERMAN COOPER,
Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
U.S. Senate,
Washington, D.C.

DEAR SENATORS COOPER, HART, AND SYMINGTON: This letter responds to your request of November 15, 1971, for my analysis of the findings of the September 1971 issue of Operations Research. On November 12, 1971, Senator Symington placed in the Congressional Record (S-18320 to S-18323) a letter which I wrote to the Editor of Operations Research, presenting my views on the volume "Guidelines for the Practice of Operations Research." Since my views have already been made clear in this (unanticipated) way in the public record, I shall reply only briefly to your specific questions.

To summarize, however, I found "Guidelines . . ." to have serious inadequacies while not making that major contribution which could have been contributed by a broad, unbiased, and technically competent review of a major question which was before Congress, namely the necessity for and the adequacy of Safeguard for defense of Minuteman. On this score, there is a nugget of gold in "Guidelines . . .", namely page 1236:

"Except for Foster's statements in his May 12 speech, the Administration appears to have avoided addressing the basic issue in the analysis of defense—how easily can they be countered and what must we do if the opponent attempts to do so?

"A particularly important interaction that has not been treated properly in this debate is the problem of the amount of defense of Minuteman believed adequate to preserve, in combination with other survivors of a Soviet first strike, a believable surviving U.S. second-strike force.

"It has been argued that the credibility of the U.S. deterrent policy is built upon making it apparent to the Soviet Union that enough of the total U.S. strike force (in all its components; bombers, ICBMs and sea-launched ballistic missiles) can survive any conceivable Soviet first strike, so as to retain an ability to inflict unacceptable damage to the Soviet homeland.

"If this principle is accepted, an argument that Minuteman must be defended (by Safeguard or any other defensive system) against a heavy Soviet SS-9 attack cannot be conclusive, unless, as a minimum, it shows that:

"(i) The undefended Minuteman survivors as well as all other surviving U.S. strike forces will not suffice to present a believable and adequate second-strike force, and,

"(ii) When Minuteman is defended, the total surviving U.S. strike force is sufficient to inflict unacceptable damage on the Soviets."

I consider it unproductive to have an ever-widening debate solely confined to criticism of the latest criticism of the original testimony. I am glad to see that your questions do not confine the comments simply to the merits of the ORSA Committee Report, and I shall comment on Safeguard itself when it is relevant to my reply. Now for the questions:

1. Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time; its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite?"

"Guidelines . . ." itself in the paragraphs quoted above shows the fundamental lack in the proponents' case for Safeguard. In the context of the overall deterrent, they did not demonstrate the need for deployment; they specifically avoided technically adequate analyses of its worth in protecting Minuteman against probable Soviet threats, to the extent of holding classified the number of interceptors which were to be deployed—a critical element in system effectiveness. By avoiding detailed considerations of effectiveness, and by excessively optimistic estimates of deployment date, the Administration denied the Congress the option of considering more effective Minuteman defense systems, simultaneously losing valuable time toward the realization of these systems.

In concentrating on Minuteman vulnerability, the Ad Hoc Committee report admittedly is too narrow to evaluate the fundamental question.

2. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

It was certainly not possible for the Ad Hoc Committee, within their narrow scope, to make a meaningful judgment on the worth of Safeguard, nor did they claim to do so. Nor does it seem to me possible for the Committee to make a meaningful judgment on the vulnerability of Minuteman, without a far more skeptical and probing attitude toward the basic facts released by the Defense Department. One does not use one's finest saw to cut rough lumber containing nails; the Ad Hoc Committee could well have asked whether the quality of the operations research was well matched to the accuracy and adequacy of the facts available, rather than whether it was of the highest absolute caliber.

3. In projecting the vulnerability of Minuteman, which was believed to depend upon whether one considered "reprogramming of Soviet missiles for failure" and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" were plausible Soviet tactics for the mid-seventies?

These questions of "reprogramming" and "pindown" are clearly not decidable by operations research. They have a very high engineering content. I discuss in my referenced comments the question of reprogramming and pindown. Here I would like to point out once again why Safeguard would not be of significant value in preserving the bombers. Thus, my position is that simultaneous attack by submarine-launched ballistic missiles on air bases and pindown of Minuteman is not a credible threat, but that Safeguard would not help significantly if it were:

DDR&E and those who support Safeguard for defending bomber bases apparently credit the Soviet Union with the technology for a true MIRV, for very high reliability, for rapid computation and recomputation of trajectories (reprogramming of offensive missiles), and with highly reliable submarine-launched ballistic missiles in large numbers. The ORSA Ad Hoc Committee appeared to concur. Clearly, missile attack on a Minuteman silo is very different from missile attack on an airfield, in that a missile warhead must come within a few thousand feet of the silo to produce enough blast pressure to damage it, while airplanes on the ground can be destroyed by a burst several miles away, and in particular at several miles altitude. In the proposed Safeguard system, Sprint could not have been used to defend bombers. Thus, in the planned deployment, it would be Spartan which intercepted the submarine-launched ballistic missiles outside the atmosphere. *But does the Defense Department maintain that the Soviet Union, in 1976 or later, will not have effective exo-atmospheric penetration aids on its SLBM's?* Each real warhead could be accompanied by 10 or more decoys, vastly overwhelming any Spartan defense discussed thus far. The solution to the bomber vulnerability problem is that which the Air Force has taken, to reduce the time required to get the B-52's off the ground in response to warning of submarine missile launch; to improve our capability to obtain this warning; and to re-base the bombers farther from our shores.

4. Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?

The DOD assumptions put Safeguard in its best possible light for Minuteman defense. That light was still not good enough, for even granting the qualitative nature of the Soviet threat it was apparent to all that a threat just slightly smaller than the one assumed would not require Minuteman defense, while one either slightly more numerous or using a small fraction of the SS-11s against the MSR's would completely negate Safeguard.

5. Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?

Certainly the Defense Department agrees, as Mr. Laird has testified, that a growing threat will require smaller, cheaper, and less vulnerable radars. Many of the proponents of Safeguard did not really distinguish sufficiently precisely between the Safeguard system offered for deployment and any other ABM system. They might include these radars as part of the Safeguard system which they advocated, although they certainly were not either in the program or in the stated budget.

6. Did the Ad Hoc Panel make full use of all the information available to the responsible Committees—the Armed Services and Foreign Relations Committees—both classified and unclassified, concerning the Soviet threat and Safeguard ABM performance capabilities against a range of Soviet threats?

Many facts and observations were considered both by proponents and opponents of Safeguard in preparing their statements to the cognizant Committees. Much of this background material was not explicitly discussed, at least in part to avoid submerging in details the important questions. A competent review of the positions of proponents and opponents, therefore, would have had to go beyond the material actually presented. The Committee implies that it reviewed other material but does not specify its sources. Examples of the Ad Hoc Committee report analysis show a serious lack of consideration for the classified material which I believe was available to at least one of the members of the ORSA Committee.

7. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

I do not believe that one can characterize the Ad Hoc Panel report as "technically correct and competent in its findings." I have given above an example of the neglect of the devastating possibility that the USSR might use exo-atmospheric penetration aids (devastating to the case for Safeguard). In my other comments, I note that the report did not treat at all properly two possibilities it criticized under the title "Suggestion of Impractical Alternatives"—the proposal to launch Minuteman on warning, and the proposal to disperse B-52s widely to airports including those commercial airports near large cities.

Considering the time available to the ORSA Committee, the number of members and the experience of the Committee, and the amount of review the report is said to have undergone, I find it it seriously flawed.

8. Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of all witnesses pro and con who were called before the two Committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc group on Safeguard for FY 1971 (the O'Neill Report) submitted to the Secretary of Defense on January 27, 1971?

If the O'Neill Report was available to the Ad Hoc Panel, it should surely have made use of it, inasmuch as the ORSA Committee report states (page 1176), "Additional relevant information and analyses performed by individuals or groups both inside and outside the government were obtained to aid in this review."

I do not believe that the Ad Hoc ORSA Panel should have conducted such an "analysis of the methodologies employed and publicly displayed by the participants in that debate" (page 1175) without going more deeply into the substance of the question. Given the decision to undertake that study, the Committee should certainly have reported more fully on the adequacy of the case presented by the Administration, who were, after all, the chief supporters of Safeguard during the hearings. I confess to at least as great an interest in the adequacy of the investigations and arguments of John Foster as in those of George Rathjens, but my interest is not satisfied by the ORSA Report.

Practically, I suppose that the Ad Hoc Committee could not have evaluated the testimony and statements of *all* witnesses. They should certainly have had a more objective procedure in choosing which statements and which witnesses to investigate.

9. Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?

I do not believe that the ORSA Committee used the same standard of judgment for all witnesses. I don't even think that it used the same standards for its own report as for the analyses above, the ORSA Report alludes to unspecified "additional relevant information and analyses performed by individuals or groups both inside and outside. . . ." Furthermore, Rathjens Weinberg, and Wiesner were not contesting with Mr. Wohlstetter. They were presenting arguments and analyses concerning the case which was made by the Defense Department. Perhaps the Ad Hoc Committee, in inviting the opponents to participate in the study, expected them to provide a specific list of topics on which they felt the Administration operation analyses were deficient, and the Ad Hoc Committee would have been willing to analyze those on an evenhanded basis. When the opponents did not choose to participate, had the Committee intended to be evenhanded, they could have gone to great lengths to have someone act in the position of public defender, to provide the Committee with such a supplementary list of topics.

Neither the procedure nor the result leads me to believe that the same standard of judgment was applied to all witnesses.

This concludes my replies to the questions. I hope that this discussion will help to clarify the utility and limitations not only of operations research, but also of our present procedures for deciding important questions and programs.

Sincerely yours,

RICHARD L. GARWIN.

PRINCETON UNIVERSITY,
Princeton, N.J., November 24, 1971.

Senator PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I am responding to the letter from you and Senators Symington and Cooper. I shall take up your specific questions simply because I do not have time to write a discursive opinion of the ORSA report.

1. Since I had never heard of any of the members of the Committee, with the exception of the ubiquitous Mr. Wohlstetter, I am not sure how technically able they might be. The very fact that I have been in the business for fifteen years and had never heard of these people makes me very skeptical. Capable or not, they essentially failed to address the questions you pose.

2. The narrowness of the inquiry was such that it had little bearing on the true issues raised by the Safeguard ABM deployment.

3. The plausibility of the reprogramming and pindown tactics is a difficult and complex problem which is not addressed in the report. They obviously are questions of broad strategic analysis involving high technical matters. All things considered, I believe the reprogramming and pindown tactics are completely implausible ones for a Soviet first strike.

4. The answer to both questions is a resounding "Yes".

5. I think it is quite clear that no reasonable defense of the Safeguard system from a technical standpoint, could ever have been nor ever really was made. The responsible people in the Pentagon have always recognized the need for smaller and more numerous missile site radars.

6. No opinion.

7. Since the panel considered such utterly trivial aspects of the whole ABM question, it is likely they got the correct answers to the simple questions they posed.

8. & 9. The whole panel study and its method of reporting was, in my opinion, entirely inappropriate and unfair. It was an exceedingly one-sided study and surely paid little attention to the very large amount of testimony supporting the conclusions of Rathjens, et al. The whole thing was a very bad show.

Sincerely,

M. L. GOLDBERGER,
Chairman.

THE BROOKINGS INSTITUTION,
Washington, D.C., January 3, 1972.

Mr. PHILIP A. HART,
Mr. STUART SYMINGTON,
JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

GENTLEMEN: In response to your letter of November 5th, I am enclosing an analysis of the ORSA committee report on the ABM. It seems to me to be most useful to prepare a general memorandum rather than specific answers to the questions posed. I have, however, indicated my views on each question in the body of the memorandum.

I regret the delay in answering your letter and hope that my response will still be of use. If I can be of any further help, please do not hestitate to call on me.

Sincerely yours,

MORTON H. HALPERIN.

COMMENT ON APPENDIX III "TREATMENT OF OPERATIONS RESEARCH QUESTIONS IN THE 1969 SAFEGUARD DEBATE" OF REPORT OF THE ORSA AD HOC COMMITTEE ON PROFESSIONAL STANDARDS

For reasons not explained in the appendix, the ORSA committee chose to concentrate its analysis on a single question relating to the damage which could be done to the American Minuteman force by one hypothetical Soviet force. This was not the only operations research question of relevance to the ABM debate; there were others of much greater importance such as the alternative means available to the United States to assure that a specified number of Minutemen could survive a given Soviet attack and the sensitivity of alternate American force postures to different Soviet threats. If the committee had chosen to examine these issues, its report would have been of some value. However, no study of the ABM debate limited to questions of "operations research" could have been of major significance since the major issues involved systems analysis and political-military calculations far beyond the scope of systems analysis.

This memorandum discusses briefly the major ABM issues before turning to an analysis of the issue which the committee did examine and an effort to explain its triviality.

THE MAJOR ABM ISSUES

The major issues, as I see them, are three:

1. How likely was it that the Soviets would develop the capability to destroy a large fraction of the Minuteman force soon enough that one had to go forward with Safeguard in 1969?

This question receives no attention at all in the ORSA report where the threat is taken as an assumption. In order to threaten Minuteman, the Soviets had to develop a MIRV for the SS-9 and provide it with a far greater accuracy than they have yet demonstrated for a single warhead. The administration extrapolated from the Soviet testing of a multiple warhead (not a MIRV) for the SS-9 and predicted that the threat would materialize. In fact it has not. According to the information officially released by the Pentagon or otherwise reported in the press, the Soviets,

several years later, have still not tested a MIRV or begun the series of tests necessary to develop great accuracy. Indeed the administration no longer even claims that Safeguard must proceed on its planned schedule or the Minuteman force would be vulnerable. It has rested its case entirely on the "negotiating chip" argument.

On this key issue the opponents have been proven correct: we did not need in 1969 to go forward with an ABM defense of Minuteman.

2. How wide a range of threats could Safeguard handle?

Critics of Safeguard charged that it could handle only a very narrow range of Soviet threats—a lesser threat and it was not needed and more of a threat and it would be easily overwhelmed. The administration made this proposition difficult to argue by refusing to make public the number of launchers which will be built. (This number would be known to the Soviets long before the system was completed.) The ORSA committee, by not discussing the question of Safeguard's effectiveness, ignored this issue completely.

Within a year, Secretary Laird was conceeding this argument, noting that the Soviets could easily build a force which would overwhelm Safeguard. On this important issue too the opponents have proven correct.

3. Could a more effective and cheaper system be developed?

Given that the threat was not imminent and that Safeguard would be effective against only a narrow range of threats, opponents argued that a more effective system with a cheaper radar could be developed. Indeed at least some critics of Safeguard were, and are, prepared to support a hard point defense provided that: (1) a cost-effective system was developed; (2) the threat appeared likely; and (3) it was consistent with a SALT agreement. What they objected to was early deployment of the wrong system which the Soviets were likely to view as the first step toward a system designed to take away their deterrent.

It would indeed have been a miracle of serendipity if components designed to protect American cities against a large Soviet attack would have also been optimal to defend cities against a small Chinese attack and to defend missile sites.

The administration has now conceded this argument as well as is pushing the development of the dedicated hard point system.

The Issue Examined: Would Minuteman be at risk?

The question on which the committee focused concerned the calculations offered by Wohlstetter and Rathjens on the number of Minutemen which would survive a specified Soviet threat. The committee did not consider whether the threat was a likely one nor did it discuss what significance the difference in calculations had. What can be said about the committee's conclusion that Rathjens behaved inappropriately?

The administration faced a difficult problem in conjuring up the threat which would justify going forward with Safeguard in 1969. The Soviet force posture had to meet three criteria:

1. it had to be one which the intelligence community would not judge to be completely implausible in the given time frame;

2. it had to be capable of destroying a large fraction of the Minuteman force; and

3. it had to be a force against which Safeguard would be effective.

These criteria were so constraining that the administration's effort to specify such a threat failed the first time around. Rathjens' calculations (even as corrected and then accepted by Wohlstetter showed that 16% of the Minuteman force would survive.[1]

Given these calculations the administration faced a dilemma. It had to increase the threat without giving the Soviets a force which could overwhelm Safeguard. The threat could have been increased either by giving the Soviets more SS-9s or more MIRVs per missile but either of these forces would have been too large for Safeguard to handle. Indeed Wohlstetter shows that by attributing to the SS-9 what he calls the "number of 1-MT MIRV warheads the SS-9 is capable of carrying" the percentage of Minutemen surviving is reduced to 7.3 without reprogramming. While the ORSA report condemns Rathjens for not using this number, it does not note that the administration and Wohlstetter rejected it because the force could overwhelm Safeguard. Since the ORSA panel did not look at all at Safeguard effectiveness it missed the significance of the alternative Soviet threats.

Faced with this dilemma Wohlstetter and later the administration decided to give the Soviets a reprogramming capability. Nowhere did the administration, ORSA, or Wohlstetter explain why the Soviets would go this route rather than following the more straight forward and reliable path of adding more warheads or building more missiles. The Soviets could rely on reprogramming instead of adding more missiles or warheads only if they had the same aim as the administration and Wohlstetter—namely to design a force which threatened Minutemen but could be handled by Safeguard. To state the point is to show the absurdity of the assumption. With 5 years of lead time before Safeguard would be operational the Soviets would have to be insane to rely on reprogramming which enhanced the value of Safeguard rather than enlarging the total force by adding warheads and/or missiles thus rendering Safeguard useless.

Moreover, the ORSA committee going beyond the bounds of operations analysis assumes that the Soviets would be prepared to rely on reprogramming. Wohlstetter describes reprogramming as involving "methods familiar to us." He did not inform his listeners that we had no such system nor was there any evidence that the Soviets had such a system or were developing it. In my judgment, no Soviet planner attempting to build a first-strike force which he hoped would be credible to the politburo would rely on reprogramming. Rather he would build a force large enough for the purpose without reprogramming.[2]

Finally, one must ask about the significance of the range of calculations offered by Wohlstetter and Rathjens. The lowest surviving percentage suggested by Wohlstetter is 5. Using standard techniques of operations research one can calculate that this means that 50 Minutemen would survive.[3]

By 1975 most of the Minuteman force will be MIRVed; thus each surviving missile would carry either a single 1 Megaton warhead or 3 warheads of lesser yield. In either case the force could easily destroy at least 15 of the largest Soviet cities. The question of whether such destruction is not sufficient for deterrence, when it serves only to reenforce the bomber force and 41 Polaris submarines, is not addressed in the report.

How Trivial is the Question on which the ORSA Panel focused?

As has already been suggested it is difficult to overestimate the triviality of the issue upon which the ORSA panel focused. Since it may be difficult for readers unfamiliar with the details of the ABM debate to grasp this point an analogy may be useful.

Suppose that an opponent of the Vietnam war had in 1966 offered the following critique:

The Vietnam war is immoral. The United States has no vital interests which require it to fight in Indo-China. The Saigon government is corrupt, inefficient and unworthy of support. The bombing of North Vietnam is not only immoral, it is ineffective since it cannot prevent Hanoi from moving enough supplies down the Ho-Chi-Minh trail to provide what its forces in the South need. This is so because it is difficult to prevent movement down the trail and because Hanoi will start enough on the trail to insure that what it needs will arrive at the other end. This is easy to do since the forces in the South need only 2.5 tons/day which can be carried in 15 trucks.

A critic of this position objects that the author has not provided the data to replicate the calculations leading to the 25 tons/day and 15 trucks. When provided with this information he shows that using alternative assumptions about enemy needs and truck capacity the correct numbers are 40 tons and 20 trucks.

Five years later an ORSA panel appointed to look into criticisms of the Vietnam war looks primarily at the ton/truck issue, concludes that 40 and 20 are the correct numbers and condemns the critics.

What the ORSA panel has done is equally absurd and the absurdity is equally clear, I believe, to any fair-minded observer familiar with the ABM debate.

One must then reluctantly ask why the committee chose to focus on this question.

The answer is clear but evidently one about which the committee is ashamed. As the report does indicate its inquiry arose from a letter by Wohlstetter to ORSA. In its 135 page report the committee prints part of this Wohlstetter letter and the full text of each of the letters it exchanged with Rathjens. The excerpts of the Wohlstetter letter are intriguing. They contain this sentence: "For this purpose it is enough to consider how participants in the debate handle the important issue I have described." What that issue is cannot be determined by readers of the ORSA report since the committee has left out the middle paragraphs of Wohlstetter's letter. These paragraphs, in fact, spell out in detail the controversy over how many Minutemen would survive and explain Rathjens' errors. That Wohlstetter was interested in having this one question examined is understandable. He is, in general, careful of the calculations he makes public, and was confident that in this instance he had shown himself to be better at arithmetic and simple calculations than Rathjens had been.

That the ORSA panel permitted Wohlstetter to define its agenda—and then chose to hide that fact—is inexcusable, totally unprofessional, and in complete violation of the standards it sets in the body of its report on criteria for reviewing a study (pages 1130–31). The committee failed to evaluate the statements by the administration or its supporters. It examined only a few of the issues raised by critics—those specified by Wohlstetter in his letter.

The report is useless in seeking to evaluate the analysis presented by the administrators, its supporters, or its critics. It is equally useless in seeking to assess, even with hindsight, whether initiating Safeguard in 1969 was indeed vital to American security.

MORTON H. HALPERIN.

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[1] Rathjens' calculations showed 25% surviving because he assumed four 1-megaton warheads in each SS-9 (before the administration specified three 5-Megaton warheads as the standard threat), and because he apparently made an optimistic assumption about how blast-resistant the Minuteman force is. (See the Wohlstetter chart reproduced on page 1191 of the ORSA report.) It was this error that occupied most of the attention of the ORSA committee.

[2] Nor would he, in my view, rely on pindown, a technique which the committee on the basis of a very superficial look at a question far beyond its competence, describes as reliable.

[3] To permit replication:

1000 (unclassified number of Minutemen)
x 5% (Wohlstetter's number, see page 1191)
50 Minutemen surviving.

CAMBRIDGE, MASS., *November 15, 1971.*

Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
Hon. JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

GENTLEMEN: This is in response to your request that I comment on the report of the ORSA Ad Hoc Committee on Professional Standards entitled "Guidelines for the Practice of Operations Research" contained in *Operations Research,* Vol. 19, No. 5, September, 1971.

A professional society that elects to judge the credibility and integrity of professional people who are not among its members is under profound obligation to employ rigorously every judicial safeguard, including having its own findings reviewed by a competent group external to the society to insure fairness and freedom from bias. After reviewing the ORSA report, I can only conclude that it does not accord with what I conceive to be the professional standards which should characterize so serious an inquiry of this kind. It is further my feeling that the ORSA report is inadequate in that it deals with very narrow aspects of the debate while neglecting the broad strategic questions, quite beyond the boundaries of operations analysis, that were of such fundamental importance. I have not always concurred in the views and judgment expressed by those scientists whose statements the ORSA report seeks to question, but I have never doubted the high purpose and great usefulness of their contributions to the national debate on the ABM issues. I hold the same view of those who testified in favor of the ABM. It is of the utmost importance that such complex issues as the ABM be thoroughly debated pro and con and that proponents and opponents, including those who constructively dissent from governmental views, be heard and feel free and encouraged to express their dissent without fear of subsequent attacks on their integrity.

If the nation is to reach sound conclusions about great technical issues, it is vital that we have meticulously prepared and rigorously objective testimony (including explicit statements about any limitations in data or assumptions) from scientists and engineers when they speak in their professional capacity and that they carefully distinguish their technical analyses from their personal or political views. At the same time it is important to understand that there are technical issues about which technical experts of equal competence, objectivity, and integrity may reach differing conclusions, especially when there are strategic and policy elements involved with the issues.

With all these considerations in mind I can only respond to your inquiry by expressing my view that the ORSA report is hurtful rather than helpful in seeking to uphold the high standards of professional participation in national debates in which there is a high content of both science and trans-science elements.

Yours sincerely,

J. R. KILLIAN, Jr.

HARVARD UNIVERSITY,
DEPARTMENT OF CHEMISTRY,
Cambridge, Mass., November 11, 1971.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I am in receipt of a letter signed by you and by Senators Symington and Cooper concerning the report of an Ad Hoc Committee of the Operations Research Society. I am familiar with that Report and the reply to it prepared by Messrs. Rathjens, Wiesner and others.

As regards your specific questions my answers are as follows:

1. Q. Was the technical scope of the Ad Hoc Committee Report etc.

A. No, it was not.

2. Q. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

A. Not an objective one.

3. Q. In projecting the vulnerability of Minuteman, etc.

A. In my view the plausibility is doubtful.

4. Q. Was the Administration misleading, etc.

A. It would appear to be an arbitrary choice helpful to the proponents of ABM.

5. Q. Do you believe that the proponents of Safeguard etc.

A. They seem to have done so.

6. Q. Did the Ad Hoc Panel make full use of all the information etc.

A. No, it did not.

7. Q. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

A. It appears to have been biased.

8. Q. Should the inquiry by the Ad Hoc Panel have evaluated etc.

A. This would have been the more correct procedure.

I should like to use this opportunity to comment in a more general way on the ORSA Committee Report and the vigorous efforts to give it wide publicity.

The ORSA Committee Report, unfairly I believe, raised questions about the credibility and even the integrity of several individuals who were active in the ABM debate. The Report specifically questioned their calculations and assumptions regarding future vulnerability of our Minuteman forces to SS-9 missiles of the Soviet Union. These calculations required projections of the SS-9 threat in numbers, accuracy, reliability, damage effectiveness, etc., etc. It is reasonable and in fact unavoidable that independent experts would determine such projections somewhat differently and hence would have different views on the magnitude and imminence of the Soviet missile threat, as well as on the performance of the Safeguard System in protecting Minuteman missiles, particularly when compared in effectiveness, cost and availability with alternative systems. The ORSA Committee Report did not address itself to these major questions, but only to a narrow segment of the debate chosen by a protagonist in the ABM debate; the Report concentrated on small issues, and largely on a few individuals who disagreed with that protagonist. Whether ORSA's specific criticisms are partially valid or not, is of small consequence when viewed in the context of broad technical issues ably discussed in their ABM testimony and writings by the criticised people, especially Drs. Panofsky, Rathjens and Wiesner, who have made many other valuable contributions to public policy regarding technical aspects of defense over a period of many years.

In the ABM debate the participation of experts provided the Congress and the public with an almost unprecedented exposure to the many facets of a major defense policy. Its formative process was especially enriched by the non-Government experts who are not restricted in their public views by the official government positions. In assessing these contributions one must bear in mind that in such debates the independent citizen-experts opposing the Administration view are at a grave disadvantage because they usually do not have the same access to intelligence and other classified information as Government experts and if they have such access are not assisted by a timely official release of selected items of classified information.

Because experts are human some unfounded assertions can always be detected on all sides, especially when the time available to prepare statements is short. What is of real importance is that Drs. Panofsky, Rathjens, Wiesner and others did contribute greatly to the quality of public debate on ABM and deserve not criticism in the publicity following the ORSA Committee Report but approbation for their public service.

Sincerely yours,

G. B. KISTIAKOWSKY.

OPERATIONS RESEARCH SOCIETY OF AMERICA,
November 23, 1971.

Senator JOHN SHERMAN COOPER,
Senator STUART SYMINGTON,
Senator PHILIP A. HART,
U.S. Senate, Washington, D.C.

GENTLEMEN: A copy of your letter requesting opinions on ORSA's Ad Hoc Committee Report has been sent to me. While you did not request my own answers to these questions, I am enclosing such answers. You will find that my answers to many of the questions are the same as those of people who have criticized the report. It seems to me that raising such questions as if they were subject to partisan interpretation implies a misunderstanding of the report and its purpose. I know you are all very busy men, but I would appreciate it if you would each take the time to read the report in its entirety.

The immediate stimulus for the report was a letter from Dr. Albert Wohlstetter (and while he is a member of the Society, and I believe endorses our report, we do not necessarily endorse Dr. Wohlstetter's opinions or writings except as specifically stated in the report). However, the document that convinced us that we should make this study (p. 1151) was written by one of your colleagues, Senator Jackson; it appeared to us to constitute a rather plaintive request to scientists to set their own house in order. We believe that Senators have a right to expect from technical experts a clear-cut exposition of matters within their area of expertise, and that within those highly restricted areas of the ABM debate which we chose to study, they had not received this.

Let me state once again that the Society which I represent does not favor the ABM (neither does it oppose it). It is clear that some people will use this report for their own ends (just as "The devil can cite Scripture for his purpose"). Let me state for the record that I find the article by Alsop, which praises the report, as disturbing as I find some of the distorted articles which attack it, such as those in the Boston Globe. I should think, however, that all Senators would unite behind the principal objective of the report; namely, to ensure that the Senate of the United States obtains a more adequate basis for its decisions on technical matters.

Sincerely yours,

ROBERT E. MACHOL.

ANSWERS TO QUESTIONS

1. "Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress." The answer is a resounding "No"; it was never intended to be. This is stated several times in the report (for example, page 1175) and was stated by me again very strongly in the Foreword (page 1123).

2. Assuming that the question means "was it possible to make a meaningful judgment on the desirability of Safeguard from the ORSA study considering the narrowness of its inquiry," the answer is no.

3. Some reprogramming (for example, for launch failures) is plausible. Other reprogramming (for example, for warhead failures) is not plausible. Operations Research is pertinent to making these distinctions. The original debate was obfuscated by failure to make these distinctions.

4. Safeguard, like any other defensive system, is effective only against a restricted band of threats. The exact width of this band was unfortunately not well illuminated by either side of the 1969 debate.

5. I have not kept up with the post-1969

debate. I believe that both sides considered the radars vulnerable. However, the failure to describe this vulnerability and its consequences adequately was one of the shortcomings of the debate.

6. Within the restricted area which it chose to study, the panel did make full use of all such information.

7. As a reviewer of this document my answer must be obvious: yes, it was technically correct and competent.

8. The inquiry of the Ad Hoc Panel should not have gone beyond the topics which it covered. It restricted its inquiry to those aspects of the 1969 debate on the ABM which were in the public domain and on which scientists gave conflicting testimony. To have gone beyond this would have been to investigate the political question of paragraph (1) above.

9. Again, since I was a reviewer for the report, it is clear that my answer to this question is "Yes."

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Cambridge, Mass., November 23, 1971.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR HART: Yes, I have read most of the September, 1971, issue of "Operations Research." More than a year ago I was asked to be Chairman of the Committee which was to write that Report. I refused to have anything to do with it, and strongly advised against setting up the Committee. When the Report nevertheless came out, I protested both to the present officers of the Society and to the press, as indicated in the enclosed exchange of letters. The Publication of the Report was only just approved by the Council of the Operations Research Society, the vote being 6 to 5, with the President of ORSA breaking the tie. The statement of the Minority of the Council, which is enclosed, may be of interest to you.

I could endeavor to answer each of the nine questions you raise, though I have not been in close touch with the details of the ABM studies and have not had access to classified reports regarding the subject. For example, my answer to your questions 1 and 2 would be No.

However, my reaction is much broader than the minutia which fill the Report. My criticism has to do with the dangers inherent in ascribing reality to the results of a mathematical analysis of a situation, without first examining carefully the assumptions on which it is based. It also has to do with the way purely technical reports can be used for non-technical purposes.

The basis of my criticism lies in my experience in operations research, which goes back to the beginning of World War II. I was Director of the U.S. Navy Operations Research Group then. We learned from hard experience that the results of mathematical analyses could be of immense value in tactics, *only* when we were reasonably certain as to the behavior of our own weapons *and* of the tactics and weapons of our enemy. During a war there are tough but necessary ways of gathering data on these two points, data from the battle itself. And if the data-gathering is *scientifically* done and efficiently processed, one can hope to obtain accurate-enough parameters for the analyses, so that correct tactics can be initiated before the enemy catches on. (A few examples are outlined in "Combat Scientists" by L. R. Thiesmeyer and J. E. Burchard, Little, Brown and Co., 1947, Chapter 7, and in "The Battle of the Atlantic," by S. E. Morison, Little, Brown and Co., 1947, pages 217 to 224, and the principles are discussed in "Methods of Operations Research," by P. M. Morse and G. E. Kimball, John Wiley and Sons, 1950, Chapter I).

We soon learned that the estimates of effectiveness of our weapons, given us by the designers of the weapons, were nearly always over-optimistic, compared with their effectiveness when used by soldiers in wartime conditions. In fact the discrepancy usually turned out to be a factor of three in degradation of effectiveness. We also learned, the hard way, that estimates of enemy intentions and capabilities, obtained from "intelligence," could be just as badly off, unless tested in battle or checked against past experience of enemy behavior. Until these uncertainties in *assumptions* could be narrowed by operational data, the predictions of our beautifully accurate *analyses* could be wrong by a factor of as much as ten. Only by applying the pessimism of experience could we arrive at *safe* predictions, to apply before operational data were available to check our assumptions (and the important goal was to get this operational data as quickly and cheaply as possible).

But in peace time these operational data are not at hand, happily for the country but unhappily in regard to predictions of weapons effectivenes. This I learned (again the hard way) when I was first Deputy Director of the U. S. Joint Chiefs' Weapons Systems Evaluation Group (WSEG) in 1949 (this was before the Group was split into a purely military group and a purely civilian group under the Institute of Defense Analyses; I supervised the work of the military as well as the civilians, under General Hull, Director). When we were trying to predict the effectiveness of the B36, we were given the optimistic estimates of the B36 designers and the "intelligence" estimates of enemy capabilities, which varied widely from month to month. Our first task was to reduce these guesses to some set of realistic *assumptions*, to put into our calculations to predict operational losses and successes. Luckily, at the time, we had enough officers and civilians with war-time experience so we could get agreement on the degree of operational degradation we had to apply to these guesses, and could come up with realistic assumptions. And I believe our resulting predictions of the inadequacies of the B36 were eventually agreed to by everyone (including General LeMay!).

By now a new generation of officers and analysts has come on the scene, many of whom have never had the sobering experience of seeing their optimistic predictions disproved by deaths on the battlefield. They too often are willing to take the assumptions given them by designers and by "intelligence" as gospel truth, and to base their calculations on them without adding any correction factors for "the fog of war." This is why I believe the arguments regarding details of the analysis of ABM effectiveness are beside the point. Strategy is still an art, not a science. Science can help in many ways, but final decisions must be based on experience and judgment.

At one point in the ABM hearings I understand one senator asked how it happened that scientists, who were supposed to know "the truth," could so convincingly come out with such widely different predictions. To this sensible question I can offer two suggestions—perhaps answers. The first is that the scientific method is dual, the use of both experiment and theory to predict future phenomena. The experimental data result in parameters (assumptions) to be inserted in the theory (analysis) to produce the predictions. The immensely complex calculations needed to land the Apollo missions accurately would have been useless without precise values of the experimentally determined data on the gravitational fields of the earth and the moon. Anyone who argues about a possible 5 or 25 percent error in the calculation of missile vulnerability without first making sure of the input parameters, or *realistic* values of our weapon capabilities and the potential of our enemy (to at least that same accuracy) is not arguing scientifically. And, in the present circumstances (thank God) we have no means of experimentally determining those input parameters to that accuracy.

Therefore the argument must be based on experience and judgment, as to the most likely value of these input parameters. I, for one, would rather place my bets on the judgment of those who have had broad experience in strategic weapons evaluation, such as a presidential science advisor, rather than on the opinions of an analytic specialist or a protagonist of some new weapon. The argument here is not about the truth or falsity of some scientific law, it is about the plausibility of the assumptions on which the calculations are based. And I submit that Congressmen are as capable of judging the experience and realism of the protagonists as are any technical expert. These are *not* questions of science, they are matters of judgment, based on experience. Anyone who tries to argue his case for the ABM on the grounds of the accuracy of his analyses is either scientifically naive, or else he thinks it doesn't matter, that the time will never come when hard reality will provide a check on his assumptions.

My second suggestion is more tentative. There is a whole gamut of "sciences," from the "hard sciences" to the "soft sciences," which can be graded in regard to the ease or difficulty of determination of their assumptions. To a physicist or chemist the experimental determination of the theoretical assumptions, the basic parameters, is as important to him as is the mathematics of the theory which uses the parameters: it is all a part of his science. The economist or the sociologist has a much harder task in verifying his assumptions quantitatively. In many cases agreement on assumptions must as yet be based on polemic or on philosophical arguments rather than on verifiable, quantitative experiment. Unfortunately, when studying military strategy or pollution or energy needs for the country, when both "hard" and "soft" scientists participate, this distinction between assumptions based on measurement and assumptions based on judgment are often forgotten, or misunderstood. And at times a non-experimentally-verifiable assumption, or the results of analyses based on such an assumption, is presented as a scientific conclusion. In such cases you of course will find scientists reaching widely varying conclusions, depending on the assumptions they have made; the differences are not in the science but in the experience and judgment of the protagonists.

This is of course not to say that science is of no help in cases where assumptions cannot be verified experimentally, under realistic conditions. Analysis can work out the consequences of the assumptions, and often can work out ways whereby some assumptions can be verified with minimum effort and disruption. But both scientists and Congressmen must distinguish between the verifiable, scientific part of the study and the "unscientific," as yet unverifiable assumptions, which must be decided, hopefully, by the best judgment available. That best judgment may be that of an experienced scientist or it may be that of a Congressman or a general; it shouldn't be called science.

I hope this general discussion will answer some of the questions behind your questions. As I said at the beginning, I am not an expert on ABM's, but I have had experience in many similar problems, both military and non-military, and I am sensitized to the crucial importance of distinguishing between science and assumptions based on judgment. I am not ashamed, as a scientist, to disagree violently with a fellow scientist

on matters based on experimentally unverifiable assumptions. I might not think much of my opponent's judgment, but I certainly would not say he was unscientific.

Sincerely,

PHILIP M. MORSE,
Director Emeritus.

NEW YORK, N.Y., *January 12, 1972.*

Hon. JOHN SHERMAN COOPER,
Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
U.S. Senate, Old Senate Office Building, Washington, D.C.

DEAR SENATORS COOPER, HART, AND SYMINGTON: I apologize for being so late in replying to your request for comments on the ORSA report about the 1969 ABM debate. As I mentioned in my earlier reply, I have been very busy traveling on business in recent weeks. A more important cause of delay, however, has been the difficulty I have experienced in composing a reply that addressed the issue I believe underlies your request: whether the Congress, and the people, can obtain expert opinions on a subject on which we are divided without having those opinions shaped in part by the political rather than the professional attitudes of the experts. I have concluded that I cannot do this without distorting my actual views if I adhere to the format for reply you suggested.

I am certain it is not necessary to stress that in the end a Senator or Congressman must make up his mind on an issue, even a "scientific" one, using his own best resources of character and judgment to sort out the authoritative things he has heard from those that merely reflect, however strongly and admirably, the political, social and strategic opinions of a scientific expert. In the case of the ABM debate, the contradictions among the opinions of scientific witnesses were especially stark. I do not believe this resulted from dishonesty or irresponsibility of the witnesses. Fundamentally, the trouble with the ABM debate's scientific testimony is that the issue itself is not very scientific. Practically, the trouble is that open hearings or debates before a lay audience tend to confuse technical and non-technical opinions and to emphasize differences rather than matters of agreement even on scientific questions.

That the ABM issue is not very scientific seems to me clear. There is not very much of a range of opoinion about either the physical phenomena that impinge materially upon ABM or even the technology used to exploit or otherwise deal with those physical phenomena. All scientific witnesses who participated in the debate believe the same fundamental things about how radars work, missiles accelerate, and nuclear explosions corrupt the environment. They differ on such issues as the severity of the technical challenge involved in dealing with such phenomena, on the merits of certain technical system implementations versus alternatives, and, in the end, the extent to which an ABM system will do the job expected of it.

They differ, as reasonable people will inevitably differ I believe, on a complicated matter. We have never and, God willing, never will fight a nuclear ballistic missile war. We have no means beyond the most careful thought and interpretation of data gathered in ways other than war to judge how a system will function in the conditions of war. We do not even know with high certainty what kind of attack we might face. We have intelligence data, data that I believe give reason for very serious concern, but we do not and cannot know in precise detail the characteristics (e.g., accuracy) of an enemy's weapons, the way he would use them, and the way he would relate the use of his ICBM's to the use of his other weapons. However, scientific experts can present to the Congress a well-done set of assessments about ABM system capabilities, based on the use of certain data and judgments. The sources and estimated quality of data used can and should be stated. The sources and bases of judgments should also be stated.

The forum of open hearing or debate has two properties which work against the purposes of the Congress and the public if these purposes are primarily to identify which scientific issues are agreed upon among the experts and which are matters of genuine technical dispute, and only secondarily to solicit the non-technical opinions of the experts. The first counter-productive property, as pointed out by the ORSA group, is that the forum is an adversary proceeding. This tempts, if not encourages, each witness to "display only the part (of his analysis-that appears strong, holding back the vulnerable part," because the witnesses "attempt to influence . . . decisions through the presentation of their cases" and because "those presentations are designed to indicate the reasons why the decision should be made favorable" to the witness. (Quotes from ORSA report, pp. 1132f.) The second counter productive property of the open hearing or debate is its conduct before a lay audience. This makes possible the presentation of statements of questionable technical quality and can lead to confusion of technical and non-technical statements. In addition, it places a rebutting witness in the position of introducing apparently petty, abstract or narrowly technical objections into a proceeding which is being conducted in far broader terms than the scientific—terms familiar to the lay audience and indeed appropriate to the interests and responsibilities of that audience. This can be so even if the narrow technical objection bears crucially on the validity of an argument whose technical value is presumably the primary reason for open hearing of its proponent in the first place.

The ORSA group focused on the difficulties occasioned by the adversary process and recommended an exchange of written technical analyses for review, appraisal and analysis by the organization to which testimony is offered and by recognized and competent adversaries. This written exchange would precede oral testimony and provide background against which testimony urging a course of action could be weighed.

In my judgment, and with particular reference to the ABM debate, the Senate could have obtained better information than it did by arranging to have scientists who were well informed about the physics and technology embodied in various ABM systems meet privately and deliver to the Senate (or the appropriate committee) a report on their private debate. The report should, of course, describe the range of opinions held, who held them, and why. ABM is a subject of great importance, complexity, and subtlety. In my opinion, on it or and similarly complicated and controversial subject, the Senate is quite unlikely to receive much less diversity of view from scientists than it does from laymen. However, the discipline inherent in a debate among peers, preceding a formal report to the Senate could serve to sharpen arguments, to clarify agreements and differences, and generally to allow each Senator (and Congressman) to judge better the utility or irrelevance of scientific argument to the issue before him.

There is another related matter that concerns me very deeply. I refer to the tendency that I believe exists to "downgrade" the opinions of scientific witnesses from the Executive Branch because they are presumed to be pressing a view that conforms to Executive policy rather than to the necessary implications of science and technology. In some cases this tendency has been extended to question the veracity of those, like me, who earn their livings outside of Government employment by working on technical material related to that which is under debate. It is, in my opinion, important to realize that such people are likely to be the best technically informed ones we have. I think a Senator is justified in estimating the extent to which a scientific witness's views are affected consciously or unconsciously by his own interests. But I do not think a witness should be disqualified as a source of information and opinion because he works in a field and under a sponsor involved in the debate. To do that would leave to Congress only those witnesses whose information is old or who have never performed sustained, pertinent work.

I appreciate your inquiring about my views on this matter. I would be happy to visit you, if you wish me to do so, to offer any information or judgments I have that might be helpful to you.

Sincerely,

LAWRENCE H. O'NEILL.

STANFORD UNIVERSITY,
Stanford, Calif., November 10, 1971.

Senator PHILIP A. HART,
Senator STUART SYMINGTON,
Senator JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART, SENATOR SYMINGTON, AND SENATOR COOPER: Thank you very much for your letter of November 5, 1971 asking me for comments on the ORSA Report, published in the September 1971 issue of their journal, entitled "Operations Research."

To be blunt I consider the type of appraisal undertaken by the ORSA subcommittee as an outrageous practice to be sponsored, even indirectly, by a professional society. I feel that more valid complaints about the professional standards of those preparing the document can be made than the report does about those it purports to investigate. However, this is not the main point. A more valid question is whether a specialized professional society should take it upon itself to analyze a controversy involving views in which many disciplines—physical sciences, operations research, social sciences, computer science, and many branches of engineering—are clearly involved. We are dealing with a subject where judgment based on technical knowledge and experience, rather than pedantic calculations based on ill-founded assumptions, are frequently most essential.

My most severe criticism is that the report deals only with the less important part of the ABM question: That is, how to forecast the prospective threat to the U.S. Minuteman deterrent. By their very nature such projections are subject to great uncertainty since neither technical performance, strategic intent, nor rate of buildup of Soviet weaponry can be predicted with confidence. The much more important question is whether the Safeguard system can deal with the threat, should it continue to evolve; it is this point which drew most of the valid criticism. The Safeguard system, even if it performs fully as specified, can deal only with a very narrow band of threats. The ORSA Report does not deal with this much more basic question at all; it is that problem which has to be faced by the Congress in deciding whether the Safeguard system is a justifiable investment for the shrinking defense dollar.

I consider the ORSA Report to be an unfortunate precedent in that it might be interpreted as a mechanism of intimidating witnesses requested to testify before the Congress; I am glad, therefore, that you are giving it some critical attention. I am attaching to this letter answers to your specific questions.

Sincerely yours,

WOLFGANG K. H. PANOFSKY,
Director.

REPLIES TO QUESTIONS TRANSMITTED BY SENATORS HART, SYMINGTON, AND COOPER THROUGH THEIR LETTER OF NOVEMBER 5, 1971, ENTITLED "SOME QUESTIONS CONCERNING THE REPORT OF THE ORSA AD HOC COMMITTEE OF PROFESSIONAL STANDARDS ENTITLED "GUIDELINES FOR THE PRACTICE OF OPERATIONS RESEARCH" CONTAINED IN OPERATIONS RESEARCH, VOLUME 19, NO. 5, SEPTEMBER 1971

1. Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time; its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite?"

Answer: The technical scope of the Ad Hoc Committee report is definitely much too narrow to evaluate the fundamental questions regarding Safeguard ABM before the Congress. The ORSA Report dealt primarily with points of disagreement among Drs. Wohlstetter, Rathjens and others concerning the projection of the threat to Minuteman. Naturally such projections will depend on the assumptions made. However the principal point, namely whether the Safeguard ABM offers any significant protection to the Minuteman force, even if it worked perfectly, was not addressed at all in the report. It is this point which deserves the brunt of the criticism. It is clear that Safeguard is not as good a system for the protection of Minuteman as a "dedicated" system such as "Hardsite."

2. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

Answer: No. The ORSA Report Demonstrates the limitations of attacking a broadly based problem by a narrow inquiry based on operations research methods only, without examining the latitude of the underlying technical assumptions.

3. In projecting the vulnerability of Minuteman, much was believed to depend upon whether one considered "reprogramming of Soviet missiles for failure" and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" were plausible Soviet tactics for the mid-seventies:

Answer: In order to claim that Minuteman and the bomber force can both become vulnerable to a conjectured Soviet first strike attack two assumptions were made in the ORSA report: One is that Soviet missiles could be reprogrammed in case of failure, and secondly, that simultaneous attack on U.S. missiles and bombers through pindown was feasible. Both are highly questionable assumptions. The first question—that of reprogramming—is less critical to the analysis. It would simply control the missile inventory the Soviets would have to possess before a valid threat to Minuteman might be assumed. The DOD previously rejected the option of reprogramming of U.S. missiles in case of failure as being too cumbersome and also as being vulnerable in that the enemy might jam or spoof the reprogramming commands. Reprogramming is particularly difficult from the engineering point of view if a MIRV'd force is considered; reprogramming might be feasible to compensate for launch failures but if it is even more difficult if one considers reprogramming to compensate for failures in MIRV'd separation from the "bus." Also, very little time would be available if the latter tactic were used. I consider reprogramming to be a very unlikely tactic for the Soviets to use, considering that a first strike attack would have to be executed with high confidence.

Pindown of the Minuteman force requires an enormous number of carefully timed nuclear explosions. In Congressional testimony both this fact and the very difficult reliability problems which a first strike attacker would face in manning such an attack was pointed out. The only comment the ORSA report gave was "The Committee does not feel that discussions by Panofsky on the infeasibility of coordinated strikes against U.S. bombers and missiles satisfactorily refute Foster's claims." The report gives no analysis of any kind and does not substantiate its criticism. The ORSA report also assumes that if the Soviets would adopt such a tactic then the U.S. would simply not launch the Minuteman force while the pindown is in progress and thereby wait for SS-9 or other Soviet counterforce missiles to arrive to destroy the Minuteman missiles in their silos This would be a nonsensical tactic for the U.S. Even if pindown were attempted by an enemy force it would clearly be sensible to launch Minuteman missiles through the pindown barrage with the expectation that some of the missiles would get through anyhow. Under this tactic the reliability the Soviets would have to assume for their pindown forces would be excessive to give any confidence to the Soviet planners in their success.

Considering all this combination of circumstances I consider pindown tactics to be totally implausible Soviet tactics for the mid-seventies. I might add that my judgment which was attacked in the ORSA report as "not being proven" was confirmed by testimony by Lt. General Glaser during his testimony before the House Armed Services Committee at the FY 1972 Hearing, page 4523. General Glaser reiterated in detail the same timing sequence which had been given in my testimony documenting the infeasibility of coordinating strikes and thereby dismisses the feasibility of a pindown attack by implication.

4. Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?

Answer: I consider the Administration's justification for Safeguard to be totally misleading in pinpointing a particular level of threat against which Safeguard would have some effectiveness. If the threat were less than that projected, Safeguard would not be needed; if it were larger the effectiveness of Safeguard could easily be nullified. Uncontroverted evidence introduced into Senate testimony made it evident that Safeguard would be effective only against a very narrow band of threats. The matter has never been brought to proper public attention because the total fire power (number of interceptor missiles) which the Nation is asked to buy for Safeguard is still classified.

5. Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?

Answer: It is my belief that the technical offices within the Defense Department who proposed the Safeguard system have now conceded *de facto* that the opponents are right in insisting that the MSR is the "Achilles Heel" of the Safeguard system and that therefore less vulnerable Safeguard radars should be developed. The increasing insistence on the "Hardsite" development bears witness to the fact. Hopefully progress at SALT will make this an academic question.

6. Did the Ad Hoc Panel make full use of all the information available to the responsible committees—the Armed Services and Foreign Relations Committees—both classified and unclassified, concerning the Soviet threat and Safeguard ABM performance capabilities against a range of Soviet threats?

Answer: I conclude that the Ad Hoc Panel was highly restricted in its inquiries. It did not make full use of all information available to all committees of the Congress, in particular it ignored testimony or criticism of Safeguard performance.

7. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

Answer: The Ad Hoc Panel ignored technical factors, in particular those relating to the engineering of the Safeguard system and therefore the competence in arriving at its findings could be seriously questioned.

8. Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of *all* witnesses pro and con who were called before the two Committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc Group on Safeguard for FY 1971 (the O'Neill Report) submitted to the Secretary of Defense on January 27, 1970?

Answer: The Ad Hoc Panel was highly selective in the choice of witnesses investigated. Specifically, the Ad Hoc Panel ignored the testimony given by most of the non-government, pro-ABM witnesses testifying before the Congress, in particular that given by Seitz, Teller, Wigner, Nitze, Brennan, Fink, O'Neill, W. McMillan, Herzfeld and Wheeler. Most of these pro-ABM witnesses showed a great deal of ignorance about the actual engineering features of the Safeguard system. The Ad Hoc Panel also did not reference the evaluation contained in the O'Neill Report, submitted to the Secretary of Defense on January 2, 1970, which concluded that if defense of Minuteman were the only mission of Safeguard then deployment would not be recommended.

9. Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?

Answer: The ORSA Panel clearly did not apply the same standard of judgment to the pro and con witnesses. As an example the ORSA Panel failed to reveal any criticism against the analysis of Wohlstetter, Herzfeld, Libby and McMillan, submitted to Senator Henry M. Jackson on August 10, 1970 which claimed that deployment of Safeguard would increase the price of admission to the Soviets for attack against the Minuteman force by 800 (!) additional re-entry vehicles. Moreover, as stated in my reply to question 8 above, the ORSA Panel omitted any judgment of those witnesses testifying for the ABM which might have been subject to considerably more valid criticism than those treated by the report.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Cambridge, Mass., November 26, 1971.

Hon. JOHN SHERMAN COOPER,
Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
U.S. Senate,
Washington, D.C.

DEAR SENATORS COOPER, HART, AND SYMINGTON: Distasteful as the whole ORSA episode has been to me, I nevertheless welcome your invitation to comment on the Report. You will, I am sure, appreciate that, as I am one of those most severely criticized, my comments are hardly those of a dispassionate or objective observer.

I shall try first to respond to your specific questions, and will then offer some more general comments. I would also call your attention to comments, a copy enclosed, prepared some time ago by Steven Weinberg, Jerome Wiesner and myself.

All of my comments really apply primarily to Appendix III of the ORSA Report. The Report proper I found generally innocuous

and noncontroversial. There is no discernable relationship between it and Appendix III.

Responses to questions

1. Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time; its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite?"

It is clear that the scope of the ORSA inquiry was not adequate to permit an evaluation of the need for Safeguard, its effectiveness nor whether other alternatives for protection of Minuteman might be preferable. In fairness it must be said that the authors made no claim for such breadth. On the contrary, they explicitly denied any intent to examine all of the issues involved in the Safeguard debate. However, notwithstanding the denial of intent and the failure to look into the many issues, the Committee seemed quite willing to draw conclusions, which were predictably emphasized by the press, and not denied by ORSA, that can be construed to be far more sweeping than the ambit of its inquiry. A quotation from page 1217 of the Report will illustrate the point.

"It must be noted . . . that the analytical arguments presented by spokesmen for Safeguard within the Administration were *carefully examined* (*emphasis* added). While shortcomings were found as documented below, they nowhere equalled the cumulative mass of inadequacies compiled by the opposition."

There is no qualification as to the facets of the debate to which this judgment is meant to apply and the paragraph immediately preceding the quotation suggests it is appropriate to the whole debate. Neither is there evidence to justify the statement that the Administration's arguments were carefully examined. Certainly there is nothing in the report to suggest that the Committee looked in depth into the question of the overall vulnerability of U.S. relatiatory capabilities, much less into the effectiveness of Safeguard or alternatives.

2. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

The ORSA inqiury, even had it dealt competently with the issues it purported to be addressing, was of such narrow scope that it would not have permitted valid conclusions about the quality of the Safeguard debate as a whole nor about the need for, or utility of, Safeguard.

Notwithstanding the narrowness of the inquiry, some interesting conclusions can, however, be drawn from the Report. These relate not so much to either the Safeguard question or the character of the debate as to the competence and judgment of the ORSA Committee and perhaps by extension to ORSA as a society and to the community of operations analysts. (This is discussed further under *General Comments.*)

3. In projecting the vulnerability of Minuteman, much was believed to depend upon whether one considered "reprogramming of Soviet missiles for failure" and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" were plausible Soviet tactics for the mid-seventies?

The plausibility of "missile reprogramming", and to an even greater extent, "pindown" are definitely *not* just questions of operations research.

In judging whether reprogramming would be a feasible Soviet tactic the following considerations would be important: the nature of the Soviet command and control system including the extent of usage of computers and their quality, the nature of the guidance system for Soviet missiles, the reliabilities and accuracies to be expected, the time and mechanisms for separation of multiple warheads, the size of the Soviet force compared with the target system to be attacked, the response time and doctrine of the U.S. command and control systems, the vulnerability of U.S. missiles. There is little information available, at least to the American Defense community, about the issues relating to Soviet capabilities and practices, and indeed there is probably considerable uncertainty even regarding the vulnerability of U.S. missiles and the U.S. response capabilities. Accordingly, whether or not reprogramming would be a feasible or desirable Soviet tactic is uncertain. It is a matter of judgment. My belief is that some degree of reprogramming would probably be technically feasible, e.g. that which could compensate for missiles not in alert status, for failures during countdown, and probably for launch failures. I am dubious about the feasibility of compensating for failures during rocket staging and particularly for those involved in MRV or MIRV separation. However, even the degree of reprogramming which I would regard as technically feasible would offer little advantage unless there were a high expectation that a single delivered Soviet warhead could destroy its target. Considering the yield-accuracy combinations that might be expected for Soviet MRV or MIRV warheads in, say, 1975, I would not envisage the Soviet Union going very far with reprogramming by that time.

The assumptions made by DoD spokesmen, by Albert Wohlstetter, and by the ORSA Committee seem to me unrealistic in this regard. Even were the Soviet Union to achieve the high yield-accuracy combinations assumed by them, which I believe unlikely, there would remain the fact that the Soviet leadership would almost certainly not have the confidence in the *reliability* of its missiles that would be required to make an attack involving less than two warheads per U.S. target a realistic option. They would need high confidence that there would be no, or only very limited numbers of, missile failures for which reprogramming could not compensate. This would require tests of Soviet missiles in numbers that seem unrealistic in the time frame under consideration.

I consider a "pindown" to be a low-confidence tactic which one might employ if one had adequate resources and had, on the basis of other considerations, decided to attack. However, it is *not* a tactic on which one would care to base the fate of a nation. Note in this connection that proponents have hypothesized Soviet SLBM attacks "pinning down" U.S. missiles for a period of perhaps 15 minutes prior to arrival over U.S. targets of Soviet ICBM warheads. There are many possibilities of failure in such an attack; e.g. a submarine being sunk at the last minute, one not executing its launch order, the possibility that the vulnerability of U.S. missiles during the boost phase may have been overestimated, or that U.S. aircraft with weapons might be put in the air based on the concentration of submarines or a communications intercept. Thus, even aside from the question of SLBM force requirements, such an attack would seem to be too fraught with risks for the would-be attacker to be considered a realistic possibility.

The feasibility of "pindown" is then, too, a matter of judgment. As regards both "pindown" and "reprogramming" there is little room for operations research considerations to come into play directly, there having been no directly relevant operations on which to do research. Experience with the operation of other complex systems can, and should, of course influence judgments. Many scientists, engineers and military people probably have at least as much relevant experience as operations researchers in this regard.

4. Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?

Safeguard, as presently planned, would have utility for defense of Minuteman only over a very narrow range of threats. Moreover, this will continue to be the case unless there is a *drastic* change in the plan—the introduction of redundant radars, large increases in the numbers of interceptors, or both.

The Administration's use of a threat of 420 SS-9's to build its case for an ABM defense seems clearly to have been designed to put Safeguard in its best light. Using the same assumptions made by the Administration regarding Soviet missile performance and tactics, one notes that, without defense, the number of Minuteman missiles that could be expected to survive a Soviet attack would increase by almost a factor of three (from 50 to 138) if the Soviet threat were only 10% less than hypothesized. Thus, the case for Safeguard would be very much weakened. Similarly, modest increases in the threat would make the case for Safeguard very weak because it could be so easily overwhelmed.

5. Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?

The existence of an active program to develop a so-called "hard-site" defense employing smaller, cheaper, less vulnerable radars clearly demonstrates that the Administration now recognizes that its opponents were correct in identifying the MSR as the Archilles' heel of Safeguard. (Whether the positions of many of the Safeguard proponents outside of the Administration have changed as did that of the Administration is not clear.)

6. Did the Ad Hoc Panel make full use of all the information available to the responsible Committees—the Armed Services and Foreign Relations Committees—both classified and unclassified, concerning the Soviet threat and Safeguard ABM performance capabilities against a range of Soviet threats?

The Ad Hoc Committee did not claim it used all available information regarding the threat to Minuteman or the performance of Safeguard nor did it do so. On the contrary, it generally accepted Administration assumptions without questions, and otherwise was selective in its use of inputs to its study, generally rejecting those inputs which would have thrown doubt on its conclusions.

7. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

The work of the Ad Hoc Committee is of poor quality, particularly when it is recognized that it took some 21 months. This is true on an absolute scale and also when one measures it against the statements of either proponents or opponents of Safeguard, all of whom were, in the 1969 debate, responding on time scales measured in days or weeks.

Two examples, to which I have already referred, will demonstrate that the report of the Ad Hoc Committee is incompetent even if measured within the narrow framework in which it chose to work and even if one restricts one's consideration to matters of operations research.

In considering the attack against the U.S. Minuteman force hypothesized by the Administration, a critical issue is the confidence the Soviet leadership would have to have that

there would be few missile failures of a kind for which reprogramming could not compensate. In the real world this is a very difficult problem because one never knows just how much degradation in performance is to be expected when one goes from the test range to the execution of an operational plan. But putting that aside for the moment, there is a simple problem in statistics which would seem to be the operations analysts' meat. That is, the determination of the kind of Soviet missile test program that would be required to make the Wohlstetter-DoD assumptions regarding reprogramming realistic *even assuming no operational degradation*. Consideration of this problem would have demonstrated the unrealism of at least the DoD assumptions if not also Wohlstetter's. Yet, the ORSA Committee, despite its leisurely time scale, preoccupation with the reprogramming question and sensitivity to the costs of missile testing,[1] did not bother to consider it.

Perhaps a more serious indictment is the failure of the Committee to comment on the sensitivity of the Administration's case for Safeguard to its use of the 420 SS-9 missile threat to Minuteman.[2] If there is a single "first commandment" for operations analysts it is perhaps "test the sensitivity of your conclusions to your assumptions". The Committee simply failed to do this despite its claim to have examined the Administration's analytical arguments closely. Had it, in fact, done so, the results would have been devastating as regards the Administration's case.

8. Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of *all* witnesses pro and con who were called before the two committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc group on Safeguard for FY 1971 (the O'Neill Report) submitted to the Secretary of Defense on January 27, 1970?

Any balanced inquiry regarding the ABM debate would presumably have looked into the statements of all witnesses and all relevant documents, or alternatively into some subset of them selected on the basis of objective ground rules. The first, more exhaustive, kind of inquiry would seem to have been indicated for the ORSA Committee considering the kinds of sweeping judgments it chose to draw regarding the debate.

The Committee, of course, chose neither of these alternatives. Rather it permitted the specification of charges and the identification of source materials and persons to be investigated to be determined almost entirely by one of the participants, Albert Wohlstetter, into whose behavior it was to inquire. Indeed, Appendix III of the ORSA report reads very much like an elaboration of an outline provided for it in Mr. Wohlstetter's instigating letter. (Note, although the Committee included Mr. Wohlstetter's letter as item A of Appendix IV to its report, it excised those paragraphs to which the above comment refers.)

9. Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?

Manifestly the ORSA Committee did not apply the same standards of judgment to all witnesses as a few examples will illustrate.

(a) It criticised me for using a cube root scaling relationship between weapons yield and blast effects[3] while not commenting on the use of the same relationship in statements by Messrs. Laird and Packard in the same debate.[4]

(b) It repeatedly criticised opponents for what it termed inadequate documentation of assumptions, citation of sources, etc. while never commenting on the similar inadequacies of DoD spokesmen.

(c) It simply failed to take note of the many technical errors by Administration spokesmen, e.g. Secretary Laird's statement regarding the coverage to be provided by Safeguard for the Minuteman force.[5]

(d) It apparently looked at (or at least paid attention only to) that private correspondence which it felt it could use to favor Wohlstetter's case, avoiding that which would not.

(e) It criticised opponents for making what it regarded as unrealistic assumptions regarding lead times for deployment of offensive systems but failed to criticise Administration spokesmen for making equally optimistic assumptions regarding deployment of Safeguard.[6]

(f) It did not comment on a paper by Messrs. Wohlstetter, Herzfeld, Libby and McMillan in which they compared Soviet requirements to destroy 70% of the undefended Minuteman force with requirements to destroy 95% of the defended force but in which they did not explain the extent to which the increase in force requirements was due to Safeguard and the extent to which it was due to the change in the ground rules regarding the level of destruction to be achieved.[7]

(g) It changed a statement in its preliminary draft criticising Mr. Wohlstetter for incorrect interpretation regarding my work to one in the final daft indicating he had difficulty in interpreting my results,[8] thereby attempting to obscure where the burden of error lay.

(h) It applied different ground rules in judging whether participants in the debate had an obligation to respond to points raised by others. I, and I believe the other opponents, felt no more obligation to respond to Mr. Wohlstetter's (or ORSA's) every comment than Administration spokesmen apparently did to ours. Yet, the Committee criticized the opponents, me particularly in some detail,[9] for not acknowledging and responding to some of Mr. Wohlstetter's calculations and comments while not similarly criticising Messrs. Laird, Packard and Foster for not responding to arguments, calculations, or questions raised by outside opponents or even Senators. (While the opponents felt their differences were primarily with the Administration, somehow the Committee labored under the delusion that they wished, and were obligated, to quarrel with Mr. Wohlstetter just because he wished to do so with them!)

(i) Finally, the selectivity of issues to be investigated by the Committee raises a broader question of standards of judgment. Any look at the ABM debate as a whole would have found the DoD case regarding the effectiveness and utility of Safeguard very much wanting. Mr. Wohlstetter's performance would have had to have been judged still more harshly since he avoided discussing that question even though it was the central issue in the debate. Thus, by permitting him to specify the terms of its study, the Committee avoided inquiring into those facets of the debate that would have been most embarassing as regards his performance, and to lesser degree, the DoD's.

GENERAL COMMENTS ON OPERATIONS RESEARCH AND ITS RELATIONSHIP TO THE SAFEGUARD AND SIMILAR QUESTIONS

The ORSA report, and Albert Wohlstetter's letter which instigated it, emphasize the relevance of operations research to the Safeguard debate. Indeed, Mr. Wohlstetter made a particular point of the superior qualifications of operations researchers and the lack of qualifications of others to deal with some of the issues involved.

". . . many of the issues in the ABM debate plainly involved operations research and systems analytic questions of a familiar kind: problems of coordination of military operations, the probability of destroying targets of specified hardness by missiles with specified performance characteristics. Some of the men speaking on these issues used an authority acquired in other fields than operational research to gain credence for dicta about such matters as the supposed impossibility of jointly attacking both bombers and missiles. However, experience in high energy physics, electrical engineering, etc. is not enough on these matters. Familiarity with various pindown tactics in military operational research is quite relevant."[10]

Actually, operations research, narrowly construed, was almost irrelevant to the ABM debate. We have had no experience involving the operational use of either ballistic missiles with nuclear warheads or ABM systems on which to do research. *No one* is really familiar with pindown tactics, at least not with those involving nuclear explosions to prevent missile launch.

There was a case for *systems analysis* in connection with the Safeguard question and a great deal was done. However, this is a very different thing than true operations research and the distinction is not trivial in this instance. In the case of operations research, such as might occur in a war-time military campaign or in peace time in running an air line, one will hopefully have hard, and rather directly relevant, empirical data as a basis for analysis. It may be sufficiently precise to justify a considerable expenditure of effort in modeling operations in order to draw inferences as to how to conduct them with greater effectiveness. The operations research community and presumably ORSA have made contributions to facilitate dealing with such problems.

But in the case of the analysis of systems not yet built, and which may never be used operationally, the problems are different. In some cases inferences can be drawn about the likely feasibility, performance and operational degradation of one system by considering others of similar complexity that may have operated in similar environments. However, very often the similarities will not be great, and when that is the case expertise in operations research and the use of its analytical techniques may well be less useful than broad experience with complex systems, military operations and human behavior, and knowledge of physics and engineering.

In such circumstances excessive attention to numerical detail, mathematical manipulation, and documentation may be quite unwarranted. Indeed, in Congressional testimony and in many other circumstances, such detail could convey a misleading impression of confidence in quantitative analysis and of certainty in conclusions with respect to a problem actually dominated by uncertainty—uncertainty as regards future technology and adversary capabilities and perhaps, above all, by the uncertainties relating to the degradation in performance to be expected of operational systems the first time they are actually used. Uncertainties of the last kind merit special attention in consideration of nuclear war. Yet, they are hardly discussed in the ORSA Report, and indeed were little discussed in the ABM debate.

I would suggest that this was a less serious omission in the case of the opponents than in that of the proponents. The former to a substantial degree, sought to demonstrate the lack of need the ineffectiveness of Safeguard or both, putting aside considerations of operational degradation. This seems reasonable in that consideration of operational degradation in either Soviet offensive, or U.S. defensive, capabilities would make the case for a defense even weaker. On the other hand, arguing *for* Safeguard without considering the uncertainties inherent in a "first-strike" and the unrealism of expecting political leaders to initiate such a strike without near-

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Footnotes at end of article.

perfect confidence of its effectiveness hardly seems sound. Yet, that is largely what the Safeguard proponents did, at least up to the point where they came around to basing their case largely on the bargaining chip argument rather than on military need or utility.

The report of the ORSA Committee reflects an acceptance of the approach generally used by Safeguard proponents. Emphasizing the relevance of operations research to the problem, it simply failed to consider problems of operational degradation, accepted Administration assumptions about both Soviet capabilities and expected Safeguard performance with apparently no attempt at understanding of their basis, and then treated these assumptions as facts,[11] apparently judging that others should have too. Not only does the Report reflect these unfortunate qualities, it also illustrates another that one associates with the worst of operations research and systems analysis: this is, an all-too-often-seen willingness of practitioners to be most shamefully used—in this case, coupled apparently with such a capacity for self-deception that it is very likely that the authors actually believed they were engaged in a legitimate scientific endeavor in the public interest.

The acceptance of the Report by the ORSA Council, its publication, the failure of the Society's membership to repudiate it, and the fact that the Ad Hoc Committee was composed of men who have held high office in ORSA and similar organizations may lead parts of the broader scientific community and the general public to conclude that the majority of the Society's membership and perhaps of the operations research community find the approach of the Committee a congenial one.

Although the Report and the events relating to it have certainly diminished my respect for ORSA, I have seen too many excellent studies and have known enough men of integrity and good sense who have engaged in such work that I would not wish to judge the majority of the Society, much less of the operations research/systems analysis community by it.

The ABM debate reinforced my conviction that in matters of technological assessment, particularly where one cannot rely on the reproducibility of experimental data, there is great merit in the use of adversary proceedings. The incompetence and bias of the ORSA analysis provides further support for that thesis.

I sincerely hope that the negative judgments of the ORSA Ad Hoc Committee about the performance of the opponents in the ABM debate will not be construed as a persuasive argument against the utility of the adversary process and that the Congress will continue to feel it useful to call on outside technical experts when it is confronted with major questions of public policy where technical considerations are of some importance.

Sincerely yours,

G. W. RATHJENS.

FOOTNOTES

[1] The Report, page 1236.

[2] The Committee's mild criticism of John Foster's analysis (the Report, page 1200) does *not* meet this point.

[3] The Report, page 1188 and page 1192.

[4] Senate Armed Services, FY 70, page 127 and page 161.

[5] Senate Foreign Relations Disarmament Sub-committee—1969, page 180.

[6] In criticising the Safeguard opponents, the Committee argued that it would take 5 or 6 years before the first deployment of an operational ICBM, or 3 or 4 even on a crash basis (page 1234 of the Report) even though no R & D would be required. It failed to comment on the claims by Secretary Packard (Senate Foreign Relations Disarmament Sub-committee—1969, page 276) that two Safeguard sites would be operational in early 1974—"late 1973 if we accelerate it", even though R & D was far from complete.

[7] Statement on the Effectiveness of the Safeguard ABM System, submitted to Senator Henry M. Jackson, August 10, 1970. The Committee's rejoinder to this critcism might be that it was considering only, or primarily, the 1969 debate. However, such a response would seem unwarranted considering its use of other materials from the 1970 debate when they served the Committee's purposes. See, for example, the Report, page 1216.

[8] Conclusion e5, page III-27 in the preliminary draft; page 1193 in the final report.

[9] The Report, pages 1190, 1191, and 1192.

[10] Page 2 of his letter of November 8, 1969, to Thomas Caywood, then President of ORSA.

[11] ORSA's treatment of reprogramming is particularly impressive in this regard. It includes assumptions that have no basis whatever in observations of Soviet technology. For example, in its exemplary calculation it assumes true MIRV's capable of 50 mile dispersion. (The Report, page 1207).

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Cambridge, Mass., December 15, 1971.

Hon. JOHN SHERMAN COOPER,
Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
U.S. Senate,
Washington, D.C.

DEAR SENATORS COOPER, HART, and SYMINGTON: This is in reply to your letter of November fifteenth requesting my views of the recent ORSA report regarding certain ABM testimony.

I would like to state my perspectives on the ABM debate before commenting on the contents of the ORSA report, since it seems to me that the report can only be viewed in the total context of the debate.

The decision on whether or not to deploy Safeguard for Minuteman defense seems to me to have required that the following questions be addressed in logical order.

1. Was our Minuteman force soon to become vulnerable to almost total destruction by a Soviet nuclear attack?

2. If so, how dangerous was this to U.S. security? Might Minuteman vulnerability tempt the Soviet Union to a "first strike" in a period of crisis in spite of our other retaliatory weapons?

3. Would the Safeguard system offer adequate protection for our Minuteman force, if indeed Minuteman warranted protection?

4. How does Safeguard compare to alternatives that may be available for responding to the threat?

5. Even if technical and military considerations do not justify Safeguard, are there political and diplomatic reasons for deployment?

Each of the experts who testified for or against Safeguard had his own individual set of reasons for his position but it seems to me that it is possible to summarize the main pro and con arguments as follows:

The pro-Safeguard witnesses argued that Minuteman could soon be in danger, that our national security demanded retention of a full "triad" of "invulnerable" strategic forces and that Safeguard was our natural and ready response to the growing Soviet SS-9 force which was endangering Minuteman. Alternative responses (i.e. a new Hard-site ABM system, new launching doctrines for our missile force, etc.) were either unattractive or too long in coming. The main thrust of these arguments was focused on Minuteman vulnerability and relatively little time or analysis was devoted to the technical merits of Safeguard per se.

The anti-Safeguard technical witnesses argued that Minuteman might or might not become vulnerable to destruction by the Soviet missile force but from their knowledge (in 1969 and 1970) of the Soviet buildup (i.e. number of SS-9s, multiple warheads and RV accuracy) they estimated that such vulnerability would not develop before the late 1970's. They argued that even if Minuteman were to be vulnerable to a Soviet missile attack, this would hardly be equivalent to a Soviet *first strike* capability since our remaining Minuteman force (however small) plus our sub-launched missile force plus strategic bombers plus naval and European-based nuclear forces could devastate the Soviet Union and that we, they, and the rest of the world knew this. They also believed that if an active defense of Minuteman was warranted it would be better to develop and deploy a system specifically designed for that purpose rather than to deploy Safeguard. Safeguard components were designed for a different purpose and offer a woefully inadequate defense for Minuteman.

In good part, the pro and con Safeguard witnesses talked past each other—one concentrating on the vulnerability of Minuteman, or the need for Safeguard for other than Minuteman protection, the other concentrating on the inadequacy of Safeguard to protect Minuteman. Ultimately, the decision about Safeguard deployment at the highest political levels was made primarily for its presumed political and diplomatic benefits and not because of military need and technical performance.

Now to return to the ORSA report . . . ORSA undertook to examine the merits of *some* of the public arguments of *some* of the Safeguard witnesses, as stated in the report at the urging of Albert Wohlstetter, a member of ORSA and an active and important Safeguard advocate.

Dr. Wohlstetter was particularly perturbed about what he considered erroneous calculations by Dr. Rathjens. Dr. Wohlstetter's own calculations suggested that our Minuteman force might be more vulnerable in the mid-seventies to the Soviet SS-9 force than Dr. Rathjens' calculations indicated it might be.

The Operations Research Society formed an ad hoc committee to investigate and apparently believed that they would perform a valuable public service even though their investigation focused almost entirely on the issues and people suggested by Dr. Wohlstetter rather than on an independent formulation of the issues by the Committee. ORSA, naively, either discounted or ignored the political implication that their findings would have. I find it hard to understand how ORSA could have assumed that it could criticize (or support) a few arguments of any important witness in a major public issue without implying that his whole case should be discounted (or supported).

A reasonable evaluation of the ABM debate would have to consider the whole Safeguard question, including all arguments for and against deployment. As we now see, a partial examination would be interpreted by the public as an examination of all the issues, regardless of what disclaimers are included in the report. But since the issues involved in the Safeguard debate involve far more than operations research methodology, a complete analysis would clearly be outside of the purview of ORSA. In fact, the operations research issues involved in the debate were all of a rather elementary character.

The key technical judgments that had to be made in considering Safeguard deployment related to the evidence that the Soviets were or were not developing a MIRV system, the rate of SS-9 deployment, size of Soviet warheads, the accuracy of Soviet RVs, the confidence the Soviets could have in their total missile force capability when many of their missiles would have to be launched from silos that were never used before and by crews that never launched an operational missile, etc. Operations research has little to do with intelligent judgments on any of these questions. Hindsight makes it rather clear that even the anti-Safeguard witnesses

in 1969 over-estimated the Soviet SS-9 capability to destroy our Minuteman force. Recent public statements by some of our defense leaders suggest that the Soviets are far from having a deployed, accurate MIRV system. The Soviet SS-9 force may not be capable of destroying as much as 80-90% of our Minuteman force until about 1980, if ever. This is not to say that we can rely on Minuteman forever. Surely the Soviets will someday develop and equip their missile force with an accurate MIRV. But the ominous 1969 calculations of what the SS-9 threat might be in the mid-seventies seem terribly exaggerated now.

I have always failed to see how a limited Safeguard deployment around Minuteman sites would be a militarily useful response to the Soviet strategic buildup. The technical inadequacies of Safeguard are becoming apparent to everyone. It is amazing to me that ORSA would issue a politically "hot" report about ABM without discussing the very heart of the issue, that is the technical and operational merits of the ABM system in question.

My answers to your specific questions follow:

1. Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time; its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite?"

No. The Report focused in most part on some calculations that related to Minuteman vulnerability. The calculations themselves are based primarily on judgments of the Soviet SS-9 threat in the mid-1970's and these have little to do with operations research per se. Questions relating to the merit of deploying Safeguard involve serious technical, military and political judgments and hardly rest at all on the elementary analysis which preoccupied the ORSA Ad Hoc committee.

2. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

Certainly no judgment regarding the need or adequacy of Safeguard would come from the narrow issues examined by ORSA.

3. In projecting the vulnerability of Minuteman, much was believed to depend upon whether one considered reprogramming of Soviet missiles for failure and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" are plausible Soviet tactics for the midseventies?

The feasibility of pin-down and shoot-look-shoot tactics is not a matter of operations research. Operations analysts can calculate the effectiveness of such tactics if they are given the ground rules for doing their calculations. Effectiveness of pin-down depends on the details of our missile hardware and on the launching doctrine that may be used by the Soviets. There are ways of minimizing our strategic force vulnerability to pin-down. To assume that the Soviets may use such a perilous tactic (a tactic that can not be really tested) with any confidence, seems very far fetched to me. The Soviet leaders may indeed go mad some day and launch a nuclear attack on the U.S. but any analysis of possible Soviet leadership lunacy is also not a matter of operations research.

Reprogramming missiles, that is, the use of a shoot-look-shoot tactic can in principle be done. It complicates missile hardware, but it promises more efficient use of a given missile force. To assess the degree we need worry about Soviet use of such a tactic in a "first strike", we must first evaluate what we know about Soviet technical developments. We must also make judgments about the degree to which the added hardware reduces missile reliability, judgments about the fraction of missile failures that can be observed and can therefore be reprogrammed, judgments on how much confidence Soviet military leaders can have in a shoot-look-shoot tactic when it is only tested in a limited way, etc. None of these judgments and assessments have much to do with operations research.

In my judgment, we need not fear Soviet use of either a missile reprogramming tactic or pin-down as part of a first strike for the middle or late 1970's.

4. Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?

I believe that Safeguard's effectiveness is limited to a very narrow range of threats, but I believe that the main supporting arguments for Safeguard had little to do with its military role but were based on political and other non-technical considerations.

5. Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?

I don't believe that the government technical experts were ever convinced of the great technical merits of Safeguard for Minuteman defense. The only difference between the government and anti-Safeguard witnesses may have been whether the several year time lag between Safeguard deployment and the earliest deployment date of any new system that might be developed to defend Minuteman, was sufficiently critical to warrant Safeguard deployment in spite of its technical deficiencies.

6. Did the Ad Hoc Panel make full use of all the information available to the responsible Committees—the Armed Services and Foreign Relations Committees—both classified and unclassified, concerning the Soviet threat and Safeguard ABM performance capabilities against a range of Soviet threats?

The ORSA Ad Hoc Committee investigations were highly limited in scope and therefore couldn't possibly make full use of all of the information available regarding Safeguard.

7. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

Some, but not all, of the findings were technically correct in a narrow sense, but the inquiry was nevertheless not competent. The choice of issues investigated, the method of investigation, the method of presentation and the total lack of perspective displayed by the ORSA Committee demonstrated to my mind a totally inadequate treatment of an important and controversial subject.

8. Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of *all* witnesses pro and con who were called before the two Committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc group on Safeguard for FY 1971 (the O'Neill Report) submitted to the Secretary of Defense on January 27, 1970?

To evaluate and assess the ABM debate, ORSA should certainly have looked at all the testimony of all the expert witnesses. But, as I mentioned, the essence of the ABM debate did not rest on operations analysis questions. Examining only the operations research aspects of the debate could only be misleading.

9. Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?

No, since ORSA applied no judgment whatsoever to the testimony of many of the witnesses, particularly the supporters of Safeguard. A rather trivial example is of following: on page 1188 of the ORSA Report the Ad Hoc Committee chastises Rathjens for using cube root scaling in calculating kill probabilities, but on March 20 1969, Secretary Laird in his testimony states explicitly that the relationship is generally a cube root relationship. Most witnesses accept the validity, for first order calculations, of the cube root scaling, but ORSA makes no mention of this fact when criticizing Rathjens. But I want to make it very clear that the whole question of whether one does or does not use cube root scaling is of very minor importance in comparison to the other factors and assumptions that enter into the calculations.

Sincerely yours,

J. P. RUINA,
Professor of Electrical Engineering.

MCLEAN, VA., *November 15, 1971.*

Senator PHILIP A. HART,
Senator STUART SYMINGTON,
Senator JOHN SHERMAN COOPER,
Old Senate Office Building,
Washington, D.C.

DEAR SENATORS: I share the concern expressed in your letter of November 5th about the report of the Ad Hoc Committee on Standards of the Operations Research Society of America (ORSA). Charges of the kind made in this report should never be treated lightly for they not only reflect on the integrity of the individuals involved, but also on the entire hearing process which is essential to the informed functioning of the Congress of the United States.

I was very disturbed therefore when I read the report which was so obviously narrow in its approach and biased in its analysis. In fact, one can only reach the conclusion that the Ad Hoc Panel was unduly influenced by one of the protagonists in the debate, the only one who was a member of the ORSA, and the man who requested the investigation in the first place. For a group, under the auspices of a supposed scientific society, to publish a study of this nature is almost unbelievable nad raises questions as to its independence from the military-industrial complex. The propriety of this ORSA action was indeed questioned in a minority report of five members of its Council.

I have attempted to express my views in more detail by answering the specific questions on which you requested comments. I am also forwarding at the same time a copy of a letter on this same subject which my colleagues, Drs. Kistiakowsky and York, and I sent to several newspapers following an article by Joseph Alsop referring to the ORSA Report.

I commend you for your efforts to shed some more light on this very serious matter.

With kind regards,

HERBERT SCOVILLE, Jr.

ANSWERS TO QUESTIONS RE ORSA AD HOC COMMITTEE

ANSWER TO NO. 1

The technical scope of the ORSA Ad Hoc Committee Report was so narrow that it failed completely to address the fundamental issues which were before the Congress. Virtually the entire analysis was directed toward the vulnerability of Minuteman to a postulated Soviet threat, and the basic questions of whether the Safeguard ABM was necessary to preserve the US deterrent or would provide any defense of Minuteman were completely ignored. Since the primary purpose of the hearings was to determine the Safeguard ABM budget, and the need and usefulness of the Safeguard defense of Minuteman, it would seem that the ORSA study avoided analysis of the central testimony. Rather, it appears to have selected

only those subissues which were called to its attention by one of the protagonists in the debate, an individual whose standards, in theory, it was investigating. This action would appear to be highly unethical and contrary to the fundmental standards of operations research in which the organization purports to have such an interest. That the Ad Hoc Committee was probably sensitive to this selection is demonstrated by their excising from Professor Wohlstetter's letter asking for the ORSA study, those paragraphs which recommended the specific issues he wished covered.

ANSWER TO. NO. 2

As mentioned above, the narrowness of the inquiry entirely foreclosed the possibility of the Ad Hoc Committee making a meaningful judgment on the professional standards of the participants in the ABM debate. This narrowness was not only limited to the subject matter covered, but also to the material studied, and individual views taken into consideration. How could the Committee judge the standards when it restricted its attention solely to the subjects raised by one of the protagonists in the debate. The Ad Hoc Committee would have appeared to fail to follow its own standards of objectivity. In its guideline for the practice of operations research, ORSA frequently refers to the operation research analyst as an adversary. In this case the ORSA Committee is just another adversary in the continuing ABM debate, but they have not followed their own guideline "to explore *all* facets of a situation objectively and dispassionately."

ANSWER TO NO. 3

A key, and perhaps overriding, element in the Ad Hoc Committee analysis was the question of whether certain individuals took into consideration the possibility for "reprogramming of Soviet missiles for failure." The three witnesses who questioned the value of the Safeguard ABM were accused of neglecting this tactic which the administration itself did not use until the debate was half over and it was having difficulty in justifying its estimate of the Minuteman vulnerability. Professor Wohlstetter was commended for having taken this tactic into consideration. While there is considerable question as to whether the plausibility of such a tactic is a question of operations research and not one of strategic analysis, there is no question of that the ORSA Ad Hoc Committee failed completely to substantiate the validity of the non-reprogrammable failure rate values used by Professor Wohlstetter. Without any questioning they assumed that the value of 5% selected by administration proponents of Safeguard and by Dr. Wohlstetter were correct.

If the ORSA group can question the failure to include reprogramming in a calculation, they certainly should question the selection of the values used, since this value turns out to be fundamental to the end result. A change in this value from the 5% selected would correspondingly change the value of 5% surviving Minuteman which Dr. Wohlstetter derived as his basis for justifying the need for Safeguard. No justification was ever given for this value. It would seem very strange that out of the total of 20% failures only 5% should be ascribed to failures in the MIRV dispensing and guidance systems, the very complicated and most advanced technological aspects of the entire missile delivery system, while 15% are ascribed to failures in the fundamental missile launching system which the Soviets have tested over and over again. It would appear rather that Dr. Wohlstetter and the Defense Department Safeguard proponents selected 5% since this number was required in order to reach the conclusion that only 5% would survive. Had they selected a 0% non-reprogrammable failure rate, they would have concluded that virtually no Minuteman would have survived, patently absurd for an attack of the size postulated. If they had selected 15%, then about 15% would have survived and the Soviet threat proven a mirage. If the ORSA Committee were truly acting as competent operations researchers, they would have raised and evaluated this fact in any discussion of reprogramming.

A second element emphasized in the Committee analysis was the failure of the ABM opponents to take into consideration that the Soviets might use a "pin down" tactic to simultaneously destroy ICBMs and bombers, this tactic which calls for maintaining a barrage of submarine launched missiles in the air above Minuteman sites to deter their being launched but not to destroy them, is a doubtful tactic at best. ORSA accepts such a tactic without question and, even more strangely, without giving any consideration to the numbers of submarines missiles which would be required to make it effective. It is not clear on what basis the ORSA Committee feels it can criticize individuals who have had broad experience in strategic analysis for discounting such a fantastic tactic when this is certainly not an operations research matter. Does the ORSA Committee feel that an appropriate operations research standard is to accept as gospel any judgment made by Dr. John Foster, DDR&E?

ANSWER TO NO. 4

The administration selected in its analyses a Soviet threat of 430–500 SS–9s, each equipped with 3 MIRVs with sufficient accuracies to have a high single shot kill probability against Minuteman. Had they selected a smaller threat, no one could have claimed that the Minuteman deterrent was in any danger. Had they postulated a larger threat such as 6 MIRVs per SS–9, which was well within the Soviet technical capability, then Safeguard would have been completely inadequate. This was recognized by Secretary Laird a year later in his Posture Statement when he said that if the Soviets continued to display SS–9s with accurate MIRVs, we would be faced with a threat much too large to be handled by the level or defense envisioned in the Safeguard system. The postulated threat was tailored to make the proposed Safeguard system look useful. None of the elements of this threat have actually materialized. In actual fact, it now appears, some two years later, that the Soviet threat is much less than was postulated in 1969. The Soviets have slowed the rate of their SS–9 launcher construction and have not even tested a MIRV which can threaten Minuteman. This was confirmed by testimony by General Ryan in March 1971. Despite these facts, the ORSA Report criticizes the AMB opponents for not using the same assumptions as the administration in its calculations.

ANSWER TO NO. 5

The proponents of Safeguard have now virtually conceded that it was not a system designed for defense of hard targets such as Minuteman missile sites. The single large and expensive radar and limited number of interceptor missiles at each site made Safeguard ineffective and easily overwhelmed. This could even have been accomplished by the Soviets primarily using their 220 obsolete ICBMs, leaving the entire SS–9 force to attack Minuteman launchers. The opponents recommended that instead more but cheaper and less vulnerable radars be installed and a year later this was recognized by the administration when they instituted development on the "hard site" ABM defense. Secretary Laird in February 1970 admitted that if "the Soviets deploy a MIRV on the SS–9, improve their ICBM accurary, and do not stop building ICBMs at this time, but continue building them at their present rate. We would then be faced in the mid-70s with a threat which is much too large to be handled by the level of defense envisioned in the Safeguard system without substantial improvement and modification."

ANSWER TO NO. 6

There is no evidence from a reading of the Ad Hoc Panel Report that it made full use of all the information available. In fact, the Report would clearly indicate that the Panel had restricted its attention primarily to material presented by one protagonist in the debate, Professor Albert Wohlstetter. It directed its entire attention to a single threat postulated by the administration and Dr. Wohlstetter and completely ignored other alternatives. Now, two years later, it appears that in almost every case, the proposed threat did not materialize. For example, the Soviets have not even tested a MIRV which can threaten Minuteman although DOD witnesses in 1969 were claiming that the Russian triplet multiple warhead system had a footprint which threatened Minuteman; the accuracy of the SS–9 is inadequate, and its guidance system and reentry vehicle would have to be redesigned to threaten Minuteman. This was publicly admitted by General Ryan in testimony to the House in March of this year although the evidence was available in 1969. Furthermore, the SS–9 program is lagging far behind that predicted in 1969. These are only a few of the myriad of examples where the Ad Hoc Panel selected data designed to bias the results of its investigation. It is hard to understand how the Panel could have censured certain witnesses for failing to have used the administration assumptions in their calculations when, in retrospect, the administration assumptions were later proven, by their own admission, to be false. There is no evidence anywhere in the Report that the Panel analyzed the usefulness of Safeguard in light of the number of its radars and interceptors (a number which the administration has kept classified to avoid its becoming obvious that the system could be easily overwhelmed).

ANSWER TO NO. 7

The Ad Hoc Panel inquiry was demonstrably incompetent. It failed to address the critical issues in the ABM debate and selected for its attention only those by one protagonist, Professor Wohlstetter. Such an action would appear to be unethical at the very least. Why did the ORSA Report excise from its published version of Professor Wohlstetter's letter the sections directing their attention to these issues if they were not sensitive to this apparent impartiality? It accepted as fact the assumptions of the protagonists of the ABM without question, and yet censured those who opposed Safeguard for failing to adopt these assumptions lock, stock and barrel even though these were later proven false; it made judgments on the usefulness of strategic tactics without any analysis or justification for such judgments. It failed entirely to live up to its own standards of objectivity and impartiality in selecting data and assumptions.

ANSWER TO NO. 8

Clearly the inquiry should have evaluated the testimony of all of the key witnesses—pro and con—who testified before the Armed Services and Foreign Relations Committees in the ABM debate. To have selected out for attention primarily those who were against the ABM and to have virtually neglected entirely the testimony of the administration seems only to indicate an initial bias on the part of the Panel. The administration had all of the information at its disposal, and thereby controlled the framework for the debate; yet, nowhere in the Panel Report is there any analysis of the shifting rationales that were used during its course. There is no analysis of how well the assumptions used by the administration witnesses have stood up with time. Not only have their predictions of the threat been proven false and probably not even in accord with the best information available at that time, but the administration

also admitted that the usefulness of the original Safeguard system was very limited and that radical improvements would be required if it were to be able to cope with threats which could have a high probability of destroying the Minuteman deterrent.

ANSWER TO NO. 9

The ORSA Panel did not apply the same standards of judgment to all witnesses who testified, both pro and con. As mentioned above, they did not even analyze the testimony of many witnesses in favor of Safeguard. The assumptions of the pro ABM witnesses were almost always taken as a matter of fact while those against the ABM were censured for not having used the same assumptions.

UNIVERSITY OF CALIFORNIA,
Livermore, Calif., November 27, 1971.

Hon. PHILIP A. HART,
STUART SYMINGTON, AND
JOHN SHERMAN COOPER,
U.S. Senate, Washington, D.C.

GENTLEMEN: Thank you for your inquiry of the 15th of November. I include my answers to the queries. These answers have been given after thorough consideration and as rapidly as possible.

For the sake of clarity I repeat the questions you have posed and give the relevant answer following each question.

Permit me please to make a few general remarks.

It is the nature of questionnaires that brief answers are of necessity strongly influenced by the manner in which the questions are formulated. This fact has forced me to answer at somewhat gerater length. I hope that in the process I have gained rather than lost in clarity. I ask for your patience in reading my detailed responses.

As stated in one of my responses, operational research is more of an art than it is a science. This fact is painfully obvious when predictions are required, when an adversary proceeding is involved, and when secrecy intervenes. One of the lessons to be learned from the ABM debate in 1969 is that as long as we try to apply the present rigorous standards of secrecy, important public debates on defense have a limited value. I should particularly urge that we should not try to protect Russian secrets more rigidly than we are protecting our own.

The Ad Hoc Committee of ORSA went out of its way to discuss the role of the adversary proceedings in operational analysis. One value of this type of proceeding is that a declared proponent and a declared opponent will not lay claim to complete scientific objectivity. In past debates such claims have occurred more frequently than is justified or desirable.

Because of the great public interest of the questions you raised, I am sending copies of this letter and of my answers to a number of recipients who have an obvious "need to know." I hope that this will meet with your approval.

Thanking you for addressing these important questions to myself,

Sincerely yours,

EDWARD TELLER.

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1. Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time, its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite?"

Answer: The clearly stated purpose of the report of the Ad Hoc Committee was *not* to evaluate the fundamental questions before the Congress. The Ad Hoc Committee was careful to point out that it did not intend to obtain answers to these questions, but rather to investigate the propriety of the practices followed by the participants in the debate which was addressed to the problem of Safeguard.

2. Was it possible to make a meaningful judgment considering the narrowness of the inquiry?

Answer: A meaningful judgment was obtained concerning the propriety of the approach that was used to evaluate the Safeguard ABM proposal.

3. In projecting the vulnerability of Minuteman, much was believed to depend upon whether one considered "reprogramming of Soviet missiles for failure" and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of the strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" were plausible Soviet tactics for the mid-seventies?

Answer: "Reprogramming of Soviet missiles for failure" and "pindown" tactics are essential elements of the discussion. Operations research becomes a meaningful exercise only after one has enumerated the reasonable operations that are and should be under discussion. In my opinion, "reprogramming of Soviet missiles for failure" and "pindown" are both plausible and essential elements. One may claim that disregarding the Queen and the Rook in a chess game is an unreasonable as disregarding "reprogramming" and "pindown" in the discussion of ABM.

4. Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?

Answer: It is true that the Administration chose for the sake of discussion a limited and hypothetical band of threats. The resulting discussion was meaningful at least for illustrative purposes. The debate would have been much more meaningful if it had not been limited by our rules of secrecy. It is particularly noteworthy that the Russians in deploying an ABM against a limited band of American threats forced us into expensive countermeasures. At the same time we were also forced to reduce the megatonnage of our retaliatory explosives. There is also evidence that ABM starting from an effectiveness against a limited band of threats may develop into a more generally applicable system. If intelligence concerning Russian operations were less severe this claim could be better substantiated. It is in the nature of ABM that it must start from relatively modest beginnings. Whether or not it can develop into a truly potent component of defense remains unsettled to this day. In my opinion, one of the serious mistakes committed in the ABM debate was that neither side admitted to a sufficient extent the uncertainties in the situation. This fact was emphasized by the ORSA report.

5. Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?

Answer: Our modest deployment of Safeguard (which actually amounted to a pilot operation) did lead to smaller, cheaper and less vulnerable radars. The need for such radars was correctly emphasized by one of the opponents of ABM, Dr. Panofsky. In a television debate with him I predicted correctly that this suggestion will indeed be adopted if deployment is encouraged. In general the difference between opponents and proponents of the ABM was dramatized to a greater extent than would appear justified by the actual facts of the situation.

6. Did the Ad Hoc Panel make full use of all the information available to the responsible Committees—the Armed Services and Foreign Relations Committees—both classified and unclassified, concerning the Soviet threat and Safeguard ABM performance capabilities against a range of Soviet threats?

Answer: The Ad Hoc Panel made ample use of the available information. It is impossible for me to tell with the amount of effort I can possibly spare whether the Ad Hoc Panel made use of *all* the information. It would seem improbable that anybody could take all information into account.

7. Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?

Answer: In my opinion, operational analysis is more an art than a science. This is particularly true when it is applied to predictive purposes and if, therefore, full operational verifications are not available at the time of the analysis. In view of the inherent restrictions of Operations Analysis the Ad Hoc Panel has put out a document that is remarkable for its competence and objectivity.

8. Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of *all* witnesses pro and con who were called before the two Committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc group on Safeguard for FY 1971 (the O'Neill Report) submitted to the Secretary of Detense on January 27, 1970?

Answer: I have participated in the debate on Safeguard in 1969. Having studied the ORSA report I find that they have made extensive and reasonable use of the testimonies known to me. I am not competent to answer the question whether there have been any omissions, very particularly in regard to testimony that was submitted in 1970.

9. Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?

Answer: The Ad Hoc Committee went out of its way to criticize both proponents and opponents of Safeguard. As far as I can judge, the same standards were applied to all witnesses. It should be borne in mind, however, that complete objectivity is an ideal that never can be reached.

WATERTOWN, MASS.,
January 11, 1972.

Hon. JOHN SHERMAN COOPER,
Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
U.S. Senate,
Washington, D.C.

DEAR SENATORS COOPER, HART, AND SYMINGTON: Thank you for asking me to comment on the report of the ORSA Ad Hoc Committee on Professional Standards regarding the ABM debate. I had not intended to become involved in the continuing discussion of the report because I was one of the individuals singled out for criticism and so believed that anything that I would say could be interpreted as a biased response. But it has become evident to me that the document is being used as the basis for a widespread campaign whose intent appears to be to generate a widespread public suspicion of congressional testimony critical of D.O.D. proposals so that in the future, large proposals for new and costly systems will not be exposed to the same kind of critical review before Congress and the public that the ABM faced. Recent articles by Mr. Joseph Alsop and Senator Barry Goldwater illustrate this point. I welcome the opportunity to set the record straight before your group.

I will not answer your specific questions about the ORSA report because my colleagues, Drs. Rathjens and Weinberg, have done so and I agree with their answers. I would like to direct attention to some issues that I regard to be especially important. I am particularly concerned about the inappropriateness of a professional society be-

coming involved in a political undertaking, as ORSA has done, and by the presentation of the Ad Hoc Panel report as an impartial study based on sound operational research methods and standards, which it is not, as I will show. In addition, I believe that operational research techniques have limited usefulness in resolving an issue such as the value of the ABM because the sound application of those techniques requires that it be possible to acquire data on the actual performance of the systems under investigation. When that can be done, their performance under other conditions may be predicted with considerable confidence. Operational research methods have been adapted to provide means for making estimates about nontested and even non-existent systems but the work should probably not be given false validity, as is the custom, by being called, "operational research." Because operational data did not exist for either the Safeguard system or the Soviet offensive missiles, the principal task in trying to evaluate the performance of Safeguard in a battle situation was that of estimating the probable performance of the weapon systems involved. This is more than a task for an operational analyst. The analytical part of such an exercise is straightforward. The important aspect of the problem can only be handled properly—and then possibly inadequately—by persons with actual knowledge and judgment about the real-life performance of complex systems. Yet the ORSA report propagates the myth that operational research experts are somehow better qualified to deal with such questions than electrical engineers and physicists, who have knowledge of the hardware involved and actual experience with sophisticated military systems, as some of us who participated in the ABM debate had.

It is troublesome that a professional society dedicated to "the advancement of operational research through exchange of information, the establishment and maintenance of professional standards of competence for work known as operations research, the improvement of the methods and techniques of operations research, and encouragement and development of students of operations research," as stated in its Constitution and reported in the introduction to its Ad Hoc Committee report, would ignore or play down the important issues involved in the ABM deployment question and concentrate mostly on some peripheral points, as has been done in the report. The following questions were really basic to the entire debate—though ignored to a disturbing degree by the ABM proponents—and yet were barely considered by the Ad Hoc study:

(1) Will the U.S. 'deterrent actually be in jeopardy if the D.O.D. projections of Soviet missile deployment become a reality?

(2) Is it necessary to protect the Minuteman missile at all if the objective is to maintain an adequate deterrent?

(3) Why the changing rationale for Safeguard?

(4) Why should the Safeguard ABM system or the Russian offensive missile system be expected to be so much more reliable—as the Safeguard proponents claimed—than any similar system previously produced?

The ORSA report actually deals briefly with the failure of the Safeguard proponents to face the fundamental strategic question raised above and comes to the following conclusion, which was not highlighted and which was ignored by the press in reporting the study, "The failure of this public exchange of views to deal with this question, whether in conformity with the wishes of the executive or legislative branches of the government, is a basic failure to deal with a most fundamental issue"* This conclusion, it seems to me, should have been featured as the report's most important finding rather than being buried at the end of the report. Why was it not even in the summary of findings?

Equally important to a rational deployment decision were the technical questions regarding the possibility of the system working under the postulated conditions, and the technical reliability of the Safeguard system, neither of which were ever answered satisfactorily by the proponents. Though it was undoubtedly beyond the professional competence of the ORSA Panel to deal with the technical issues involved in these questions, its failure to highlight the ABM proponents' almost complete failure to answer them satisfactorily is a second major shortcoming of the review.

Instead of considering the quality of the discussion of the major issues of the ABM question the report, as my colleagues have shown, concentrates on and often misrepresents minor incidents during the debate.

In some instances the Ad Hoc Committee seems to speak with two voices. For example, on page 1221 the report cites as a misuse of source material by me of data published in Science and Technology Magazine by Dr. Daniel J. Fink. The Ad Hoc Committee's reference to this incident has been featured in the newspaper stories about the report. Because there was no operational data available about the reliability of the Safeguard missiles, I used data concerning the reliability of certain offensive missiles published by Fink in the above article. I justified this on the grounds that though very different in purpose and size, the two systems were not unlike in concept and complexity. I stated that in my judgment Safeguard missiles were probably more complicated than the Minuteman missiles. This was a personal judgment. Dr. Fink objected to my view and said so in a long letter to Senator Gore. Among the major reasons that led me to conclude that the Safeguard missile was more complicated and likely to be even less reliable than the Minuteman missile were its dependence upon a ground-based computer coupled through a radio-communication link, and the difficult conditions under which they would be expected to operate. The ORSA Ad Hoc Committee quotes the following statement from Dr. Fink's letter, "Finally, Dr. Wiesner states that the ABM interceptors are more complicated than ICBMs and thus could be expected to be less reliable. Probably the reverse is true. ICBMs are self-contained; that is, each missile has its own guidance and computer system. In an ABM system, the computer and most of the guidance equipment is on the ground and thus can be maintained to a higher order of reliability.

"I apologize for taking so long to respond to one paragraph in Wiesner's letter. I found it so misleading, however, as to warrant a more thoughtful reply."

The ORSA report then says,

"It is true, on the other hand that the radar required for guidance of the ABM system is a particularly vulnerable and 'soft' target. Also, the ABM interceptor flight requirements (to bring the ABM missile to a point in space where the explosion of the ABM warhead can damage the RV so that the RV will not damage its target) are quite stringent. The performance of the entire system can be adversely affected by near misses, or by detonations of atomic warheads in the atmosphere in the vicinity of the ABM guidance radar. Thus while Fink has refuted Wiesner's statement that an ABM interceptor is more complicated than an ICBM, he has not addressed the question of the reliability of the ABM interceptor functioning as part of a system under attack. (See the discussion on page 1208 ff.)"

As far as I am concerned, the communications link is an essential part of the interceptor. Its receiver and decoder is built into the missile and the interceptor cannot be controlled without the ground computer and the communication link being operational. The Ad Hoc Committee actually makes a stronger argument than I do, yet they start by asserting that Weinberg, Rathjens and myself have misused Fink's material. It is just not so. Fink may not like the conclusions I draw from his data but they are my judgments to which I am entitled and which, as I have shown, the Ad Hoc Committee in its confused way actually supports.

The Ad Hoc Committee is critical of my complaint about the shifting ground rules, intelligence and numbers made before the Gore Committee on May 14. Though I was specifically responding to a speech given by Dr. John Foster, Director of Defense Research and Engineering before the Aviation/Space Writers Association meeting in Dayton, Ohio, on May 12 and reported in *The New York Times* the following day, I was attempting to point out the great difficulty of participating in a discussion that was a moving target in time and space as well as substance. I was not able to obtain a copy of the Foster speech until I arrived in Washington on May 14 to appear before the Gore Committee.

In the introduction to their report, the Ad Hoc Committee provides guidelines for the use of operations research in the adversary process which begin:

"If an analyst is called upon or volunteers to advocate or support the advocacy of a position, a documented analysis by which he reaches his conclusions should be available for independent and objective appraisal. A write-up of his analysis should be made available in advance, for thorough analysis by the staff of the organization to which he is offering testimony (such analysis by the organization receiving the testimony cannot be accomplished unless it has access to its own staff competent to evaluate the analysis) and by recognized and competent adversaries. Subsequent oral testimony or position papers urging a course of action may be weighed against the analytical background (submitted earlier) from which they sprang."

In preparing the book, *ABM—An Evaluation of the Decision to Deploy an Antiballistic Missile System*, my co-authors and I were trying to do just what is recommended, to provide in one place a coherent and complete presentation for our opposition to the ABM. The proponents never did supply an equivalent presentation and yet the only comments by the Ad Hoc Committee regarding our books were detailed and critical comments of specific points. If their purpose was as stated—to examine the quality of the adversary process—they should have given us high marks for making the effort to document our case, even if they did not like the quality of our work, and seriously censored the proponents who, in spite of their infinitely greater resources, failed—as the Ad Hoc Panel report itself implies—to document their case and who, when provided with criticism of the Safeguard system, often responded with a public speech, hard to get and sometimes hard to understand.

The Ad Hoc Committee made many criticisms of our book in which we tried to bring all of the arguments regarding the ABM deployment into one document, but ignored the shotgun nature of the D.O.D.'s dissemination of its information which made dealing with the subject in a coherent fashion extremely difficult. In the talk referred to above, Foster criticized Minuteman survival numbers given in *ABM—An Evaluation of the Decision to Deploy an Antiballistic Missile System* and predicted much lower survival rates based on a highly reliable Soviet-in-flight retargeting capability and something like a reliable MIRV capability. I objected to these assumptions and said essentially that they represented a change from earlier D.O.D. testimony about the Soviet threat. I also objected to Foster's reliability assumptions.

*Operations Research V19 Number 5, September 1971, p. 1237.

The Ad Hoc Committee agreed with my objection about the reliability but supported Foster's use of an in-flight retargeting doctrine, a doctrine incidentally that apparently required not only retargeting a second round of missiles for initial failures, but also a third round for second round failures; and the Committee actually presented some calculations to show how useful a retargeting capability could be. These calculations also make the assumption which I still challenge, that so complicated a system could be made to work reliably in its first large-scale use or that any military strategist would be willing to employ it as a first-strike weapon. Here again we are dealing with matter of judgment and I still believe I am correct.

On one point concerning this exchange—the report is correct. I should not have criticized Foster's change of available SS9's from 500 to 600 as I did because he did indicate that he was talking about a later year. I just missed that point in my hasty reading of his full text.

The ORSA group objects to my consideration of a fire-on-warning doctrine. I actually do not propose this as a strategy but indicate that it is a option open to the United States which an attacker would have to consider and which could provide additional security for the deterrent force if it was needed. The group insists on taking a conservative position in regard to Soviet retargeting capability when it suits their argument, saying, "Hence it is imprudent to ignore the possibility of reprogramming in assessing Soviet first-strike capabilities." But they refused to believe that a Soviet planner would have to take a similar view regarding a launch-on-warning strategy in planning an attack on the Minuteman force.

Incidentally, the logic employed by the Ad Hoc Panel, that we must respond with weapon systems to any imagined Soviet deployment that can't be proved impossible, must bear much of the responsibility for the arms race and the deteriorating security posture of the United States. We don't have the resources to deal with the fantasies of the most frightened analysis.

Finally, I would like to close with a warning. Operational research as frequently employed to make judgments about future systems or events should be regarded as a most uncertain instrument.

Many people, in response to your questions, have already observed that results of operational research can be no better than the questions asked, the models postulated or the data fed in. In the hands of a careful analyst whose judgment is sound and who has long experience to guide him, operations research techniques can be of tremendous help in the making of difficult decisions. But, too many times in my 25 years' involvement with national security matters, I have seen operational analysis lead to disastrously wrong conclusions because of wrong assumptions. During my term as Special Assistant to President Kennedy, I observed very questionable recommendations regarding Minuteman deployment presented to him. Their character was determined by the assumptions on which they were based. I helped reverse a serious wrong recommendation of operations analysts in the Office of the Secretary of Defense, regarding analysis of the fighter aircraft procurement, wrong because of incorrect assumptions about radar performance. At stake was the possibility of several billion dollars of aircraft production. President Kennedy had to contend with overly optimistic analysis supporting the deployment of the Nike Zeus ABM system, now regarded by everyone as a totally useless system. During that period, too, I saw the results of inadequate operational analysis lead to the selection of a conventional aircraft carrier when a nuclear carrier was clearly more desirable. I could add to this list, but this collection is probably sufficient to make my point. I was frequently drawn to the sad conclusion that the analysis was carried out to support a decision already made for other reasons, but in no case was it actually possible to judge whether the misleading results were due to incompetence or deliberate intent.

The great danger is that unsuspecting laymen—civilian and military—will accept the results of operational research because they are impressed or awed by the methodology, not realizing how often the complex analysis obscures faulty assumptions and bad judgments. Operational research is not a substitute for experience, judgment or common sense in any human endeavor.

Sincerely yours,

JEROME B. WIESNER.

UNIVERSITY OF CALIFORNIA, SAN DIEGO,
La Jolla, Calif., November 10, 1971.

Senator JOHN SHERMAN COOPER,
Senator PHILIP A. HART,
Senator STUART SYMINGTON,
U.S. Senate,
Washington, D.C.

Gentlemen: Below are my answers to the questions contained in your November 5th letter. I regret that they are so short and terse, but pressure of other business and shortness of time makes any more detailed analysis impossible at this time. I hope, even so, that you will find them useful.

1. No.
2. No.
3. Operations research can be of use in a study of such matters as "reprogramming" and "pindown" but by no means could the final judgments as to the value or lack of value of these tactics be derived solely from operations research. Personally, I regard as completely implausible the notion that the Soviets might seriously consider using such tactics against us in the mid-seventies.
4. I believe that the action of the administration in choosing a relatively narrow band of threats in most of their Safeguard testimony was misleading and that the Senate and public would have been better able to understand the issues had the administration been more complete in its descriptions of the various possible threats. Safeguard is effective against only a very narrow band of threats even in theory to say nothing of practice.
5. I believe it is true that many of the proponents of Safeguard have by now conceded that the opponents of Safeguard were right in insisting that if any deployments were to be made, they should make use of smaller, cheaper and less vulnerable radars. However, I don't know whether all proponents of Safeguard agree with this or not.
6. I have not made a sufficiently thorough review of the Ad Hoc Panel study to be able to give a firm answer to this question.
7. I do not believe so.
8. If you grant that it was proper for the Ad Hoc Panel to engage in evaluation of anyone's testimony, then indeed they should have evaluated the testimony and statements of all witnesses both pro and con, and they certainly should have made use of such studies as the O'Neill report. However, my personal view is that the Ad Hoc Panel had no business evaluating the testimony and statements of any witnesses.
9. It would appear that they did not.

Sincerely yours,

HERBERT F. YORK.

To Senators COOPER, HART, and SYMINGTON:

THE ASSESSMENT AND IMPROVEMENT OF SCIENTIFIC ADVICE TO CONGRESS: THE CASE OF THE ABM

(By Dr. Paul Doty, Professor of Chemistry, Harvard University, Cambridge, Mass.)

(The following statement is taken in large part from an article being submitted to MINERVA for publication.)

It is not possible to assess the ORSA Report[1] without recognizing that the portion of the testimony that it treats was only part of a wider and more complex policy debate that had been going on for nearly a decade. The part that occurred in the Senate hearings and debate in 1968–69 centered on the issue of whether or not to fund the deployment those stages of the Safeguard ABM system that were directed to the defense of our ICBM force. Reaching a responsible position on this issue working through several groups of questions in order. It is useful to spell these out since they also correspond to the different levels at which the debate proceeded.

I. Assessment of need.—Here one had to ask if the United States' land based ICBM force (1,000 Minutemen and 54 Titans) would become vulnerable to almost total destruction in the foreseeable future of roughly 5 to 10 years. Clearly the answer depends on the outcome of several subsidiary questions. First, what different estimates or assumptions of the growth of Soviet forces, both in numbers of missiles and payload capability, should be considered for the next decade? Second, What will be the vulnerability of our force to each of the assumed growth patterns of the Soviet force? Third, To what extent would the bomber and submarine parts of our deterrent force become vlunerable and to what extent would our tripartite deterrent force remain capable of launching a retaliatory strike of unacceptable intensity?

II. Assessment of the Adequacy of the Solution.—If the protection of some or all of the land based missiles and some or all of the bombers is shown to be necessary, one must then ask if the proposed solution, in this case Safeguard, is adequate. The reply to this question requires careful analysis of the effectiveness of the composite system against the variety of attack options and tactics available to the Soviet Union. Such analysis must include the degradation in performance that may be produced by the environment of a nuclear attack, the special vulnerability of the radars, probability of maintaining the system in a state of instant readiness indefinitely and the ability of the attacker to exhaust the defense. After defining as well as possible the range of threat for which Safeguard may be effective, the cost must be estimated and compared with alternative proposals for maintaining roughly equivalent deterrent force.

III. Assessment of the Political Values in Buying the Solution.—This level of questioning is largely political rather than technological and aims at estimating the net benefits of the solution in terms of national security, diplomatic advantage and domestic needs and pressures. In the context of the ABM decision this meant, will having Safeguard help attain a political goal that is worth the price and risk? This question remains valid in all circumstances short of a decisive negative answer to questions of both Type I and Type II. The less affirmative the answers to questions of Type I and II are, the greater the burden that is placed on the political perception of the decision maker and the more he risks turning diplomacy and military posture into bluff.

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Viewing the ABM debate retrospectively in this framework one cannot avoid observing that the pro-ABM scientists concentrated on questions of Type I (need) while the anti-ABM scientists focused on questions of Type II (adequacy of the solution). Meanwhile, the Administration was not seriously challenged on its political decision (Type III question) whose only articulated basis was the need of Safeguard as a "bargaining chip" in SALT.

The pro-ABM scientists argued that our ICBMs could soon be in danger, that our

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Footnotes at end of article.

security demanded the retention of all three components of our deterrent (ICBMs, submarines and bombers) and that Safeguard was the only available response to the growing Soviet SS-9 force that was endangering our ICBMs. By concentrating the force of their arguments on Minuteman vulnerability they left the technical merits and shortcomings of Safeguard essentially unexamined.

The anti-ABM scientists argued that a linear projection of the SS-9 buildup, coupled with increased accuracy and MIRVing, would ultimately lead to the obsolescence of Minuteman, perhaps in a decade. But they insisted that this would not be equivalent to a first strike capability since the other parts of our deterrent could not be simultaneously attacked: that enough was certain to survive to devastate the Soviet Union. More importantly, however, they concentrated their fire on the ineffectiveness of Safeguard in providing significant protection to Minutemen, even if it performed optimally.

Turning now to the ORSA Report, and particularly to Appendix III which makes up the bulk of the Report, we find that the investigation does not deal with all these three levels of the debate but is limited almost exclusively to Type I questions. Even its treatment of Type I questions is incomplete for it does not examine the adequacy of the tripartite deterrent when one part fails. This limitation of scope not only imposes severe restrictions on what is being examined but biases the outcome because it cuts out most of the ground on which anti-ABM arguments were made and gives undue emphasis to the narrow terrain on which most pro-ABM arguments rest.

Although it is not our purpose to examine the many findings of the Committee that would seem to be open to questions, two of them are sufficient to illustrate what appears to be a lack of impartiality and comprehensiveness in the investigation. Perhaps the most dramatic finding was the difference in the numbers of ICBMs calculated to survive a Soviet first strike attack using the 420 to 500 SS-9 missiles it was then predicted they may have in 1975. Clearly such a calculation depends on the assumptions one makes about the number of reentry vehicles per missile, their accuracy, their megatonnage, the tactics employed by the attacker and the hardness assigned to the ICBMs attacked.

Since the range of reasonable choice for these variables is considerable it is understandable that no great weight should be attached to any particular set or the result that is derived therefrom. That two different assessments should produce figures as different as 5 and 25% surviving ICBMs is not surprising. If the assumptions had been the same the calculated results would have been the same: high school mathematics is sufficient for the calculation. Dr. Wholstetter considered the difference a matter of high principle: Dr. Rathjens looked upon it as a "back-of-the-envelope" calculation. After identifying the assumptions used and some small errors made by Dr. Rathjens the Report praises Wholstetter for doing his homework correctly and criticizes Rathjens rather severely for his errors and the bias they find in some of his assumptions.

By treating this incident in so much detail it assumes the importance of a pivotal point in the debate. Yet the Committee fails in its obligation to put the calculation in perspective. They do not suggest that the choice of 500 missiles makes the best possible case for Safeguard effectiveness.[2] A significantly smaller number would leave too many ICBMs surviving and any significantly larger number would so overwhelm the Safeguard system that it would be useless. The critically of the choice of 500 goes even further. Since the effectiveness of Safeguard is sharply peaked at this number, then it is clear that an adversary could overwhelm it by waiting until he has a larger striking force. The main point is that in an environment of constantly growing forces, Safeguard offers *at best* a brief period of marginal effectiveness. Whether this period would occur about 1975 or in some later year is very uncertain. This is a situation that occurs repeatedly in technically based policy decision-making. The fine tuning of a calculation involving a number of parameters having substantial uncertainties is seldom justified, particularly if it obscures larger issues. Yet Dr. Rathjens is taken to task for being inattentive to small details while a testimony that consciously avoids the main point—that Safeguard can be effective against only a very narrow band of transient threats—is praised.

An indication of dual standards can be seen in many other places. An interesting example is the Report's treatment of two tactical options that might possibly be used by the Soviets if they were planning a first strike. One of these involves reprogramming—the retargeting of some missiles to replace those that failed to function in the original salvo firing. The inclusion of such a tactic improves the hypothetical destructiveness of a Soviet first strike when large weapons are used. Since it supports the point Dr. Wholstetter was making the inclusion of this tactic in his assumptions is understandable, although comparable choices by Dr. Rathjens are criticized. But consider the justification that Wholstetter uses for assuming that the Soviet force has this capability. In this testimony he states, "There are very familiar, well known methods of arranging it so that you can reprogram missiles to replace a very large proportion of your failures . . . "Dr Rathjens replied "There is no basis that I am aware of for believing the Soviet Union employs such a technique, and I do not believe we do."

The Report agrees, but allows the assumption since Wholstetter "does not claim that either we or the Soviets have such techniques now." The standards which Wholstetter must meet could hardly be lower. To help him the Report devotes nine pages to suggestions of how reprogramming might be done. Yet it does not admit the central point: that this "quite likely tactic" requires selection of standby missiles, the switching of their targeting instructions, and possible internal readjustments all within seconds. This very heavy additional burden for communications, computer and guidance systems would require extensive tests in salvo firings before the confidence level of 95% single warhead kill probability assumed by Dr. Wholstetter could be achieved. It is the great cost and the near impossibility of achieving and maintaining high reliability for this tactic that makes it so unlikely; the necessary but insufficient numerical criteria elaborated in the report to legitimize this assumption miss the point. It is good judgment, not operations research, that is needed.

Compare, now, the way that this assumption was handled with the treatment given to Dr. Panofsky who had argued that it was unreasonable to assume that in a first strike the Soviets could force us to hold Minutemen in their silos while bomber bases were being attacked by exploding submarine launched warheads over our Minuteman fields. Dr. Panofsky concludes his argument in this way, "(Such an attack) . . . would require an enormous increase in the numbers of Soviet missiles, their accuracy, and in the confidence the Soviets would have to have in their system. Moreover, the SAC fleet would have to remain on the ground as 'sitting ducks' even in times of stress, that is, they would have to be not on airbourne alert; moreover the SAC airfields would have to be within reach of the Soviet's SLBMs (Submarine Launched Ballistic Missiles) a fact that we are presently changing. . . . We are giving the Soviets credit for a degree of performance and reliability of military systems which we could not dream of achieving ourselves."

The Committee was unimpressed and formulated the unrealistically high standard that Dr. Panofsky (and Dr. Wiesner) should have met: "Those who wish to challenge the possibility of a pin-down attack by the Soviets must treat *all* reasonable tactics that might lead to pin-down, and demonstrate that *none* of them will succeed." Just as ABM systems can always be exhausted by being presented with more incoming warheads than they can handle, so can scientific witnesses if they accept the charge to evaluate all kinds of "contrived threat which totally ignore the kind of realities the Soviet planner would have to face."

The gap between the capability the Soviets would have to have to employ this tactic with confidence and that which they are estimated to have in the foreseeable future is very great. Only arguments using classified data could spell this out, but one can be confident that the Department of Defense is not so derelict in its duty as to have allowed this kind of vulnerability to develop. This attitude of allowing maximum capability on their side and minimum capability on ours, like the asymmetry between capability and intent, permeates all strategic debates and is probably unresolvable by any professional committee. Being unresolved it offers a tool, perhaps unconsciously used, to impose an unacceptable discrimination on technical witnesses.

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Let us now turn to the propriety of the ORSA investigation and examine the extent to which this effort might affect the conduct of public policy debates and the technical advice that they require. It is evident upon examining Appendix III that what took place resembled in some ways a court proceeding. The findings read like a judgment and the potential impact on the careers of those "found guilty" could be substantial. Yet this was carried out without any prior communication of rules, without a prior limitation of jurisdiction and without any provision of safeguards. These features are considered necessary in a court and even more so in an *ad hoc* proceeding where the reputation of individuals is at risk. Even if one argued that justice was done in this case, the precedent is set for other investigations of this kind any of which may bring substantial harm to individuals whose conduct and hence whose ethics, since ethics are the complex of rules that govern conduct, are publicly judged by a group to which they do not belong and to which they never conferred such prerogatives. Only the State with its judicial apparatus can claim such powers.

The authority which the Society and its Ad Hoc Committee presume to have in this investigation derives solely from self appointment. None of the six persons[3] whose conduct was found at fault were members of the Society; Dr. Wholstetter was. None of the six considers himself to be engaged in operations research. More importantly, almost none of the individual points investigated involved matters obviously within the domain of operations research. Instead, the questions which led to the severest judgment dealt with how a graph was read or misread, or whether this data or that were employed. Distinctions such as that between 500 and 600 are not matters requiring an expertise in operations research. Nowhere except in the ten page section shoring up Dr. Wholstetter's assumption on reprogramming can one see any requirement of the professional discipline. Hence one must ask, why is a group who are not members of an operations research society investigated by a group that are, on matters that do not require an expertise in operations research. This amounts

Footnotes at end of article.

to one group taking action against another without going to the police or the courts. To condone this is to deny constitutional rights.

Many, perhaps most, professional societies have faced the problem of propagating a standard of professional behavior, particularly with regard to the professional-client relationship. The "Guidelines" which are set forth in the first 10 pages of this Report—the rest consists of appendices—appear to be sound statement of standards of procedure and conduct for operation researchers doing contracted work and serving a client as advocate. If the appendices dealt with the application of these in typical situations the result would be professionally useful and conform to the practice of other professional societies. Instead, as we have seen, Appendix III is of quite a different nature. And, further, it represents a departure that appears to be unique. The closest approach would seem to be in medicine and law where licensing and censure or disbarment, are standardized procedures. Yet no medical or bar association would assume authority to judge on professional misconduct except under authority granted by statute or the courts. Such acts as are examined are those of the most obvious misconduct, the taking of bribes or the injury of a patient through malpractice. Even then, the charges are heard under strict safeguards, and are subject to court review. Thus the ORSA investigation is seen as a radical departure from the traditional roles of professional societies. If this kind of procedure is repeated and extended it will surely come into conflict with due process.

These considerations lead me to conclude that it is unlikely that quality and effectiveness of scientific advice to the government will be improved by ORSA type investigations although some persons may indeed do their sums more carefully as a consequence. Even if such procedures were modified so as to avoid legal redress they would be harmful to the process of advising and debate because they empower a professional group no matter how narrowly constituted to inject their particular standards into issues that are almost certain to be very much larger. Yet, the general respect that professional societies still evoke from the public is such that the condemnations resulting from such procedures would be widely accepted and the people who would be willing to be judged publicly by such standards would become fewer.

* * * * *

How, then, can the technical input into such important policy debates be made more responsible? How can conflicting conclusions involving scientific concepts and analyses be fairly resolved or understood in time to be useful? And, how can one insure that a reasonable balance of attention be given to both the arguments that depend on detail and the wider issues that depend on experience, judgment and perception of the political context? Let us consider only those few major issues such as the ABM in which the debate becomes extensive and the technical component is substantial. The SST debate is in this category. Likewise the debates of the early 1960s over a nuclear test ban and their predictable recurrence in the near future when a complete test ban will be considered serve as other examples.

Ideally such conflicts should be resolved and some approach to a concensus reached before Congressional hearings begin. The mechanisms for achieving this are the Agency bureaucracies and the scientific advisory committees and their interplay. When properly appointed these communities form a "parallel communication network within the federal government which to a very considerable extent circumvents the customary bureaucratic channels. In science and engineering no level of the bureaucracy has a monopoly on new ideas, and the loose nature of the advisory system provides one means by which ideas originating at a low level in the bureaucratic structure can be brought directly to the point of decision without going through regular channels, and new ideas from outside the federal structure (or its contractors) can be introduced quickly into governmental operations."[4]

When this system fails the Administration generally recommends its choice among the alternatives to Congress and the debate develops in hearings before the appropriate Committee(s). The content and value of the hearings is then shaped by the work of the staff and the choice of witnesses invited to testify. While experienced and competent staff can develop very useful hearings on many bills within their normal range of work, the transcending issues of large scope, such as ABM, involve matters, especially technical matters, with which they cannot adequately deal. The selection of witnesses can be done in a way to bring out the important differences and often to aid in finding compromises. But in issues that are already highly polarized and politicized the choice of witnesses is likely to be strongly influenced by those members of the Committee who are acknowledged exponents of the two polarized points of view. This allows little opportunity for introducing less aligned testimony, it polarizes the debate further and converts the taking of testimony into an adversary proceeding. Obviously it was this kind of structured atmosphere, and the inevitable haste, that contributed to much of the unnecessary misunderstanding in the ABM hearings.

Since the hearings in such cases are so close to adversary proceedings in spirit there are recurring suggestions to go all the way and introduce the actual procedures of a court of law. The attractiveness of this pales, however, when one appreciates that this would require the Senate Committee to immerse itself in the technical details as a judge does. Given the work load and schedule requirements such a process would be ludicrously cumbersome and would paralyze decision-making. Moreover, any reform of existing procedures should encourage convergence rather than intensify the polarization of viewpoints.

Perhaps the most practical way of improving the advisory process at this stage is to build on the process that keeps scientists honest and relevant in their professional lives. That is, a means should be found to have witnesses confront peers of equal competence. To be specific, Senate Committees after being formed in each (two-year) Congress and assessing the major issues that are likely to come before them could, with adequate advice, engage a balanced group of consultants of acknowledged technical competence and reputation for the remainder of the Congressional Session. As consultants they would agree not to engage in public discussion or serve on existing advisory committees in areas where hearings may be expected or to which they may be specifically assigned.

In actual operation a consultants panel would be selected for a given set of hearings. They would advise the staff on witnesses, organization and schedules. They could suggest the most useful form of testimony and specific questions that should be addressed. At the hearing itself they would be able to question each witness and require written answers to questions that could not be dealt with within the hearing. In cases of continued conflicting testimony they could recommend additional sessions and the questions which should be taken up. After the hearings they could meet with the Committee in both open and executive session to discuss their evaluation of the presentations and provide a written summary.

Of course, the success of such a course depends decisively on choosing and enlisting as consultant scientists of considerable experience and stature so that the witnesses will feel that they are being judged by their peers. In some circumstances it may be possible for the panel of consultants to meet with witnesses prior to testifying to resolve issues that are obviously due to misunderstanding or insufficient data and thereby avoid wasting time in the hearings proper.

Another device that might prove useful and builds on peer judgment is one by which a House or Senate Committee Chairman requests an external organization, such as the National Academy of Sciences, to provide an advisory report in an area of potential Committee concern. This was done in 1965 and 1967 by the House Committee on Science and Astronautics when they requested such reports on *Basic Research and National Goals* and *Applied Science and Technological Progress*[5]. In both cases the panels were chosen to represent a balance of views. Individual members were asked to prepare papers outlining their own views on specific topics but were then required to present and defend them *in camera* before the whole Panel. As a consequence there was considerable revision of papers as a result of this peer confrontation. The conclusions prepared by the staff and the chairman clearly reflected the quality and conviction displayed by individuals before the whole Panel. These recommendations eventually became the basis of legislation reorganizing the National Science Foundation. Although the subjects in these instances allowed a more leisurely paced approach than issues such as the ABM might, the usefulness of such a procedure and the balanced and tested quality of advice which it can produce justifies its being tried on other major issues.

For example, one can anticipate that a decision on a complete nuclear test ban may come before Congress in the next session. As before, an enormous amount of seismological and other data will be involved and used in Administrative proposals. Early in the next Congressional Session the Appropriate Committees could request an examination of this problem in the form just outlined. The Panel that carried out this task, or a part of it, could then also serve as consultants on hearings dealing with Administration proposals. Properly orchestrated such a procedure could be much more effective and much less abrasive in dealing with an issue that may have the emotional potential of the ABM.

Both of these proposals have the additional virtue of increasing the contact between Congressmen and the science and technology community. Moreover, they do so in a manner that reveals the workings of this community since they use peer judgments in much the same way as within science itself. A scientist recognizes that his influence in science rests on the degree to which his research is verified by subsequent events and provides results that others can build on. A scientific advisor will function best if his influence in government rests on the degree to which his advice is vindicated by subsequent events and provides results that others can build on.

We can now return briefly to the questions of Type III, referred to earlier. It was suggested that the ultimate form of the political decision in this case was: Will having Safeguard help attain a political goal that is worth the price and risk? And it was further remarked that technical considerations would only affect this decision if such arguments decisively showed a lack of need (Type I) and an inability to do the job (Type II). In my view this was indeed the situation until late 1967 when the invention of defense

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against a small Chinese attack so lowered the system requirements that Secretary McNamara could say, "There are marginal grounds for concluding that a light development of U.S. ABMs against this probability is prudent."

Until this time the Soviet position had been firmly against any limitation of ABM, arguing that they were solely defensive and could not produce the serious destabilizing effects which many American strategists claimed. Ironically, it was just at this time that Soviet opinion began to shift, greatly aided, I believe, by private discussions that had taken place over several years. By the Spring of 1968 the possibility of negotiations on limiting ABM and offensive missiles seemed to have become possible. Plans to do so were upset by the Soviet intervention in Czechoslovakia in August 1968; negotiations did not actually begin until November 1969.

While it is far too early to render events since that time in perspective a subjective interim assessment may be of some interest. For simplicity consider what each side has to its credit. Those advisors who favored ABM can point to the deployment of Safeguard at two sites and the authorization for two more sites. If a SALT agreement is reached it will probably permit the retention of some of the Safeguard system. If a SALT agreement is not reached, pro-ABM advisors will be able to recommend an improved system (hard site defense) that would be more cost-effective in the protection of land based missiles. And the option of returning to the advocacy of countrywide defense and a heavy urban defense will remain.

Those advisors who have opposed ABM have nevertheless won important contests. They played a major role in causing the country-wide defense to be abandoned. The first step was in its downgrading from a major role in the Sentinel System to a lesser role in the original Safeguard System. The second step came in the revival of the ABM debate prior to the 1970 Senate vote on funding. Here Senator Stennis was persuaded of the shortcomings of the area defense and took the lead in cutting out that part of the program. Beyond these specific successes is the change in climate in the Congress with respect to Administration proposals for new complex systems mentioned in the quotation from Newsweek at the beginning of this article. Indeed, the defeat of the supersonic transport in 1970 is claimed by many to be a consequence of the new sensitivity of Congress to the adequacy of the technological assessment of new complex systems—military or civilian.

But in the long run, those who have opposed investing in ABM in principle have further grounds for satisfaction. The consequences of deploying a heavy ABM system on either—and then ultimately on both sides—are widely appreciated and accepted throughout the world now, whereas five years ago they were not. Although initial SALT agreements may preserve more ABM capability than existed when the talks began it will still be a relatively small part of what might have been built eventually. And if SALT fails it is likely that these more realistic views will cause similar limits to be self imposed. If this interpretation is correct the ABM debate has contributed to the precious store of world sanity. Those who invest their energies in such arcane pursuits can expect no more, regardless of their individual positions.

* * * * *

In closing it may be useful to try to look beyond the possible improvements in the means of scientific advising to the more fundamental limitations which will keep it imperfect no matter how adequate the means or how honest the advisors.

Operations research was born and came of age in World War II. Its techniques were based on gathering operational data under battle conditions, using these data to narrow the uncertainties of assumptions or parameters so that an analysis of how a system or tactic was operating could be used to make militarily useful predictions.

These techniques were soon developed into a methodology[6] that found wide utility in many diverse ways in both civilian and military problems where extensive operational data was available. But the transfer of this methodology to strategic problems in the nuclear age has been another story. Nuclear weapons have not been delivered and exploded between nuclear powers. As a result there is no operational data from which to narrow the uncertainties of assumptions or parameters. This applies to the effectiveness of the other sides' strategic forces, since intelligence is never complete; to the effectiveness of our own, because they have never been used in a nuclear war environment.

Without "battle tested" data, such as the space and time distribution of bombs falling in a given target area in World War II, the methodology of operations research could not be applied in the traditional ways. The alternative that developed, often under the same name, was the use of assumptions instead of operational data. The mathematical analyses could proceed, increasing in complexity with each successive generation of computers, to highly quantified answers. The uncertainties in the assumptions increase again in analyses such as the ABM because of the range of tactics the attacker can use to defeat the defense. Ultimately, the question must be faced as to how useful are the quantitative calculations with the widely uncertain assumptions. As an aid in design, in planning tactics and in giving some guidance to estimates of capability, they do have value. But in the hard decisions—to build or not build the system—judgment based on experience and exercised without bias must be the final arbiter for rational and responsible men.

Yet, if all this were agreed there would remain unresolvable differences in judgment. It is an inseparable part of the human condition that men are conservative or liberal, hawk or dove, hopeful or pessimistic, confident or suspicious. In this deeper, human sense, the contest to which the ORSA Report contributes has been played before and will be played again. In the late 1950s Dr. Wohlstetter was a leader in the discovery of our new "vulnerability", arguing this with great persuasiveness in a paper[7] entitled "The Delicate Balance of Terror". One of his main points was that ". . . it takes great ingenuity at any level of nuclear technology to devise a stable equilibrium". P. M. S. Blackett[8] among others set about to demolish this "delicacy" thesis and ended his essay with these words. "More important is the possibility that the arguments which have been, in my view, falsely used to prove the balance unstable in recent years may be used in the future to prove it again unstable, in spite of the expected improvements of weapons. So the truth or falsehood of the delicacy thesis will remain for many years of vital importance."

It was the rehabilitation of the delicacy of the balance argument and the newly perceived vulnerability of Minuteman that fired much of the pro ABM thrust. In this context I am lead to conclude that despite its concentration on matters of detail and its avoidance of the larger and decisive issues, the ORSA Report, consciously or unconsciously, addresses a doctrinal dispute in the guise of a preoccupation with quantitative methodology premised on quite uncertain assumptions. The doctrinal dispute cannot be settled by a contest over explicitness of the uncertain assumptions. To have done this *consciously* imputes political motives to the Ad Hoc Committee and the Society and a willingness on their part to misuse the prestige of the Society—and in effect the prestige of professional societies in general. To have done this *unconsciously*, assuming that its few disclaimers would prevent this from putting ORSA officially behind the Administration and the Pentagon on ABM in the public's eye, is to be politically naive.

University faculties, if they are alive, are rife with doctrinal disputes. By long experience they have learned that their existence, their freedom and their usefulness depends on limiting their self-investigation of the most elementary and obvious forms of "grave misconduct". Professional societies should limit themselves in the same way. Of all professional groups only the Church pretends competence in settling doctrinal disputes and even then with the expectations of divine guidance and, it would seem, with mixed results.

FOOTNOTES

[1] Guidelines for the Practice of Operational Research, The ORSA Ad Hoc Committee on Professional Standards, Minerva, *10*, 107–157 (1971).

[2] The "Guidelines" in the body of the Report recommends that analysts should "check the sensitivity of the results to variations in assumptions and inputs. . . ."

[3] At least one of the six, Professor Panofsky, received no notification of the investigation until he was sent the Report.

[4] H. Brooks, *The Government of Science*, Massachusetts Institute of Technology Press, Cambridge, Mass. 1968, p. 82.

[5] Reports to the Committee on Science and Astronautics, U.S. House of Representatives, by the National Academy of Sciences, 1965. Ibid, 1967.

[6] P. M. Morse and G. E. Kimball, *Methods of Operations Research*, J. Wiley, New York 1950.

[7] A. Wholstetter, Foreign Affairs, January 1959.

[8] P. M. S. Blackett, Encounter, April 1961, pp 9–17.

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. 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.

ORDERS FOR RECOGNITION OF SENATOR BENTSEN TO READ WASHINGTON'S FAREWELL ADDRESS ON MONDAY, FEBRUARY 21, AND FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND LAYING BEFORE THE SENATE THE UNFINISHED BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, following the two leaders under the standing order, the distinguished Senator from Texas (Mr. BENTSEN) be recognized for the purpose of delivering the Farewell Address of the first President of our country, George Washington; and that, upon completion of the reading of George Washington's Farewell Address, the Senate proceed to the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes, at the conclusion of which the Chair lay before the Senate the unfinished business.

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

QUORUM CALL

Mr. BYRD of West Virginia. 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. BYRD of West Virginia. 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.

LEAVE OF ABSENCE

Mr. BYRD of West Virginia. Mr. President, in accordance with paragraph 1 of rule V of the Standing Rules of the Senate, I ask unanimous consent that the distinguished Senator from Tennessee (Mr. BAKER) be granted leave of absence from the Senate during the meeting of the Senate on Monday next and on Tuesday next.

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

ORDER FOR ADJOURNMENT FROM MONDAY, FEBRUARY 21, UNTIL TUESDAY NEXT AT 10:30 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business on Monday next, it stand in adjournment until 10:30 a.m. on Tuesday next.

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

ORDER FOR PERIOD OF TRANSACTION OF ROUTINE MORNING BUSINESS ON TUESDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that after the two leaders have been recognized on Tuesday next, there be a period for the transaction of routine morning business, not to extend beyond 11:15 a.m., with statements limited therein to 3 minutes.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, are we still in the morning hour?

The ACTING PRESIDENT pro tempore. We are still in the morning hour.

The Senator from New York is recognized.

(The remarks Mr. JAVITS made at this point when he introduced S. 3187 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

THE PROPOSED ANTIBUSING AMENDMENTS

Mr. ALLEN. Mr. President, last Monday I commended the President of the United States for his statement in which he renewed his oft-declared opposition to the forced busing of public school students. I commended him for his consideration of a constitutional amendment that would provide for banning massive forced busing. However, I pointed out that a constitutional amendment, if one could be achieved, would probably require some 2 years before it could possibly be ratified by 38 States. I said then and I say again while we are waiting for the passage of a constitutional amendment, there are other avenues through which this problem can be reached, attacked, and solved.

I refer specifically to the possibility of passing amendments to the Higher Education Act, which will be before the Senate in the next few days. Too, I recommend that the Department of Health, Education, and Welfare stop submitting desegregation plans that call for massive forced busing. And I would like to see a changed attitude on the part of the Federal judiciary, all the way up to and including the Supreme Court.

The President on Monday appointed a Cabinet level commission or committee to consider this problem and to make recommendations for affirmative action. The committee consists of the Secretary of Health, Education, and Welfare, Mr. Richardson, the Attorney General, Mr. Mitchell, and Dr. Schultz, the head of the Office of Budget and Management. Already the Secretary of Health, Education, and Welfare has prejudged the matter. I ask unanimous consent that an article entitled "Busing Solution Pressed, HEW Chief Is Opposed to Amendments," written by Eric Wentworth, and published in this morning's Washington Post, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ALLEN. This article states that the HEW chief is opposed to the amendments. He was appointed, it seems, on Monday to investigate and advise the President on the President's return from China, and here on Thursday morning he has already decided the question. These amendments are not advisable, in the opinion of the HEW Secretary.

What kind of advice is that to give the President of the United States on this complex problem? I submit, Mr. President, that the Secretary of Health, Education, and Welfare, in 4 days' time, has outlived his usefulness on this committee, and should resign, because he has prejudged the matter.

Another of the appointees is the Attorney General. I am not sure whether the President intended that the person occupying the position of Attorney General should be on the committee, or whether the Honorable John N. Mitchell individually should be on the committee. He has resigned, I believe, effective March 1, to manage the President's reelection campaign and at that time, unless his successor has been confirmed by the Senate, there will be no Attorney General.

So what kind of committee does the President have? I suggest, Mr. President, that the President take a long, close look at the composition of his committee.

Mr. President, I say again that the President needs to look at the composition of this committee. He needs to ask Mr. Richardson to resign from the committee, because he has already prejudged the matter—he is opposed to the amendments, and has so stated—and get himself a committee that will give him some sound advice. He has been President of the United States for more than 3 years, and at this late date he has not decided yet the method of attacking this problem. So it is past the time just to have committees consider the problem; it is high time for action by the Congress of the United States, and it is time for affirmative action by the President—action, not words.

Mr. President, I yield the floor.

EXHIBIT 1

BUSING SOLUTION PRESSED—HEW CHIEF IS OPPOSED TO AMENDMENTS

(By Eric Wentworth)

Busing requirements have gone too far in some school-desegregation cases, but constitutional amendments offered to date would be poor remedies, Health, Education and Welfare Secretary Elliot L. Richardson said yesterday.

The HEW chief said in a press conference that he wanted to explore possible legislative guidelines for the courts concerning when busing reaches the point of offsetting the educational benefits of desegregation.

In Georgia, meanwhile, Gov. Jimmy Carter said he might support a statewide one-day school boycott to protest court-ordered busing. Carter criticized a new busing plan imposed Monday in Augusta, where white parents demonstrated and some sought yesterday to block trucks transferring textbooks.

Richardson, a member of the cabinet-level committee which President Nixon has assigned to study all anti-busing avenues and recommendations, declined to rule out a constitutional amendment.

But constitutional amendments, he said, tend to be worded in such general terms that they allow conflicting interpretations.

Richardson cited the amendment offered by Rep. Norman F. Lent (R-N.Y.) and Sen. William E. Brock III (R-Tenn.), among others, which states: "No public school student shall, because of his race, creed or color, be assigned to or required to attend a particular school."

This, he said, could be read as supporting the 1954 Supreme Court decision against segregated schools which touched off the long parade of modern-day civil rights actions.

But it could also, Richardson added, "have the effect of actually undercutting and rolling back the measures that have been taken to dismantle dual school systems" even without massive busing. He doubted that the administration wanted that result.

As to setting general limits on busing through legislation, Richardson indicated the difficulties when he declined to define "excessive busing" specifically at this time or to offer any actual examples. He did say, however, "I think that the requirements in some situations go beyond what would seem to me desirable limits."

The basic problem, as the HEW chief saw it, was to assure that children gained educational benefits regardless of what steps

were taken to desegregate a dual school system.

Asked about anti-busing amendments which Southern senators are expected to offer to a combined higher education-school desegregation bill when it reaches the Senate floor soon, Richardson said:

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the time for the transaction of routine morning business has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the period be extended for an additional 3 minutes.

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

THE ANTIBUSING PROPOSALS

Mr. ERVIN. Mr. President, when the President of the United States was a candidate for the presidency, he held a news conference in Charlotte, N.C., in the fall of 1968, in which he stated two propositions.

The first proposition was that he was opposed to the busing of schoolchildren for the purpose of integrating the public schools, and the second proposition was that he was in favor of the neighborhood school—that is, the right of a child to go to the school nearest his home, available to children of his age and educational standard.

The President received the electoral vote of North Carolina. As a citizen of North Carolina who has lived in that State all his life and who is familiar with the thinking of the North Carolina people, I am convinced that the President owes in large measure his receipt of the electoral votes of North Carolina to those two statements made in Charlotte in 1968.

In the election of 1970, the President returned to North Carolina and made a public speech to approximately 10,000 or more people in Asheville. In this public speech, the President reiterated his previous statements that he was opposed to the busing of schoolchildren for the purpose of integrating schools and that he believed that children should have the right to attend their neighborhood schools—that is, the schools nearest to their homes, operated for the education of children of their ages and educational standards.

It does seem to me that the President of the United States, who is a man of brilliant intellect and who has announced publicly that he is opposed to busing and is in favor of the neighborhood schools, would not have to appoint a committee, almost 3½ years after he took that position, to determine how he is going to end or how Congress should put an end to this monstrous tyranny being practiced by Federal courts and the Department of Health, Education, and Welfare in respect to little, helpless school children of America.

I would think that the best way to deal with this perhaps would be to take both routes.

They tell the story in North Carolina about a man who thought his mother-in-law was a rather cantankerous woman. On one occasion, when he was absent from home, he received a telegram from an undertaker stating:

> Your mother-in-law died today. Shall we cremate or bury?

He wired back to the undertaker:

> Take no chances. Cremate and bury.

I have always had the conception that it is the duty of Government to put an end to tyranny. I know of no more monstrous tyranny than that which takes little children, denies them the right to go to their neighborhood school, and compels them to ride in buses to schools in distant areas, not for the purpose of enlightening their minds but merely for the purpose of integrating their bodies.

So I say that Congress should immediately pass a statute to put an end to that sort of tyranny. I also say that Congress should then submit a constitutional amendment to the States to make certain—if the States ratify such amendment—that such tyranny shall never hereafter be practiced upon helpless little children.

The truth is that under any correct interpretation of the equal protection clause of the 14th amendment, the busing of children at the instance of Federal courts or at the instance of HEW constitutes a clear violation of the equal protection clause.

The equal protection clause is not a complicated constitutional provision. It is probably the simplest provision in the Constitution. It reads:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

What it means is simply this, and nothing more: No State shall treat in a different manner persons similarly situated. When a Federal court orders a school board to deny a child the right to attend his neighborhood school and permits other children residing in the same school district or in the same attendance zone to attend the neighborhood school, the court compels the school board to violate the equal protection clause, because it compels the school board to treat in a different manner children similarly situated.

When a court orders a school board to bus children away from their neighborhoods in order to integrate schools elsewhere, it violates the equal protection clause as interpreted in the Brown case, because it takes such action in order either to decrease the number of children of that race in the neighborhood schools or to increase the number of children of that race in the schools elsewhere. Oceans and oceans of judicial sophistry cannot wash out the plain fact that such an interpretation denies the children who are bused admission to the neighborhood school on the basis of their race and nothing else. Hence, it is a violation of the interpretation placed upon the equal protection clause in the case of Brown against Board of Education of Topeka.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON FLIGHT INCENTIVE PAY

A letter from the Secretary of the Navy, reporting, pursuant to law, on flight incentive pay, for the 6-month period ended November 30, 1971; to the Committee on Armed Services.

PUBLICATION ENTITLED "STATISTICS OF PRIVATELY OWNED ELECTRIC UTILITIES, 1970"

A letter from the Chairman, Federal Power Commission, transmitting, for the information of the Senate, a publication entitled "Statistics of Privately Owned Electric Utilities, 1970" (with an accompanying document); to the Committee on Commerce.

REPORT ON GRANTS FINANCED WHOLLY WITH FEDERAL FUNDS

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report concerning grants approved which are financed wholly with Federal funds, for the period October 1, 1971, to December 31, 1971 (with an accompanying report); to the Committee on Finance.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting pursuant to law, a report entitled "More Specific Policies And Procedures Needed for Determining Royalties on Oil From Leased Federal Lands," Geological Survey, Department of the Interior, dated February 17, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Problems Associated With Converting Defense Research Facilities to Meet Different Needs: The Case of Ft. Detrick," Department of Defense, dated February 16, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Greater Conservation Benefits Could Be Attained Under the Rural Environmental Assistance Program," Agricultural Stabilization and Conservation Service, Department of Agriculture, dated February 16, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Problems Being Experienced in the Dependent Shelter Program in the Republic of Vietnam," Department of Defense, dated February 17, 1972 (with an accompanying report); to the Committee on Government Operations.

PROPOSED IMPLEMENTATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

A letter from the Attorney General, transmitting a draft of proposed legislation to implement the Convention on the Prevention and Punishment of the Crime of Genocide (with accompanying papers); to the Committee on the Judiciary.

REPORTS RELATING TO THIRD PREFERENCE AND SIXTH PREFERENCE FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports relating to third preference and sixth preference for certain aliens (with accompanying papers); to the Committee on the Judiciary.

PROPOSED ADDITIONAL APPROPRIATIONS UNDER ECONOMIC OPPORTUNITY ACT OF 1964

A letter from the Director, ACTION, transmitting a draft of proposed legislation to provide additional authorization of appropriations under title VIII of the Economic Opportunity Act of 1964, and for other purposes (with an accompanying paper); to the Committee on Labor and Public Welfare.

CARE AND TREATMENT OF VETERANS

A letter from the Administrator of Veterans' Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to promote the care and treatment of veterans in State veterans' homes (with accompanying papers); to the Committee on Veterans' Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. NELSON):

Resolutions of the Legislature of the Commonwealth of Massachusetts; to the Committee on Foreign Relations:

"RESOLUTIONS PROTESTING THE PRESENT POLITICAL DIVISION OF IRELAND

"Whereas, The present political division of Ireland is not in keeping with the principles of self-determination and is not based on the racial, economic or historical background of the people of Ireland; and

"Whereas, The Republic of Ireland should embrace the entire territory unless a clear majority of the people of Ireland in a free plebiscite determine and declare to the contrary; and

"Whereas, This approach to the problem of a united Ireland is entirely in keeping with the free democratic ideals and principles of our own democracy and all free nations of the world; and

"Whereas, Ireland from the very beginning of our own beloved country through tremendous hardships and adversity has always been a staunch and unflinching friend of America; and

"Whereas, The current Northern Ireland movement is aimed at securing equality for all in local government, voting and public housing, at ending property ownership requirements to vote and at terminating discrimination in public housing allocation by local officials; therefore be it

"Resolved, That the Massachusetts House of Representatives hereby urges the United States Government to use its good graces and attempt to assist in bringing about a peaceful solution to the Northern Ireland problem presently plaguing the Irish people and thereby lay the foundation for uniting this great nation under one flag; and be it further

"Resolved, That copies of these resolutions be sent forthwith by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress, to the members thereof from the Commonwealth and to the Secretary of State."

"RESOLUTIONS URGING THE WITHDRAWAL OF BRITISH TROOPS FROM NORTHERN IRELAND

"*Whereas*, The presence of British troops in Northern Ireland has increased the tension which has existed therein for many years; and

"*Whereas*, Riots and bloodshed resulting from the presence of such troops have become an almost daily occurrence; and

"*Whereas*, On Sunday, January 30, 1972, British soldiers fired at Irish Catholic sympathizers thereby killing thirteen persons; and

"*Whereas*, The continued presence of British troops in Northern Ireland will result in further riots, bloodshed and deaths; therefore be it

"*Resolved*, That the Massachusetts House of Representatives urges the President of the United States to use the full weight of his office to effect the immediate withdrawal of British troops from Northern Ireland; and be it further

"*Resolved*, That a copy of these resolutions be sent by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress, to the members thereof from the Commonwealth and to the British Consul."

"RESOLUTIONS URGING THE UNITED NATIONS TO CONSIDER THE ISSUE OF NORTHERN IRELAND

"Whereas, The Massachusetts House of Representatives deplores the violence and bloodshed, which has occurred in Northern Ireland; and

"Whereas, Continuance of violence in Northern Ireland affects not only that country but much of the civilized world; and

"Whereas, It appears unlikely that peace will be restored in Northern Ireland unless British troops are removed therefrom and unless the parties involved in such violence negotiate in good faith to restore peace; and

"Whereas, The United Nations presents an ideal and readily available agency through which such negotiations may be conducted; therefore be it

"Resolved, That the United Nations be requested to immediately consider the situation in Northern Ireland with a view to effecting the elimination of violence and a political solution to the problems of Northern Ireland by negotiation of the parties involved; and be it further

"Resolved, That a copy of these resolutions be sent by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress, to the members thereof from the Commonwealth and to the Secretary General of the United Nations."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 2275. A bill for the relief of Wolfgang Kutter (Rept. No. 92-620);

H.R. 2714. An act for the relief of Mrs. Kayo N. Carvell (Rept. No. 92-621);

H.R. 2792. An act for the relief of Juanita Savedia Varela (Rept. No. 92-622);

H.R. 3093. An act for the relief of Mrs. Crescencia Lyra Serna and her minor children, Maria Minde Fe Serna, Sally Garoza Serna, Gonzalo Garoza Serna, and James Garoza Serna (Rept. No. 92-623);

H.R. 4319. An act for the relief of Josephine Dumpit (Rept. No. 92-624);

H.R. 5179. An act for the relief of Soo Yong Kwak (Rept. No. 92-625);

H.R. 6506. An act for the relief of Mrs. Hind Nicholas Chaber, Georgette Hanna Chaber, Jeanette Hanna Chaber, and Violette Hanna Chaber (Rept. No. 92-626);

H.R. 6912. An act for the relief of William Lucas (also known as Vasilios Loukatis) (Rept. No. 92-627);

H.R. 7316. An act for the relief of Mrs. Norma McLeish (Rept. No. 92-628); and

H.R. 8540. An act for the relief of Eleonora G. Mpolakis (Rept. No. 92-629).

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

S. Res. 259. Resolution commemorating the Girl Scouts of America on their 60th anniversary, March 12 (Rept. No. 92-630).

By Mr. SCHWEIKER, from the Committee on Armed Services, without amendment:

H.R. 11738. An act to amend title 10, United States Code, to authorize the Secretary of Defense to lend certain equipment and to provide transportation and other services to the Boy Scouts of America in connection with Boy Scout Jamborees, and for other purposes (Rept. No. 92-631).

By Mr. FULBRIGHT, from the Committee on Foreign Relations, with amendments:

S. Res. 214. Resolution relative to the submission of any Portuguese base agreement as a treaty (Rept. No. 92-632).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

I. H. Hammerman II, of Maryland, to be a member of the Board of Directors of the National Corporation for Housing Partnerships;

Henry W. Meers, of Illinois, to be a Director of the Securities Investor Protection Corporation;

Marina von Neuman Whitman, of Pennsylvania, to be a member of the Council of Economic Advisers; and

William B. Camp, of Maryland, to be Comptroller of the Currency.

Mr. STENNIS. Mr. President, from the Committee on Armed Services I report favorably the nominations of 83 flag and general officers in the Navy, Marine Corps, and Air Force. I ask that these names be placed on the Executive Calendar.

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

The nominations, ordered placed on the Executive Calendar, are as follows:

Rear Adm. William W. Behrens, Jr., U.S. Navy, for appointment to the grade of vice admiral, for the duration of his service in duties determined by the President;

Col. Solomon E. Lifton, Regular Air Force, and sundry other officers, for temporary promotion in the Regular Air Force;

Richard Mulberry, Jr., Marine Corps Reserve, for temporary appointment to the grade of major general;

Robert E. Friederich, and Paul E. Godfrey, Marine Corps Reserve, for temporary appointment to the grade of brigadier general;

Adm. Horacio Rivero, Jr., U.S. Navy, for appointment to the grade of admiral on the retired list;

Vice Adm. Richard G. Colbert, U.S. Navy, for commands and other duties of great importance and responsibility; for appointment to the grade of admiral while so serving; and

Rear Adm. Jullen J. Le Bourgeois, U.S. Navy, for commands and other duties of great importance, for appointment to the grade of vice admiral while so serving.

Mr. STENNIS. Mr. President, in addition I report favorably 2,164 appointments in the Army in grade of major and below; 2,244 promotions in the Navy in grade of commander and below; and 189 appointments in the Marine Corps in grade of first lieutenant. Since these names have already appeared in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, 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 desk, are as follows:

Joseph L. Perry, and sundry other persons, for appointment in the Regular Army of the United States;

Bobby E. Bogard, and sundry other persons, for appointment in the Regular Army of the United States;

Max N. Akers, and sundry other officers, for promotion in the U.S. Navy;

Seth E. Anderson, Jr., and sundry other officers, for temporary promotion in the U.S. Navy; and

Jesse W. Addison, and sundry other officers, for promotion in the Marine Corps.

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. SCOTT (for himself and Mr. SCHWEIKER):

S. 3184. A bill to amend the Federal Property and Administrative Services Act of 1949 to permit the disposal of certain surplus property for court and law enforcement purposes. Referred to the Committee on Government Operations.

By Mr. PERCY:

S. 3185. A bill to promote more effective operations and management of the Federal corrections system by reorganizing certain functions and creating new organizations, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. BEALL (for himself and Mr. MATHIAS):

S. 3186. A bill to amend chapter 383, title 18, United States Code, to provide for the commitment of certain individuals acquitted of offenses against the United States solely on the ground of insanity. Referred to the Committee on the Judiciary.

By Mr. JAVITS (for himself, Mr. KENNEDY, Mr. WILLIAMS, Mr. DOMINICK, Mr. BROOKE, Mr. CRANSTON, Mr. BEALL, Mr. CANNON, Mr. CASE, Mr. EAGLETON, Mr. GURNEY, Mr. HARRIS, Mr. HART, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MOSS, Mr. NELSON, Mr. PASTORE, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. STAFFORD, Mr. STEVENS, Mr. STEVENSON, Mr. TAFT, Mr. TOWER, Mr. TUNNEY, and Mr. YOUNG):

S. 3187. A bill to amend the Public Health Service Act so as to provide for the prevention and control of venereal disease. Referred to the Committee on Labor and Public Welfare.

By Mr. GOLDWATER:

S. 3188. A bill to amend section 203 of title 37, United States Code, to provide additional pay for permanent professors at the U.S. Military Academy and the U.S. Air Force Academy. Referred to the Committee on Armed Services.

By Mr. GURNEY:

S. 3189. A bill to establish the Chassahowitzka National Wilderness Area in the State of Florida; and

S. 3190. A bill to establish the St. Marks National Wilderness Area in the State of Florida. Referred to the Committee on Interior and Insular Affairs.

By Mr. ALLEN:

S. 3191. A bill to authorize the Secretary of the Interior to conduct a study with respect to the feasibility of establishing the Bartram Trails, Ala., as a national scenic trail. Referred to the Committee on Interior and Insular Affairs.

By Mr. RIBICOFF:

S. 3192. A bill for the relief of Trevor Keith Devon and Diane Eva Devon. Referred to the Committee on the Judiciary.

By Mr. NELSON (for himself, Mr. MONDALE, Mr. CRANSTON, Mr. HUGHES, Mr. KENNEDY, Mr. PELL, Mr. RANDOLPH, Mr. STEVENSON, Mr. WILLIAMS, Mr. BAYH, Mr. HARTKE, Mr. HUMPHREY, Mr. MCGOVERN, and Mr. TUNNEY):

S. 3193. A bill to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes.

By Mr. MONDALE (for himself, Mr. KENNEDY, Mr. BEALL, Mr. CRANSTON, Mr. HUGHES, Mr. JAVITS, Mr. MAGNUSON, Mr. NELSON, Mr. PACKWOOD, Mr. PELL, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENSON, Mr. WEICKER, Mr. WILLIAMS and Mr. EAGLETON):

S.J. Res. 206. A joint resolution relating to sudden infant death syndrome. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SCOTT (for himself and Mr. SCHWEIKER):

S. 3184. A bill to amend the Federal Property and Administrative Services Act of 1949 to permit the disposal of certain surplus property for court and law enforcement purposes. Referred to the Committee on Government Operations.

Mr. SCOTT. Mr. President, I am today introducing for appropriate reference, a bill to permit the disposal of certain surplus property for court and law enforcement purposes. Essentially, this legislation would enable local authorities to acquire old Federal court facilities at little or no cost, under the same authority as local bodies are now allowed to acquire parkland, educational buildings, housing, and the like.

Although this legislation would have applicability all over the Nation, the situation in Philadelphia is particularly critical. Some time ago, D. Donald Jamieson, president judge of Philadelphia's Court of Common Pleas, spoke with Robert L. Kunzig, the former administrator of the Federal General Services Administration, about need for additional courtroom space. Judge Jamieson and Mr. Kunzig, the latter now a judge on the U.S. court of claims, discussed the possibility of acquiring the soon-to-be vacant old Federal Court House at Ninth and Chestnut Streets for the Court of Common Pleas when the Federal judges move into the new Federal Court House.

The pressing need for additional courtroom space for persons who administer justice is evident. If the Federal Government can make some of this space available, it would free the States and local governments to use some of their money to appoint additional judges. The idea of turning over excess Federal court house space to lower courts is consistent with President Nixon's desire to help those court systems. In addition, it seems to make eminent good sense in terms of economical use of the taxpayers' money.

The physical improvement of courts and other law enforcement facilities should be given priority attention. My bill, which is being offered as an amendment to the Federal Property and Administrative Services Act of 1949, would give lower courts this priority attention. The bill specifies that space would be made available for lease or purchase at prices which "take into consideration any benefit which has accrued or may accrue to the United States from the use of such property by any such State, political subdivision, instrumentality, or municipality."

Mr. President, this is a good bill and it merits the close attention of my Committee on the Judiciary as well as the Committee on Government Operations. I hope that hearings are scheduled promptly to insure enactment this year.

By Mr. PERCY:

S. 3185. A bill to promote more effective operations and management of the Federal corrections system by reorganizing certain functions and creating new organizations, and for other purposes. Referred to the Committee on the Judiciary.

FEDERAL CORRECTIONS REORGANIZATION ACT

Mr. PERCY. Mr. President, I invite the attention of Senators to a malady which has been spreading its infectious poison throughout our society until it is now reaching epidemic proportions. Worse, it is an epidemic we are helping to spread at a cost of $1.5 billion a year.

I refer, Mr. President, to the fact that our prisons are critically incapable of performing the important duties for which they have been established—that is, to assist those who enter them eventually to return to society as useful, law-abiding citizens.

It is a fact that 98 percent of all those sentenced to prison eventually will be released. A basic premise of our system of criminal justice has been that the purpose of prison is not only punishment, but rehabilitation—to provide the inmate with the wherewithal—emotional, physical, educational—to turn away from crime.

To this end, we pour in massive amounts of money, but still the job is not being done. Richard Velde, Associate Administrator of the Law Enforcement Assistance Administration, estimates that, of the 21,000 inmates now in Federal prisons, 3,150, or 15 percent, need psychiatric help, and an additional 5 percent are seriously mentally ill.

Yet, according to Mr. Velde, the Federal Bureau of Prisons employs only 50 full-time psychiatrists and psychologists, or about one for every 400 prisoners. The typical Federal prisoner has only a 6th-grade educational level, yet we have but one teacher for 1,330 prisoners. There is one vocational teacher for 1,031 prisoners, and only one social worker for 846 prisoners.

The result is that our prisons are little better than human warehouses, and each year thousands of men and women complete their sentences or are paroled to leave prison equipped only to return to crime—and the virtual certainty of winding up behind bars again.

This grim situation has been recognized by officials at all levels of our Gov-

ernment, including President Nixon, who has said that—

No institution within our society has a record which presents such a conclusive case of failure as does our prison system.

In my view, no one can seriously dispute this assessment.

Experts familiar with the situation estimate that 65 percent of all those who serve a prison term will return, convicted of second and third crimes. Eighty percent of our crimes are committed by someone who has been in prison. Is it any wonder that our prisons are often referred to as "finishing schools for crime"?

Yet, we continue to pay ever higher subsidies for these so-called schools which nobody wants. We spend $1.5 billion annually to support the 26 facilities administered by the Federal Bureau of Prisons, and the likelihood is that, at all levels of government, we will pay more and more to achieve even poorer results.

In my own State of Illinois, for example, when a maximum-security institution was built near Marion in 1960, the cost was $10 million. Today, it would cost $17 million, or nearly double, to replace that facility. Construction costs for prisons are usually stated on a "per bed" basis. Today, the unit cost of correctional facilities is estimated to range from $25,000 to $35,000 a bed. Quite often, there will be two prisoners in a single cell, which can cost from $50,000 to $70,000. Yet the end products are, in the words of Howard Gill, former superintendent of prisons in Washington, D.C., "massive, medieval, monolithic, monkey cage monstrosities."

The problem does not stem from lack of dedication and effort among those who toil in this frustrating field. Men like Peter Bensinger, director of the Illinois Department of Corrections, and Norman Carlson, Director of our Federal Bureau of Prisons, do their utmost to make the system work. They are as much the victims of its failures as those who return as second and third offenders. The failure is in the system itself—or, rather, in the lack of a coordinated system for following every offender, from arrest through trial, sentencing, and prison assignment, to that moment when the prison doors swing open, and he is free again.

As matters stand today, questions on setting bail, on such pretrial procedures as whether a defendant should be permitted to plead guilty to a lesser charge, presentencing investigations, tests and evaluations to determine prison assignments, and eligibility for parole are all determined by separate agencies, with little or no coordination among them. These individual agencies are often undermanned and overworked.

The U.S. Board of Parole, for example, with eight members, plus an additional eight hearing examiners, is responsible for 21,000 inmates in 26 Federal institutions. The board holds nearly 12,000 hearings a year—an average of 480 per working day. This means a prisoner gets about 5 or 10 minutes with the Parole Board representative who will determine that prisoner's future.

The effect of this uncoordinated, haphazard activity is that the prisoner is shunted from agency to office to department to board, minimizing the effectiveness of each body and reducing the possibility for rehabilitation. He is hurried through a parole hearing, to wait as much as 6 months to know the results. If rejected for parole, he may never learn why. Need we ask why prisoners often come out even "harder" than when they entered?

Clearly, Mr. President, simply adding more money will not improve this system. A complete reorganization is needed, and that is why I am offering today "The Federal Corrections Reorganization Act."

This bill would establish a single agency to provide continuous assessment and evaluation of a prisoner from the time a charge is filed until the time he is released from the jurisdiction of our prison system. It would discard those elements of the present system which have failed us, while retaining and strengthening those that are worthwhile. It would establish new procedures to benefit both society and the offender. At the same time, many of the provisions I shall describe are directly in line with the recommendations of the President's Commission on Law Enforcement and the Administration of Justice.

The bill consists of three main parts. First, it would establish a Federal Circuit Offender Disposition Board, composed of 11 members representing a wide variety of professional disciplines. This board, appointed by the President, with the advice and consent of the Senate, would be responsible for formulating national guidelines and standards for sentencing, probation, and parole. Each board member would represent one of the 11 Federal circuit courts.

Second, my bill would create 90 district court disposition boards, one for each of our Federal district courts, to function under the Circuit Board. Each of these 90 boards would consist of not less than five members representing a variety of disciplines. They would be responsible for providing a continuous line of service, instead of the fragmented system now operating among a number of separate agencies.

The duties of these boards would range from making recommendations on bail, and whether an offender should stand trial or be diverted into a job placement or training program, to whether, upon conviction, he should be placed on probation or sentenced to prison.

If probation were recommended and accepted by the court, the offender would report to a probation officer responsible to the board. If prison were recommended and accepted, the board then would be responsible for determining the offender's eligibility for parole and the offender would know what society expected of him. And, once paroled, the offender would be in the custody of a parole officer who also would be under the jurisdiction of the board.

Thus, the same body would be responsible for guiding the progress of an offender through our prison system. The same men who recommended bail and sentencing at the outset would recommend probation or parole at the end. The same panel would recommend whether the offender should enter the pipeline that could lead to prison, or whether he should be diverted to jobs or training.

For example, we know that prison will not help an alcoholic. And, because more than a third of all arrests are related to intoxication, diverting these kinds of offenders into more appropriate programs will relieve the courts of a heavy burden. The success of the concept of diversion has been amply demonstrated by the Manhattan court employment project, where the rate of rearrests among participants during the first quarter of fiscal 1972 was less than one-half of 1 percent.

Mr. President, the third part of the reorganization bill would establish a Federal Corrections Advisory Council, consisting of a broad cross section of people concerned with problems of crime and prisons. It would include law enforcement officials, ex-offenders, social scientists, attorneys, and other public-spirited citizens.

The council would recommend standards and guidelines for States, serve as a clearinghouse for information, conduct seminars to evaluate new ideas and articulate problems in the field of corrections, and submit annual reports to the Congress, the Executive, and the courts, advising appropriate steps each could take to improve our system of criminal justice.

Mr. President, passage of this bill would represent a significant departure from the practices we have followed to date. But, I, for one, am not satisfied with a system which virtually assures the return of prisoners to lives of crime. I am not satisfied when we are subsidizing a penal system that produces more criminals. The bill I am introducing today will help to reverse this process. Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 3185

A bill to promote more effective operations and management of the Federal corrections system by reorganizing certain functions and creating new organizations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Corrections Reorganization Act".

(b) (1) The Congress hereby declares that a reorganization of the Federal departments and agencies dealing with parole, probation, and other activities relating to the disposition of Federal offenders is necessary to insure a unified and coordinated approach to the rehabilitation of such offenders, and the protection of society.

(2) The Congress further declares that the Federal Government has primary responsibility for formulating coordinated Federal corrections policies with regard to prison construction, the appointment and training of corrections personnel, pre-trial and post-trial release programs, alternatives to incarceration, the establishment of a national clearinghouse and study center for corrections, and other such activities.

(3) The Congress further declares that the Federal Government has a responsibility in recommending standards and guidelines to States for the operation of programs concerning State correctional facilities, and the treatment of State offenders.

TITLE I—FEDERAL CORRECTIONS ADVISORY COUNCIL ESTABLISHMENT; COMPOSITION

SEC. 101. (a) There is hereby established the Federal Corrections Advisory Council (hereinafter referred to in this Act as the "Council") which shall consist of the following members:

(1) Two members who shall be former inmates of Federal Correction Institutions;

(2) Two members who shall be criminologists;

(3) One member who shall be an attorney;

(4) One member who shall be a former or retired judge of a Federal court;

(5) Two members who shall be involved in law enforcement;

(6) Two members who shall be sociologists;

(7) Two members who shall be psychologists;

(8) One member who shall be appointed on the basis of his knowledge and interest in the field of corrections;

(9) One member representing the communications media;

(10) Director of the Federal Bureau of Prisons (ex-officio member);

(11) Administrator of Law Enforcement Assistance Administration (ex-officio member);

(12) Attorney General of the United States (ex-officio member);

(13) Associate Justice of the Supreme Court (ex-officio member), who shall be designated by the Chief Justice of the United States;

(14) Secretary of Health, Education and Welfare (ex-officio member);

(15) Secretary of Labor (ex-officio member);

(16) Director of the Office of Management and Budget (ex-officio member); and

(17) Chairman of the Federal Circuit Offender Disposition Board (ex-officio member).

(b) The Council shall elect, from among its members, one member to serve as Chairman. The Council may appoint and fix the compensation of a Director (who shall be responsible for the administrative duties of the Council) and such other staff personnel as it deems necessary.

(c) Members of the Council designated in clauses (1) through (9) of subsection (a) of this section shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve for terms of five years, except that of such members first appointed, two shall serve for terms of one year, two shall serve for terms of two years, two shall serve for terms of three years, two shall serve for terms of four years, and one shall serve for a term of five years, as designated by the President at the time such appointments are made. Members shall be eligible for reappointment.

(d) (1) Members of the Council designated in clauses (1) through (9) of subsection (a) of this section shall receive compensation at the rate of $100 for each day on which they are engaged in the performance of duties of the council, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Council.

(2) Members of the Council serving ex-officio shall serve as members of the Council without additional compensation, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Council.

(e) The first meeting of the Council shall be called by the Attorney General of the United States.

PURPOSE OF COUNCIL

SEC. 102. It shall be the purpose of the Council—

(1) to exercise an investigative and advisory role in the oversight and direction of the Federal corrections system;

(2) to recommend standards and guidelines for States to meet before being eligible to receive grants under any Federal program involving State law enforcement and correction agencies; and

(3) to serve as a clearinghouse for study, planning and dissemination of information in the field of corrections.

FUNCTIONS OF COUNCIL

SEC. 103. (a) The Council shall recommend to the courts of the United States and other appropriate Federal instrumentalities and officers, guidelines and standards for—

(1) the training and appointment of correctional employees within the Federal system;

(2) the design of the physical plan and facilities of Federal prisons and the replacement of existing Federal correctional institutions;

(3) the operations of all Federal correctional institutions;

(4) pre-trial and post-trial release programs;

(5) the operation of the Bureau of Prisons; and

(6) States to meet as a condition of eligibility for Federal grants which may be made by the Law Enforcement Assistance Administration, or any other Federal instrumentality when such grant has a substantial relationship to corrections, pre-trial release, post-trial release, or alternatives to incarceration.

(b) The Council shall establish an information and study center for—

(1) the collection, evaluation, and dissemination to appropriate Federal, State or private organizations of information relating to corrections and corrections reform;

(2) the training of personnel in the field of Federal and State corrections, including parole and probation personnel;

(3) conducting seminars for attorneys, judges, administrators, Federal and State correctional officials, ex-offenders, and students of the correctional system;

(4) the study, analysis and encouragement of plans and projects relating to corrections submitted or recommended by private organizations;

(5) the development of a plan which, if adopted, would reorganize the Federal corrections system in a manner which, within the five-year period following the date of the enactment of this Act, would give the Federal courts maximum flexibility in deciding upon the disposition and treatment of Federal offenders, and which would give the District Court Disposition Boards and Federal prison authorities maximum flexibility with respect to disposition and treatment; and

(6) the study of plans and petitions from Federal prisoners and ex-offenders.

(c) The Council shall submit annually to the President of the United States, the Chief Justice of the United States, and the Congress (through the Committees on Government Operations, Appropriations, and Judiciary of the Senate and House of Representatives) a public report which shall—

(1) examine the effectiveness of the various Federal programs and activities relating to the field of corrections;

(2) review and assess other programs in the field of corrections which are unique or otherwise of national significance;

(3) recommend legislative action to the Congress, and recommend to the President and the Chief Justice administrative actions which could be taken by the executive and judicial branches, to improve the system of corrections;

(4) comment specifically on the implementation of the recommendations of the so-called Wickersham Commission (The National Commission on Law Observance and Enforcement—1931), and the report of the President's Commission on Law Enforcement and Administration of Justice—"The Challenge of Crime in a Free Society"; and

(5) comment specifically on the introduction of legislation to establish academies for correctional officers training on either a national or regional basis.

(d) In carrying out its functions under this Act, the Council shall insure the coordination and integration of policies and programs respecting the disposition, treatment, and rehabilitation of offenders on the Federal and State levels.

(e) The Council shall assist in the development of funding requests for all Federal instrumentalities which participate in or contribute to the areas of correction and the rehabilitation of offenders, and shall, upon request, be available to advise the Congress on matters involving the allocation of Federal resources in such areas.

(f) Any vacancy in the membership of the Council shall not affect its powers and shall be filled in the same manner as the original appointment was made.

(g) The Council may establish such temporary task forces as it may deem necessary.

(h) The Council is authorized to enter into contracts or other arrangements for goods or services, with public or private profit organizations, to assist it in carrying out its duties and functions under this Act.

TITLE II—FEDERAL CIRCUIT OFFENDER DISPOSITION BOARD ESTABLISHMENT; COMPOSITION

SEC. 201. (a) There is hereby established the Federal Circuit Offender Disposition Board (hereinafter referred to in this Act as the "Circuit Board"), which shall be composed of eleven members appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall represent diverse backgrounds, including, but not limited to, the fields of correction, psychiatry, psychology, sociology, law, medicine, education and vocational training. Such members shall serve for terms of four years, except that, of the members first appointed, three shall serve for terms of one year, three shall serve for terms of two years, three shall serve for terms of three years, and two shall serve for terms of four years, as designated by the President at the time of their appointment, each member shall be designated by the President to represent a specific judicial circuit. The Attorney General shall call the first meeting of the Circuit Board within six months of enactment.

(b) The Circuit Board shall elect, from among its members, one member to serve as Chairman. The Chairman shall represent the Circuit Board on the Council. The Circuit Board is authorized to appoint and fix the compensation of such employees as it determines necessary to carry out its duties under this Act.

(c) Members of the Board shall receive compensation at the rate of $100 for each day on which they are engaged in the performance of the duties of the Board, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Board.

(d) The Circuit Board is authorized to enter into contracts or other arrangements for goods or services, with public or private profit organizations, to assist it in carrying out its duties and functions under this Act.

FUNCTIONS

SEC. 202. It shall be the function of the Circuit Board to formulate, promulgate, and oversee a national policy on the treatment of offenders under the jurisdiction of any court of the United States on the basis of a charge

of having violated any of the laws of the United States. In carrying out such function, the Circuit Board shall, among other things—

(1) establish and recommend sentencing guidelines and standards for the United States courts, and provide periodic review thereof;

(2) establish guidelines and standards for the United States courts in probation, parole, or other forms of release of offenders;

(3) hear appeals by offenders denied parole on the sole ground that a District Board deviated from the established national guidelines and standards established pursuant to clause (2) of this section;

(4) assist and advise the Council in determining overall Federal correction policy;

(5) assign to each member of the Board the responsibility of overseeing the direction and operation of the various District Boards within the circuit which such member represents; and

(6) assign each member of the Board the responsibility of notifying the President of the United States of any vacancy on the various District Boards within the circuit which such member represents.

REPORTS

SEC. 203. The Board shall, not less than annually, make a written report to the Attorney General concerning the carrying out of its functions and duties under this Act.

TITLE III—DISTRICT COURT DISPOSITION BOARDS ESTABLISHMENT; COMPOSITION

SEC. 301. (a) There is hereby established in each judicial district a District Court Disposition Board (hereinafter referred to in this Act as the "District Board"), which shall be composed of not less than five members appointed by the President of the United States, by and with the advice and consent of the Senate, and representing diverse backgrounds, including, but not limited to, the fields of correction, psychiatry, psychology, sociology, law, medicine, education, and vocational training. Such members shall serve terms of six years, and shall be eligible for reappointment. The Board shall elect, from among its members one member to serve as Chairman. The Board may appoint and fix the compensation of such employees as it determines are necessary to carry out its duties under this Act. The Attorney General shall call the first meeting of each District Board.

(b) Each member of a District Board shall be compensated in an amount equal to $——— per annum, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Board.

(c) Each District Board may establish such units as it determines necessary, which may include an investigation unit, a pretrial evaluation unit, a pre-sentence unit, a youthful offender unit, and a narcotics and alcohol unit. Each unit shall consist of such members as shall be determined by the Board. Each unit, with the approval of the Board, shall be authorized to appoint and fix the compensation of such employees as it determines are necessary to carry out its duties.

(d) Immediately following the arraignment of a person charged with a Federal offense, the case shall be assigned to the District Board, which shall—

(1) investigate the defendant's background, family ties, relationship with the community, employment history, and the circumstance surrounding the alleged offense, and other information which it deems pertinent;

(2) recommend, if indicated, mental observation, or medical observation for problems such as alcoholism, drug addiction or other mental or physical disabilities; and

(3) submit, within thirty days of arraignment, a written report to the counsel of record for such defendant, and the office of the United States attorney having jurisdiction over the case.

(e) The report shall set forth the findings and conclusions of the District Board, including its conclusions as to any physical, mental, social, economic or other problems of the defendant and shall recommend whether and what type of diversion of the defendant from the criminal justice system of prosecution is desirable. The report shall be made part of the permanent record of the defendant's case.

(f) The report shall be the basis for discussion between the United States Attorney and Counsel of record for the defendant at a formal Pre-Charge Conference, during which the report and alternatives to prosecution shall be considered. If the United States Attorney and Counsel for the defendant agree that diversion of the defendant from the criminal prosecution system would be desirable, and an appropriate authorized diversion program exists, then the charges against the defendant shall be suspended for up to twelve calendar months, subject to the defendant agreeing to participate in that program. The Board shall file with the court a statement of the date the defendant has commenced participation in the program. The United States Attorney shall make periodic reviews as to the progress of the defendant while participating in the program. If the United States Attorney is not satisfied with the defendant's progress, he may resume prosecution of the charges by filing, within one year after the defendant commenced participation in the program, a statement of intention to resume prosecution, which shall include the reasons for resumption of prosecution. If the United States Attorney does not file a timely statement of intention to resume prosecution of the charges against the defendant, the charges shall be permanently dismissed. The statement of intention by the United States Attorney to resume prosecution shall be included in the case.

(g) If a defendant is prosecuted for, and convicted of, a Federal offense, the court shall refer the record of the case to the appropriate District Board for review and consideration prior to sentencing. The Board shall examine and review the record, the pretrial evaluation report and other pertinent information concerning the case, including the recommendations of counsel for the defendant. Within thirty days after receiving the record, the Board shall file a written report with the court, the counsel for the defendant, and the United States Attorney, such report shall include—

(1) the sentence recommended by the Board, which may be a suspended sentence, probation, imprisonment, or any alternative authorized by law to imprisonment;

(2) the reasons for the sentence recommended; and

(3) if imprisonment is recommended—

(A) the reason imprisonment is recommended (such as for reasons of punishment, deterrence or rehabilitation) and what alternatives were considered as inapplicable, and the reasons therefor;

(B) the term of imprisonment recommended and the institution or facility in which the imprisonment is recommended to be carried out; and

(C) the goals for the offender to attain while so imprisoned which, when attained, should entitle him to parole, but the goals may, from time to time, be revised by the District Board.

(h) If the court determines not to follow the recommendations of the District Board, it shall so state in writing along with the reasons therefor, and the purposes and goals of its sentence.

(i) The District Board shall carry out, with respect to a defendant who has been sentenced, the functions relating to probation, parole, or other form of release (as the case may be) transferred to the Board pursuant to section 401 of this Act. In carrying out those functions, the District Board shall hold an annual hearing with respect to each offender who has been sentenced to imprisonment. In the hearing, all pertinent information concerning the offender shall be reviewed with a view to determining the progress of the offender in attaining the goals established for him by the District Board. At the hearing the offender shall have the right to be represented by counsel, to submit evidence, and to cross examine witnesses. Within fourteen days following the conclusion of the hearing, the Board shall make its determination as to whether the offender should be released on parole or other authorized alternative action taken. A determination by the Board to authorize release on parole of an offender eligible for parole shall be accompanied by a statement of the condition of parole. If the Board determines that an offender who is not eligible for parole should be released on parole, it shall recommend to the appropriate court that the sentence of the offender be reduced so that the offender may be so released, or that an authorized alternative disposition be made. Within fourteen days after the determination, the District Board shall submit to the offender and to the appropriate court a written report containing the decision of the Board and the reasons therefor, including the views of the Board with respect to the goals the offender has attained and the goals he has not yet attained.

(j) A quorum for any hearing held pursuant to subsection (i) shall be not less than three members of the District Board.

(k) The decision of the District Board may be appealed to the Circuit Board by the offender affected by the decision solely on the basis that the District Board, in conducting the hearing, failed to follow the standards and guidelines established by the Circuit Board pursuant to section 202 (2) of this Act. Nothing in this section shall be construed as abridging the right of an offender to appeal a sentence to the Federal courts.

(l) The District Boards are authorized to enter into contracts or other arrangements for goods or services, with public or private profit organization to assist them in carrying out its duties and functions under this Act.

TITLE IV—TRANSFER OF FUNCTIONS PAROLE; PROBATION

SEC. 401. There are hereby transferred to the District Boards established by this Act all functions which were carried out immediately before the effective date of this section—

(1) by the Federal Board of Parole;

(2) by any United States court relating to the appointment and supervision of probation officers;

(3) by the Attorney General relating to the prescribing of duties of probation officers; and

(4) by the Director of the Administration Office of the United States Courts relating to probation officers and the operation of the probation system in the United States courts.

SEC. 402. (a) With respect to any function transferred by this title and exercised after the effective date of this section, reference in any other Federal law, rule or regulation to any Federal instrumentality or officer from which or whose functions are transferred by this Act shall be deemed to mean the instrumentality or officer in which or whom such function is vested by this Act.

(b) In the exercise of any function transferred by this Act, the appropriate officer of the District Board to which such functions were so transferred shall have the same authority as that vested in the officer exercising such function immediately preceding its transfer, and such officer's actions in exercising such functions shall have the same force and effect as when exercised by such officer having such function prior to its transfer by this title.

(c) All personnel (other than the mem-

bers of the Board of Parole), assets, liabilities, property and records as are determined by the Director of the Office of Management and Budget to be employed, held or used primarily in connection with any function transferred by this title are hereby transferred to the District Boards in such manner and to such extent as the said Director shall prescribe. Such personnel shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions.

(d) Effective on the effective date of section 401 of this Act, the Board of Parole shall lapse.

(e) As used in this Act, the term "function" includes powers and duties.

EFFECTIVE DATE

SEC. 403. Sections 102, 103, 202, subsections (d), (e), (f), (g), (h), (i), (j) and (k) of section 301, and sections 401 and 402 of this Act shall take effect upon the expiration of the one hundred and twenty-day period following the date of the enactment of this Act. All other provisions of this Act shall take effect upon the date of its enactment.

DEFINITION

SEC. 404. As used in this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

AUTHORIZATIONS

SEC. 405. (a) On and after the date of the enactment of this Act, all moneys received by any court of the United States as fines, penalties, forfeitures and otherwise shall be deposited in the Treasury to the credit of Federal Circuit Offender Disposition Board and shall be available for carrying out the purposes of this Act.

(b) There are authorized to be appropriated such sums as may be necessary in addition to those available pursuant to subsection (a) of this section to carry out the provisions of this Act.

By Mr. BEALL (for himself and Mr. MATHIAS):

S. 3186. A bill to amend chapter 383, title 18, United States Code, to provide for the commitment of certain individuals acquitted of offenses against the United States solely on the ground of insanity. Referred to the Committee on the Judiciary.

Mr. BEALL. Mr. President, I am today introducing legislation which is designed to close a loophole now existing in criminal cases where the defense of insanity is raised. My colleague from Maryland (Mr. MATHIAS) joins in cosponsoring this legislation.

Court officials in the Federal courts of Maryland inform me that an accused person who is acquitted by reason of insanity can now walk free from the courtroom no matter how heinous the offense. In most State courts, procedures have been established to allow for a thorough examination in such cases and violators judged to be dangerous can be restrained. I believe it is obvious that the Federal courts need new authority to detain for examination those whom the court feels may be a danger to society. Our bill would provide for such a procedure.

Under this legislation, a verdict of "not guilty by reason of insanity" would be specifically established and a procedure provided to determine the state of the acquitted person's mental condition at the time of acquittal.

When a verdict of not guilty by reason of insanity is returned, either the U.S. attorney or the judge who heard the case could institute commitment proceedings if they felt them to be appropriate. Under such proceedings a hearing would be held to determine whether the person is dangerous to himself or others, because of his mental condition.

Prior to this hearing the court is given the power to commit the individual for a period not to exceed 60 days. During this period the person can be psychiatrically observed so that some expert advice on his condition will be available at the hearing on his present condition.

Such a prehearing commitment is discretionary so that the court can take into consideration all existing circumstances.

At the hearing, the court may find the acquitted person to be dangerous and commit him to the custody of the attorney general for appropriate hospitalization.

The person's rights are protected throughout by the right of habeas corpus, and then by requiring periodic reports from the institution when committed. These reports allow the court to release an individual who is judged to be no longer dangerous to the community.

Mr. President, I am convinced that a procedure of this nature is most needed in our Federal courts. I know that prior legislation on this point has been submitted on several occasions, without enactment. To delay further would be detrimental to society. I hope for swift consideration of this bill.

Mr. MATHIAS. Mr. President, Federal courts as well as all State courts allow an individual to offer the defense of insanity to a criminal act. This is a well established criminal procedure. The procedure in the Federal courts, unlike most State courts, requires a criminal defendant to limit his plea to "guilty" or "not guilty." He may after pleading "not guilty" raise insanity as a defense to the charge and then proceed to present evidence of his mental condition at the time of the alleged criminal act in order to sustain the defense. If he proves some evidence of insanity, the burden then switches to the Government to prove that the defendant was sane during the commission of the act. If a guilty verdict is returned, the insanity defense is obviously rejected and the individual defendant will be subject to the sentencing and adjudication jurisdiction of the court.

The problem, however, is when a "not guilty" verdict is returned. This verdict gives no indication whether, first, the trier of fact decided that the person was insane and thus not guilty—or, in other terms, that the Government failed to meet its burden of proving that the defendant was sane—or second, whether the trier of fact thought that the State did not meet the traditional burden of proving the guilt of the defendant beyond a reasonable doubt. The distinction becomes important when the person is found not guilty, because of his mental condition. At present, Federal criminal procedure fails to provide any guarantee that one who has successfully raised the insanity defense will be treated and his mental condition improved before he is returned to society. In essence, there is no Federal commitment procedure available to restrain one who successfully raises the defense of insanity. This void in Federal procedure is in contrast to the procedure of most States.

I find this omission a grave error for it disarms the courts from fully protecting the public from those who should not be returned to society. It is not enough to merely give the courts the power to decide the guilt or innocence of an individual if they are to truly protect the public and afford defendants the fullest protection under law. They must also be given the necessary tools to commit the individual who is dangerous both to society and to himself.

What is needed, I believe, is a Federal verdict of "not guilty by reason of insanity." This judgment would clearly indicate the reasons for an acquittal and enable the courts to deal with the individual rather than granting an unsupervised release with the possibility of the person committing more crimes and insane acts.

Today, Senator BEALL and I are introducing a bill which will amend the Federal criminal procedures to accomplish these objectives.

Under the legislation, upon the return of a verdict of "not guilty by reason of insanity" commitment proceedings against the person could be instituted by either the prosecuting U.S. attorney or the district judge who heard the criminal case. If such proceedings are brought, a hearing would be held to determine whether the person acquitted, because of insanity at the time of the alleged act is at the time of the hearing dangerous either to himself or to others because of his mental condition.

Prior to the commitment hearing, the district court is given the discretionary power by the bill to commit the person for psychiatric observation for a period not to exceed 60 days. This prehearing commitment is framed in discretionary rather than mandatory terms, because in most cases where the insanity defense has been raised the person's mental condition will have been subjected to a good deal of scrutiny at the trial of the criminal charges. In these cases, the criminals defendant may have undergone extensive examination and may even have been subjected to lengthy pretrial commitment either for examination or to insure that he was competent to assist his counsel in the defense of his case and thus competent to stand trial. Reported cases show as much as 33 months treatment between arrest and trial.

The discretionary prehearing commitment will allow psychiatric observation where the court believes there has not been sufficient scrutiny of a person's present mental condition prior to and during the criminal trial. It will also allow the district judge to have the benefit of a thorough examination of the person's mental condition immediately before the hearing to determine the present danger of the individual.

The bill further provides that if, after a hearing at which the person shall have the assistance of counsel, the court determines that, because of his insanity, the person would constitute a present danger to himself or others if released from custody, the court shall commit the person to the custody of the Attorney General who shall hospitalize him for treatment in a suitable mental institution.

Commitment, it could be argued, should be to the Surgeon General, but remission to the custody of the Attorney General is patterned after provisions of existing law. Today, the Attorney General is charged with the custody of persons subjected to pretrial commitment, as well as with the custody of those Federal prisoners who suffer mental illness during the term of their sentences. The Attorney General is authorized by the bill to contract with State and private institutions for the hospitalization and care of persons committed under the bill where Federal institutionalization may not be desirable.

The bill also insures that a person committed under its provisions will not be held beyond the time when he is a threat to society or to himself because of mental illness. This is accomplished by preserving the right of habeas corpus and by requiring the mental institution in which the person is maintained to make an annual report on the condition of the person committed to the court that ordered the commitment. These reports will allow the court to observe the progress of the person and to order his release if it concludes that the danger to the community or to himself has been sufficiently arrested. The annual reports will make the committing court aware of the gravity of such commitment and provide a basis for future consideration of the need for and value of continued commitment.

The committed person may obtain release from the hospital only after obtaining a Federal judicial decree predicated upon a certification of the hospital superintendent that he will not constitute a danger to himself or to others. If the superintendent believes that outright release is not in the best interests of society or the individual, the person may be conditionally released by the court under such partial restraints as are appropriate. These restraints might include periodic examinations or daytime release.

The bill attempts to fill the void that now exists in Federal criminal procedure and to strike an appropriate balance between the interests of society and the rights of the individual defendant.

I think it is important to give credit to former Senator Joseph Tydings, of Maryland who pioneered this legislative proposal at a time when the Judicial Improvements Subcommittee of the Committee on the Judiciary was under his distinguished leadership.

Mr. President, I ask unanimous consent that the complete 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. 3186

A bill to amend chapter 313, title 18, United States Code, to provide for the commitment of certain individuals acquitted of offenses against the United States solely on the ground of insanity

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 313, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 4249. Commitment of certain individuals acquitted of offenses against the United States on the ground of insanity

"(a) Whenever the issue of insanity at the time of the commission of an offense against the United States is raised by the pleadings or evidence, the court shall find or, in the event of a jury trial, shall instruct that the verdict shall be one of the following: (1) guilty, (2) not guilty, or (3) not guilty by reason of insanity at the time of the commission of the offense. The judgment shall so state.

"(b) Whenever any person charged with an offense against the United States is acquitted solely on the ground that he was insane at the time of its commission, the United States attorney, if he has reasonable cause to believe that such person so acquitted may be presently insane and that, because of his insanity, his release would constitute a danger to himself or others, shall file a motion for a judicial determination of the mental condition of such person, setting forth the grounds for such belief, in the trial court in which the proceedings which resulted in his acquittal were conducted. Upon the filing of such a motion or upon its own motion, the court shall, after notice, hold a hearing within a reasonable time to determine whether the person acquitted of an offense against the United States on the ground that he was insane at the time of its commission, would, because of his insanity, constitute a present danger to himself or others. Such person shall be entitled to be represented by counsel at such hearings, and, if such person is indigent, counsel shall be provided for him at the expense of the Government.

"(c) After the filing of a motion to determine the mental condition of a person found not guilty of an offense against the United States solely because he was insane at the time of its commission, or upon its own motion, the court may order such person to be examined by at least two qualified psychiatrists designated by the court. The psychiatrists so designated shall, within sixty days thereafter, file their reports with the court setting forth their findings with respect to such examination, including their conclusions as to the mental condition of such person and whether the release of such person would constitute a danger to himself or others. For the purpose of examination the court may order the person committed for such reasonable period as it may determine, not to exceed sixty days, to the custody of the Attorney General who shall hospitalize such person in a suitable mental institution or other facility designated by the court.

"(d) If, after the hearing provided in (b), the court shall determine that the person, because of his insanity, would constitute a present danger to himself or others if released from custody, the court shall commit the person so acquitted to the custody of the Attorney General, who shall hospitalize such person in a suitable mental institution or other facility.

"(e) Whenever a person shall be committed to the custody of the Attorney General or his representative pursuant to subsection (d) of this section, his commitment shall run until his mental condition is so improved that his release would not constitute a danger to himself or others.

"(f) Where any person has been confined by the Attorney General in a mental institution or other facility pursuant to subsection (d) of this section and the superintendent of any such mental institution or the head of any such facility certifies that, in his opinion, the release of such person will not in the reasonable future constitute a danger to himself or others and that the person is entitled to his unconditional release from such mental institution or facility, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States attorney, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined.

"(g) Where, in the judgment of the superintendent of such hospital, a person committed under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States attorney, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall impose at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section.

"(h) Nothing contained in this section shall preclude a person committed under the authority of subsection (d) of this section from establishing by a writ of habeas corpus his eligibility for release under the provisions of this section.

"(i) The superintendent of any mental institution or the head of any facility in which any person is confined by the Attorney General pursuant to subsection (d) of this section shall annually, during the hospitalization of that person, submit to the court a written report with respect to the mental condition of such person, together with the recommendations of such superintendent or head concerning the continued hospitalization of such person. Upon the receipt thereof, the court shall consider such report and recommendations and, if it determines that his release will not in the reasonable future constitute a danger to himself or others, the court shall order his immediate release. Such reports and recommendations shall be made available to counsel in any judicial proceeding challenging the continued hospitalization of a person committed under the provisions of subsection (d).

"(j) The Attorney General is authorized to enter into contracts with the several States (including political subdivisions thereof) and private agencies under which appropriate institutions and other facilities of such States or agencies will be made available, on a reimbursable basis, for the confinement, hospitalization, care, and treatment of persons committed to the custody of the Attorney General pursuant to subsections (c) and (d) of this section.

"(k) The provisions of this section shall not be applicable to the District of Columbia."

(b) The chapter analysis of chapter 313, title 18, United States Code, is amended by adding at the end thereof the following new item:

"4249. Commitment of certain individuals acquitted of offenses against the United States on the ground of insanity."

By Mr. JAVITS (for himself, Mr. KENNEDY, Mr. WILLIAMS, Mr. DOMINICK, Mr. BROOKE, Mr. CRANSTON, Mr. BEALL, Mr. CANNON, Mr. CASE, Mr. EAGLETON, Mr. GURNEY, Mr. HARRIS, Mr. HART, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MOSS, Mr. NELSON, Mr. PASTORE, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. STAFFORD, Mr. STEVENS, Mr. STEVENSON, Mr. TAFT, Mr. TOWER, Mr. TUNNEY, and Mr. YOUNG):

S. 3187. A bill to amend the Public Health Service Act so as to provide for the prevention and control of venereal disease. Referred to the Committee on Labor and Public Welfare.

NATIONAL VENEREAL DISEASE PREVENTION AND CONTROL ACT

Mr. JAVITS. Mr. President, I introduce for myself and a group of more than 30 Senators, including the Senator from New Jersey (Mr. WILLIAMS), the chairman of the Labor and Public Welfare Committee, of which I am the ranking Republican member, a bill for the prevention and control of venereal disease.

Joining Senator WILLIAMS and me in introducing this proposed legislation are Senator KENNEDY, Senator DOMINICK, Senator BROOKE, Senator CRANSTON, Senator BEALL, Senator CANNON, Senator CASE, Senator EAGLETON, Senator GURNEY, Senator HARRIS, Senator HART, Senator HOLLINGS, Senator HUGHES, Senator HUMPHREY, Senator MCGEE, Senator MCGOVERN, Senator MONDALE, Senator MOSS, Senator NELSON, Senator PASTORE, Senator PERCY, Senator RANDOLPH, Senator RIBICOFF, Senator STAFFORD, Senator STEVENS, Senator STEVENSON, Senator TAFT, Senator TOWER, Senator TUNNEY, and Senator YOUNG.

I know that the Senator from California (Mr. CRANSTON), who is a prime sponsor of this bill, wanted very much to be here today to make a statement as the bill is introduced. Unfortunately, a scheduling conflict prevented him from being here, but I know he plans to speak on this measure shortly after he returns next week.

Mr. President, a companion measure is being introduced in the House of Representatives by Representative JAMES HASTINGS of New York.

Mr. President, this bill has the support of the American Social Hygiene Association, the Association of State and Territorial Health Officers, the American Nurses Association, and the American Pediatric Association.

We have a real crisis in the country, to which the measure which I introduce today seeks to respond.

The measure, which is called the National Venereal Disease Prevention and Control Act, would provide:

First. An authorization of $15 million annually for research, demonstration, or training programs in venereal disease prevention and control. To establish these programs, technical assistance and grants would be made available to universities, hospitals, and other public or private nonprofit entities.

Second. The establishment of comprehensive State venereal disease diagnosis and treatment programs, for which formula grants in the amount of $25 million annually would be authorized. The allocation, with a minimum of $50,000 per State, would be based upon incidence of venereal disease and population; each State would be required to submit a plan for the establishment and maintenance of adequate public health programs in this area, including provisions for statewide laboratory diagnostic services.

Third. Project grants of $30 million authorized annually to States and political subdivisions for venereal disease prevention and control programs which require: disease-surveillance activities, including reporting, screening, and following up; case finding and followup activities; and professional and public venereal disease education activities.

The funding levels provided for in this bill follow the recommendations of the American Social Health Association, as set forth in "Today's VD Control Problem—1971."

The history of our Nation's syphilis-control measures is a mix of successes and failures. In the years following World War II, a massive venereal disease control program based on widespread use of penicillin resulted in dramatic decreases in the incidence of syphilis. Then, as the number of cases went down, so did national interest; complacency set in and programs were curtailed. By the early 1960's the annual increase in the number of syphilis cases was threatening to wipe out the gains of postwar years. In 1961, at the request of Congress, the Surgeon General of the Public Health Service developed a strategy for the eradication of syphilis. The program recommended by that group of experts was implemented and syphilis declined. However, Federal support stabilized at the 1965 level, and erosion of programs set in as a result of cost-of-living increases.

The greatest tragedy, therefore, occurred when the number of venereal disease cases began to decline—giving us a great opportunity to once and for all eradicate the strain of infectious bacteria, an opportunity we unfortunately failed to seize at the Federal level. Rather than stepping up our preventive and treatment programs, the Federal Government drastically slashed venereal disease funding. As a result, in 1969, the rate of venereal disease infection increased more rapidly than ever before. State and local public health authorities were left to fight the drastic rise with less money than they had had previously.

I previously noted my concern that as funding is reduced, venereal disease increases. In 1970, the number of cases of syphilis in New York State was 40 percent higher than it was in 1969. In 1971, we saw an additional increase of about 15 percent. One obvious question that arises is why are we not doing as well now as we were in the mid-1950's. The answer is that New York, like most other States, relies very heavily on Federal support for VD control. New York State during the early 1950's received a considerable amount of Federal support for syphilis control activities, but toward the end of the 1950's, this support was drastically reduced with a consequent rise in the number of cases of syphilis. Federal support was again increased in 1962–63 and there then resulted a striking decline in the number of cases. In the last 2 years, our Federal support has been declining once again and we are now seeing the result of this lack of support. Thus, the direct correlation between the incidence of syphilis and the level of support can be readily seen.

It is most important that we all understand that when we speak about venereal disease—an epidemic of unparalleled proportions—no level of society is immune. The sad statistics are that venereal disease strikes our affluent suburbs as well as our inner cities. It is also important to understand that when we speak about venereal disease, we can no longer point the finger of blame at the prostitute. As a recent magazine article pointed out:

> Prostitution is not where it's at with VD today. It's Johnny next door and Susie down the street.

The cost-benefit ratio of an increased Federal commitment to research, treatment, diagnosis, prevention, and control of venereal disease, measured against institutionalized syphilitic patient care, is well established. An HEW publication, "VD Fact Sheet—1970," indicates that in 1968—the most recent year for which data is available—the annual economic cost of maintaining patients with syphilitic psychoses and syphilitic blindness in public hospitals and mental institutions was more than $45.1 million.

Mr. President, there are two major points. First, we have an absolutely phenomenal, absolutely shocking increase in venereal disease cases in the United States. With approximately 650,000 new cases reported in the United States in 1971, it is estimated by the U.S. Public Health Service that there are really about 2 million, because people tend not to report cases of venereal disease. What they do not realize is the absolutely terrible toll of this tragically debilitating disease: blindness, paralysis, insanity, and death, as far as its victims are concerned. Venereal disease has reached epidemic proportions in the Nation and threatens the health and welfare of a generation of unborn children. It must be combatted.

Second, Mr. President, the record clearly shows that only when there is a drive such as the one this bill would be responsible for, is the rate reduced; and in the absence of such a drive, the rate increases.

Mr. President, the tragic and alarming increase in venereal disease was reported in the New York Times magazine section of November 7, 1971, in an article entitled "The Venereal Disease Panic" by Cokie and Steven V. Robert, and then in a Newsweek cover story on January 24, 1972, entitled "VD: The Epidemic." I commend both articles to the attention of my colleagues, and I ask unanimous consent to have these articles and the article entitled "Costs of Uncontrolled Syphilis," appearing in the HEW booklet, "VD Fact Sheet—1970," printed in the RECORD at this point.

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

THE VENEREAL DISEASE PANDEMIC

(By Cokie and Steven V. Roberts)

LOS ANGELES.—The Los Angeles Free Clinic is a small, rather shabby building wedged between a Chicken Delight ("We Deliver") and an appliance store ("Quality Merchandise—Best Service") across Fairfax Avenue from the West Coast headquarters of C.B.S. At about 5:30 the young people start crowding into a narrow alley alongside the clinic, waiting to sign in for treatment. They include well-scrubbed college students and scruffy street kids, both sexes, all colors, as young as 15 and as old as 35. Despite their diversity, they have two things in common. They need medical help, and they can't or won't get it elsewhere. Many just cannot afford a private doctor; others cannot afford to have their parents find out what's wrong with them. What's wrong with them could

be almost anything—pregnancy, hepatitis, various infections and fears, tired blood and tired brains, maybe just the flu or a bad cold—but more than 25 per cent have V.D., venereal disease.

What passes for interior decoration at the Free Clinic is a bright mixture of the psychedelic and the scientific. One poster shows two bodies whirling in a sea of purple; another gives the symptoms for V.D. and advises women: "If a guy you balled has it, come for treatment. If not treated, germs will spread up, causing great pain and inability to have kids." One night recently, two boys and a girl from a local high school were exchanging typical teen-age chatter ("I had him for chemistry. . . . I used to go to a lot of dances at . . .) in a corner of the cramped waiting room. The girl, who wore her name on a gold chain around her neck, wanted birth-control pills. She was getting anxious about the time, for she did not want her parents to start wondering where she was. "Have you ever tried being honest with them?" gibed one of the boys. "Yes," she answered, a little grimly, "it doesn't work." The second fellow was tall, curly-haired, radiating what used to be called "boyish charm." Had he ever had V.D.? "I'm in the process." Had he been concerned about getting it? "No, I never really thought about it. I got it, and I'll take care of it. It's a big pain, but I'll make sure it doesn't go too far." Was he surprised? "This thing shocked me," he admitted. "I knew the people I was with pretty well, and I didn't think they had it. I really can't figure out who I got it from. I guess I had a bad stereotype of the person who had V.D.—that's why I was shocked. I thought the only one who got it was a girl or a guy who balled an awful lot without any real feeling about it—someone who didn't take care of his body. I guess if I can get it anybody can."

That is hardly overstating the case. Anybody can get V.D., and more and more people *are* getting it. The United States is in the midst of a monstrous epidemic. Within the last year, according to the American Social Health Association, a private organization that studies such matters, there has been a V.D. "pandemic," an epidemic of "unusual extent and severity." The association says V.D. has reached such proportions only twice before in the last 53 years, after World War I and toward the end of World War II, before penicillin came into wide use. Robert R. Lugar, an adviser to the Los Angeles County Health Department, described the situation this way:

"If you pose the question, 'Where is V.D.?' the answer is: 'Everywhere.' My God, if there's anything in this world today we can't stop it's V.D. It's no more possible to restrict the spread of venereal disease than it is to keep the flies in one room of your house."

The phrase "venereal disease" comes from Venus, the goddess of love, and refers to maladies that are virtually always transmitted by sexual contact. (Some infections, such as vaginitis, can be caught in a variety of ways, including sexual intercourse, but they are not included here.) Of at least five known types of V.D., only two, gonorrhea and syphilis, are important. Gonorrhea, commonly known as "the clap," is milder but much more prevalent. In the fiscal year ending last June, 624,000 cases of gonorrhea were reported nationwide, a jump of 9 per cent over the previous year and 130 per cent over 1963. There were 23,500 reported cases of syphilis last year, an increase of 15.6 per cent over the previous year. These figures indicate that reported cases of gonorrhea outnumber those of all other communicable diseases combined. Between June 1969, and June 1970, for example, California reported about 105,000 cases of gonorrhea. In the same period it had only about 10,000 cases of hepatitis, 6,000 of mumps and 4,000 of tuberculosis. A random sampling of 164,000 women revealed that 1 in 10 had gonorrhea, though most of those infected did not know they were ill.

But such statistics represent merely the tip of the iceberg. About four cases are treated for every one reported to public-health authorities, and other victims simply do not seek treatment. The estimates are that about four million Americans contracted venereal disease last year, and at least 500,000 people have undiagnosed cases of syphilis.

Does it matter? Public Health officials say yes. Most cases of V.D. do not cause long-term complications. But if 10 to 12 per cent do, as the American Social Health Association estimates, that is still a lot of people. When it goes untreated, syphilis can cause insanity, paralysis, blindness, heart disease, sterility and death. The National Communicable Disease Center in Atlanta reports that 9,000 patients were hospitalized with syphilitic insanity in 1968 at a cost to the taxpayers of $41 million. Unchecked gonorrhea causes more sterility in both sexes than any other disease, and also produces a painful form of arthritis. In women, it can lead to such problems as pelvic infection and tubular pregnancy, which occurs when the Fallopian tubes are blocked by scar tissue and the fertilized egg cannot reach the uterus. In men, untreated gonorrhea or repeated cases, even if they're cured, can scar the urethra, making urination painful and difficult.

Venereal disease, although it is concentrated in larger cities and industrial states, is a national problem. Alaska and Georgia have the highest rates of gonorrhea. California is third, just ahead of Illinois, and makes a good case study. California agencies, particularly the Los Angeles County Health Department, have made special efforts to control the diseases, and their experiences tell a lot about the problems involved. It should be stressed, however, that V.D. is not just another kooky California phenomenon. The city with the highest V.D. rate is San Francisco, but the top 10 include Atlanta; Washington, D.C.; Newark; Cleveland, and Chicago.

About half the cases of gonorrhea nationally and almost 70 per cent in California occur in people under 25. Los Angeles officials estimate that 1 in every 10 of the city's teenagers will get V.D. this year, and 1 in 5 will have had it by the time they leave high school. If present trends continue, half of Los Angeles' high school graduates in 1980 will have had V.D.

The Free Clinic is a good place to find these youngsters, for there they will talk openly about a disease that often causes as much embarrassment as pain. One clinic patient was Bushy, an 18-year-old runaway from Kansas City and the proud possessor of his third case of gonorrhea. "I'm one of the experts," he declared. "I get it about once a year; it's one of the chances you have to take these days."

Jeff, 24, was suffering his first case since coming back from Vietnam five years ago, and he was angry: "I've been pretty careful, I thought I was smart. I try to trust my judgment on who I bed down with, but sometimes it doesn't work out. I guess I'm mad mainly at myself, though. Whoever I play around with I expect to be playing around, too—I'm one of the boys like she's one of the girls. This is the first time in five years. I guess that's not too bad."

Carol squeezed onto a crowded couch, trying to read a magazine. She was 22, very pretty and a little uneasy. "Things haven't been normal, so I'm playing it safe," she said. "I'm not really worried, though. I've always been going with one guy." Suppose the guy had gotten it somewhere else and given it to her? "I never thought about that one," she said.

The cause and the cures of the V.D. epidemic are varied and complex. They involve behavior patterns, scientific problems and—probably most important—public attitudes. For even now, despite our self-proclaimed and well publicized "liberation" in sexual matters, venereal disease remains clouded in myth and taboo. Dr. Theodor Rosebury, in his new book, "Microbes and Morals," put it this way: "V.D. is shameful. . . . Nice People don't talk about the whole subject, or if they do, it is with mincing and blushing or with a phony solicitude under which finger-shaking is more plainly visible than the Nice People can imagine." Or as the Los Angeles Health Department said in a recent publication: "One of the reasons for the continued existence of gonorrhea and syphilis is the widespread belief that decent people don't acquire the disease, decent people don't talk about the disease and decent people shouldn't do anything about those who do become infected."

Syphilis and gonorrhea present somewhat different problems, but both are apparently being spread by the "sexual revolution." Some researchers do not think anything more is happening now than 30 years ago, but most doctors who treat V.D. feel that increased sexual activity, particularly "indiscriminate" activity, contributes to the epidemic. One of the favorite examples among V.D. people is the San Francisco man who recently contracted gonorrhea after a brief liaison with a stewardess in the bathroom of a jetliner 30,000 feet above Kansas. Dr. Geoffrey Simmons, who works in several V.D. clinics, also cites the "new morality":

"I think it exists, and I think it is significant. Girls are coming and getting birth-control pills who are 14, 15, 16 years old. These girls aren't taking them for menstrual cramps, they're taking them to ball—and they admit it freely. When I went to high school, which was not that long ago, talk about sex was not that common. Most females I went to high school with, unless I was sheltered, didn't engage for fear of pregnancy. But when you have the pill you're not afraid of becoming pregnant. The fact that you can get an abortion now adds on to this new morality. It's quite open, it's just like eating a meal to them. They want to screw, they want to have fun. They're upset when they have V.D., not so much because they have V.D., but because they have to abstain for two or four weeks."

Sex is probably most "indiscriminate" among homosexuals, and about 40 percent of the new syphilis cases come from homosexual encounters; the gonorrhea figure is much lower. Treatment is still hampered by the reluctance of some homosexuals to name their "contacts," and many doctors just do not remember to check for infection of the anus, a common homosexual malady. But partly as a result of educational campaigns by homosexual groups, more are seeking help. One of the patients at the Free Clinic was a male hustler named Gerry who shrugged off his infection as an "occupational hazard."

The birth-control pill is a major cause of the epidemic, for in addition to ending the fear of pregnancy, it replaces that traditional if inconvenient means of contraception, the condom, or "rubber." Condoms were originally designed to prevent V.D., and remain the most effective prophylactic method—90 per cent sure against syphilis, close to 100 per cent against gonorrhea. Moreover, many doctors believe that the pill actually changes the chemical "milieu" of the vaginal area from acidic, which tends to kill germs, to alkaline, which does not. According to one estimate, about 20 to 30 per cent of the women who are exposed to gonorrhea and are not on the pill actually catch it. Among women who take the pill and are exposed to the disease, the infection rate is over 90 per cent.

When you talk about scientific and technical causes, there are important differences between syphilis and gonorrhea. Syphilis is

carried by tiny organisms called spirochetes, and is virtually always transmitted by sexual contact. The old canard about toilet seats and door handles is a convenient but untenable excuse. The disease first appears as a lesion or sore where the spirochete entered the body. This is usually in the genital area, but could also be around the mouth, for example. The lesion is painless, appears between 10 and 90 days after infection and goes away without treatment. Two to six months later the second stage appears in the form of a rash, sores, falling hair or fever. These signs, too, disappear without treatment. But years later, the spirochetes can invade and destroy vital organs, causing severe disability or death.

Thus it is quite possible to have syphilis and not know it, which is one reason why there are a half-million undiagnosed cases. This "silent" character of the disease is a major obstacle in controlling it. Fortunately, there is an accurate blood test for syphilis, and many cases are detected that way. In addition, since the disease has such a long incubation period, public-health authorities are able to use the "case-finding" method of control—tracing all known sexual partners of an infected person and getting them treated before they spread the disease to others.

Gonorrhea, which is caused by the gonococcus germ, is also transmitted by sexual contact, but there the similarities end. In the male the symptoms are usually obvious: a burning pain when urinating and a discharge of pus. But 10 percent of the males and 80 percent of the females who get gonorrhea have no visible symptoms. As a result, there is a huge "reservoir" of infected women, an estimated 60,000 in Los Angeles County alone, who spread the disease without knowing it. "If you could sum up our problem in one word it would be 'female,'" said Robert Lugar. "How great that reservoir is is only now beginning to come to light."

Moreover, there is no screening process comparable to the blood test for syphilis. Taking a vaginal smear and growing a culture from it is time-consuming, expensive and only about 60 to 80 percent accurate. Even if you could detect gonorrhea easily, the incubation period is so short—about three days—that the case-finding method is all but useless. "Tracing gonorrhea," lamented one doctor, "is like trying to trace the common cold."

If that isn't enough, some strains of V.D. are developing considerable resistance to the drugs usually used for treatment, particularly penicillin. The dosage given today is 43 times what doctors prescribed 20 years ago, and a certain number of cases still defy normal treatment. The resistance problem seems to be aggravated by the importation of new and hardier strains from Southeast Asia. Indeed, V.D. must rank close to heroin addiction on Vietnam's list of exports.

There is a debate raging over the proper treatment of V.D. Some physicians, including Dr. Walter Smartt, head of V.D. control in Los Angeles County, have abandoned penicillin, which is injected, in favor of orally administered drugs, particularly tetracyclines. Dr. Smartt contends that he gets a 10 percent higher "cure rate" with Vibramycine, the drug used in Los Angeles. But the United States Public Health Service still maintains that penicillin is the "drug of choice." In fact, Dr. Robert J. Brown, until recently chief of the V.D. branch of the Center for Disease Control, blames the oral drugs for contributing to the epidemic. "Practicing physicians," insists Dr. Brown, "are not giving adequate amounts of antibiotics to cure the disease and are not properly informed as to the best method of managing gonorrhea." With oral drugs, the level of "patient error" is high—patients lose pills, forget to take them, give them to friends. They think they are cured but are not, and the infection spreads. The real point is that even the professionals do not agree. Not enough is known about the diseases to resolve the squabbles, and no one is willing to spend money to find out.

This raises the question of public attitudes. There is still a widespread belief that V.D. is caused by sex itself, not by an organism, and that anybody who contracts it "gets what he deserves."

Most physicians agree that we could solve the syphilis problem if we really wanted to, but apparently we don't really want to. Syphilis was a scourge until penicillin was discovered. The rates dropped swiftly after that, and in the mid-fifties health authorities relaxed, thinking the disease was headed for extinction. But the rates jumped again as soon as control efforts eased. In 1962, after the Surgeon General called attention to the renewed problem, the Federal Government put about $7-million a year into syphilis control, most of it to pay case finders. In the last two years, Federal funds have held steady and dropped in some cases; in a time of inflation, this has produced havoc. At the peak, Washington was financing more than 600 case finders; today it pays only about 450. A few years ago, health authorities were tracking down 98 per cent of the syphilis cases; today they can reach only about 50 per cent. Thus, after a steady decline, syphilis rates leaped 8 per cent in fiscal 1970 and 15.6 per cent last year. Scott Winders, a drug-company executive who heads the California V.D. Task Force, spoke for many when he said: "We've had a copout by the Federal Government, and, frankly, if they don't get off the dime we're going to have syphilis in epidemic proportions." The states are no better. Each one gets a block Federal grant for health services, and few rank V.D. higher than hangnails in setting their priorities. "V.D. is just not a popular disease, it never has been," explained Dr. Warren A. Ketterer, head of V.D. control for California. "A tremendous number of people moralize about it. They think that if you stop sex, you'll stop V.D. That's true, but you never think of stopping TB by stopping breathing. . . . We could have controlled V.D. 50 years ago if we tried. But we never had a President with V.D. who said, 'Let's go on a V.D. campaign.' It's not an honor to have V.D. People don't realize what it costs society. If they realized it cost $1-billion a year to treat V.D. they might do something."

When it comes to setting health priorities, V.D. just cannot compete with cancer, say, or heart disease. In most cases that are diagnosed, cure is relatively simple, and fatalities are rare, though doctors love to speculate on how many "heart failures" are really syphilis. Yet as one doctor said, "It is the only disease I know of where we have a known cure and yet still have an increasing incidence."

Government money is not the only victim of public ignorance and indifference. There is also education. Only two-thirds of the nation's schools teach anything at all about V.D., and much of the information they dispense is incomplete or inaccurate. The subject makes parents and educators so nervous that many textbook publishers just omit it from standard health texts, though the rate of infection is rising faster in the 15-to-19-year-old group than in any other.

California is probably the best example of timidity triumphant. Two years ago, the Legislature passed a bill sponsored by John Schmitz, a member of the John Birch Society and now a Congressman. The bill declared that before a school could offer a course on sex education, parents had to be notified and given a chance to withdraw their children from the class. The procedure was so costly and confused that many schools dropped the whole thing. Despite the pleas of health authorities that V.D. should be discussed under disease, not sex, school officials were "running scared," according to Mrs. Mabel S. Rickett, a specialist in V.D. education. "Teachers now feel they can't talk about sexual organs, and therefore they can't talk about V.D. Everyone's afraid the kids will ask embarrassing questions or the teachers will be quoted out of context," Mrs. Rickett explained.

In schools that do offer sex education, only about 2 percent of the parents take their kids out of class, but that small minority wields enormous power. This year, the Legislature passed a bill that clarified the distinction between sex education and V.D. education so schools would feel free to talk about the disease. But Governor Reagan, bowing to conservative pressures, vetoed the bill.

The subject is so sensitive that even in schools where V.D. is discussed in health classes, instructors are not allowed to talk about prevention. The same is true in county health clinics. Some parents are petrified that if their kids know how to prevent V.D. they will have one less reason to avoid sex.

Statistics indicate, however, that Junior is having plenty of sex even without adequate information, and conversations at the Free Clinic suggest that if youngsters know something about V.D. they tend to be more selective in choosing sex partners, not less. Even Bushy, the 18-year-old runaway, said, "If someone's really funky, I'm not going to chance it."

But reason often crumbles in the face of righteous indignation, fear and confusion. It is not easy being a parent at a time when 15-year-old girls are chunking down birth-control pills like One-a-Day Vitamins. And if the reaction to V.D. in some quarters is indignation, among doctors in private practice it is disinterest. Dr. Smartt describes the attitude this way:

"The medical profession sees V.D. as no problem. . . . The private physician feels that since he has good treatment this disease has been eliminated. You schedule a meeting on V.D. for private physicians, they won't come. They figure, "I know how to treat that disease, what do I want to go listen to that nut in the Health Department for?' Private medicine isn't interested, it couldn't care less, it doesn't give a damn."

A lot of the people who get V.D. don't give a damn, either. At the Free Clinic Dr. Michael Talbot, who is not much older than some of his patients, said: "There are people who we find have had the disease many times. People aren't afraid of it anymore; it's like a cold. It's not that serious, it can be treated. They view it as a part of living, a part of growing up."

"It's terrifying," said one clinic nurse, "to realize that we see the more intelligent ones; we don't know what's out on the street." Bushy, one of the intelligent ones, says: "Nobody really sweats it. Just about everybody I know has had it; it's a big joke with us." Tom, 29, was at the Free Clinic with his girl friend, Susan. "If you know what to do about it, you don't worry, like anything else," he said. "You just go get it fixed." Susan, a gentle girl of 22, wasn't worried, either. "Truthfully," she said, "I wouldn't ball anybody I didn't know was clean. I don't ball anybody but him and my friends." But since even "friends" sometimes don't know they have V.D., the waiting room was full of people who were confident they could never catch it.

Given these attitudes, can anything be done to control V.D.? If the money were available, researchers could probably find a cheap and easy screening test for gonorrhea; some progress, in fact, has already been made. Better drugs could be produced that don't build up resistance in the V.D. organisms. Doctors could learn more about why some patients suffer long-term compli-

cations and others don't. More case finders could be hired. But as everyone in the field agrees, "You don't treat a disease out of existence." Walter Smartt fumes: "All we're doing is treating, treating, treating, and we cannot gett rid of the epidemic that way. If this epidemic is ever reduced it'll be because somebody has guts enough to do what we did for pregnancy."

In other words, the answer is prevention. There are ways to prevent V.D. now. The best, of course, is abstinence, but that is hardly a likely possibility. Washing before and after intercourse and urinating as soon as possible both help kill the germs. Then there are prophylactic devices. A vaginal gel called Progonasyl has been around for years but never fully tested. (A group of prostitutes in Nevada are trying the substance now as part of a study by the State Bureau of Preventive Medicine.) The "pro kit" used by the armed forces during World War II—a device used to inject a disinfectant—is probably too annoying and inconvenient. Some doctors place their hope in the condom, but others think that is unrealistic. Mr. Lugar, the health adviser here, insisted: "It's been demonstrated over and over again that the promiscuous individual will not use a condom. When it comes to such a mechanical approach, sex just loses its flavor." Out of dozens of youngsters we interviewed, not more than one or two would consider using a prophylactic. "It kind of takes the fun out of it," said Bushy. "It's a little awkward at times, you know." Awkward and, these days, insulting. If a girl is on the pill, the only reason to use a condom is to prevent V.D., and some people are likely to resent the implication, no matter which partner makes the suggestion.

Two possibilities remain. One is a vaccine. The scientific and financial obstacles are enormous, but Dr. James N. Miller of the University of California at Los Angeles, a leading researcher in the field, predicts a syphilis vaccine within five years. A gonorrhea vaccine, on the other hand, seems almost impossible at this point. And, of course, if people won't allow their kids to read about V.D. will they allow them to be inoculated against it?

The other possibility is a pill taken regularly to suppress infection. In a recent study, Dr. Smartt gave a group of highly promiscuous individuals Vibramycine pills. In more than 5,000 sexual contacts, he reports, only two cases of V.D. were contracted. The procedure is expensive and dangerous, however. Some people are allergic to antibiotics, and widespread use of any drug would cause a certain number of adverse reactions. Moreover, no one knows what the regular ingestion of antibiotics would do to the body's normal defense system against disease.

The outlook, then, is not very promising, particularly for gonorrhea. There is not enough public support for treatment, research or education. Though we spend $41-million a year just to care for syphilitic insanity, and the total cost of V.D., from absenteeism, lost income and the like, might reach $1-billion annually, according to one estimate, the total Federal outlay comes to less than $10-million. The cost in human suffering is also rising: more sterility, more blindness, more babies born deformed from congenital syphilis. One thing is certain: V.D. will continue to spread as long as it is considered dirty and shameful, something nice people don't talk about, a "just punishment" instead of a crippling disease.

VD: THE EPIDEMIC

The coach was baffled. After a succession of winning seasons, his Los Angeles high-school football team had suddenly gone sour. During practice, the players barely limped through their wind sprints and the tackling dummy gave out more punishment than it got. Saturday after Saturday, linemen failed to open holes, and when they did, the backs had trouble finding them; pass receivers were chronically late getting downfield and tended to zig when they should have zagged. At midseason, the team had lost three games in a row.

The reason for the squad's mysterious deterioration didn't emerge from locker room chalk talks, but from some dramatic medical detective work. One player, complaining of swollen testicles, went to a public-health clinic. The diagnosis: gonorrhea. Soon, investigators found that 48 boys and girls—including nine members of the team—had contracted the disease. All were quickly cured by penicillin and the team came out of its slump and started winning again.

Unlike the coach, public-health doctors in Los Angeles find little to cheer about in the happy conclusion of the case. If venereal disease keeps climbing at the present rate, fully one in five of the city's high schoolers will have contracted gonorrhea or syphilis by the time they graduate. And what's happening in Los Angeles is happening almost everywhere. For the fact is that the entire nation is in the grip of a VD epidemic of unparalleled proportions—and no one at any level of society is immune.

"This is by no means a class phenomenon," says Dr. John Grover, a Harvard gynecologist who is actively involved in the VD campaign. "We have treated doctor's wives, bank president's wives, the daughter of the professor as well as the daughter of the milkman." Even some clergymen have been afflicted, and in San Francisco, Michael R., a young lawyer and discreet man about town, found out the hard way that VD has come a long way from the ghetto. "VD doesn't have anything to do with being 'nice' any more," he says. "The girl I got the —— from is a lovely person—she was sleeping with one other guy and figures he gave it to her."

As infectious diseases, syphilis and gonorrhea are outranked in incidence only by the common cold; and VD is now first among the so-called reportable communicable diseases, for the number of cases each year exceeds those of strep throat, scarlet fever, measles, mumps, hepatitis and tuberculosis combined. This year, 624,000 new cases of gonorrhea will be reported. But an estimated four cases occur for everyone reported, so the real figure is more than 2 million.

For syphilis—which untreated can lead to insanity and death—the figures are even more disturbing. There are half a million Americans with untreated syphilis today, and this year their ranks will be joined by 85,000 new cases. The number of new syphilis cases currently being reported represents an increase of 16 per cent over last year, the biggest jump in two decades.

VD, not surprisingly, strikes hardest in the cities. While there are 12 cases of syphilis for every 100,000 persons nationwide, Newark ranks first among cities with 124, followed by Atlanta and San Francisco. For gonorrhea, the national case rate is 308 per 100,000 population.[1] But in the Atlanta area the incidence is an astronomical 2,510 and in San Francisco, 2,067. Fully 6 per cent of the women having babies at one major hospital in Los Angeles had gonorrhea.

FROM CITY TO SUBURBS

And VD is moving rapidly from the inner city to outer suburbs. Mike Moy, a 27-year-old investigator for the Oakland County (Mich.) Health Department, has his hands full tracking down gonorrhea and syphilis in the affluent Detroit suburbs of Bloomfield Hills, Birmingham and Southfield. "This area," he notes, "has as big a problem as anyplace else." The gonorrhea rate quadrupled between 1969 and 1970 in Arlington, Va. In Prince George's County, Md., a major bedroom suburb of Washington, D.C., it has increased fivefold in the last decade.

VD is particularly rampant among young Americans. At least one in five persons with gonorrhea is under 20. Last year, more than 5,000 cases were found among youngsters between 10 and 14, and 2,000 among children under 9. "The probability that a person will acquire VD by the time he's 25," says Dr. Walter Smartt, chief of the Los Angeles County Venereal Disease Control Division, "is about 50 per cent."

What makes this horrendous state of affairs hard to comprehend is the simple fact that both syphilis and gonorrhea can be cured with penicillin and other antibiotics. After 1947, the number of cases dropped steadily for a decade through the use of these drugs. Then a vast blanket of complacency settled down over government, the medical profession and the public. Funds for VD control dropped off, and VD began its stealthy climb up the statistical ladder. "They provide money when the statistics are high, when you're getting a lot of syphilis for your money." Myron Arnold, a District of Columbia VD-control adviser, notes wryly. "When the cases begin to drop, they cut out the funds instead of seeing it through to completion."

NO WORSE THAN A COLD

The complacency is shared by the VD victims themselves. "It's no worse than having a cold," says a Hollywood 19-year-old, in an unconscious echo of an old street cliché. "You just lay off balling until it goes away." Another youth shrugged off the advice of doctors at the Fairfax Clinic, a Los Angeles public health unit that ministers to more than 2,000 VD victims a year, on ways to prevent recurrences. "I'm usually too stoned to care," he said. VD victims who don't follow doctor's orders become repeaters. One youth who had been to the Fairfax Clinic on three occasions kept taking only half the antibiotic pills he was given and selling the other half in order to spare his friends the trouble of a clinic visit. As a result of the inadequate dosage, no one was cured.

Nowadays, the old B-girl-meets-lonely-sailor picture of how VD is spread is as passé as an album by the Andrews Sisters. In fact, most public-health experts credit prostitutes with being unusually conscientious about avoiding VD and seeking treatment if they do contract it. Only 2 per cent of the VD patients treated in St. Louis clinics are prostitutes. "Prostitution is not where it's at with VD today," says Robert M. Nellis, an investigator with the San Francisco City Clinic. "It's Johnny next door and Susie up the street."

Public attitudes toward VD range from ostrich-like ignorance to downright repugnance and help make the current epidemic worse. "We even have doctors who don't want to treat or have anything to do with VD," says Phillip Wactor, director of VD control for the Illinois Health Department.

To a good many public-health officials, the root causes of the VD epidemic can be crisply summarized by the "three P's—the Pill, promiscuity and permissiveness." By virtually removing the fear of pregnancy, so the argument goes, the Pill has encouraged greater sexual activity—particularly among the

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[1] Though the VD epidemic is worldwide, the gonorrhea rate in the U.S., according to latest figures, is markedly higher than in such Western European nations as Britain (118 per 100,000) and France (30 per 100,000). But in the comparatively more permissive Scandinavia, the national average is much higher than in the United States. Denmark, for instance, reports a rate of 319 per 100,000 and in Sweden the rate is an astonishing 514 per 100,000—higher even than it is in California. Only in Communist China is the VD rate down appreciably. There, thanks perhaps in some measure to Chairman Mao Tse-tung's puritanical thoughts on promiscuity and prostitution, VD seems to have been all but eliminated.

young. At the same time, it has reduced the use of condoms, one of the most efficacious barriers to the transmission of VD. Moreover, researchers note, the hormones in the Pill increase the alkalinity and moisture of the female genital tract, favoring the rapid growth of gonorrhea bacteria. According to one estimate, the risk of contracting gonorrhea for a woman engaging in a single act of unprotected intercourse with an infected partner is 40 per cent; for a woman taking the Pill, it is almost 100 per cent.

Whether promiscuity is too strong a word, the life-style of large numbers of young people includes plenty of sex and lots of mobility—just what it takes to keep a VD epidemic going. "Let's face it," says Dr. Joshua Seigel of the Hollywood-Wilshire Clinic, "if you walk across a freeway once, you're less likely to get hit than if you walk across it ten times." "One day they're in San Francisco, the next week L.A., then on to Denver, notes Jan Cobble of the Bay Area Venereal Disease Association.

SHE GOT IT FROM A FRIEND

A case in point is Donald, the bearded 25-year-old resident of a Sonoma Valley commune, holding his eleven-month-old daughter on his hip as he waited his turn in the San Francisco City Clinic. He readily admits he contracted gonorrhea from his wife who had brought it back from a trip to New York. "She got it from a friend of mine she was staying with," says Donald, matter-of-factly. "He wrote and suggested she get a checkup; she's coming in for shots, too." At free clinics set up to serve the subculture, like the Ark in Chicago or the Medivan that patrols the streets of Boston and Cambridge, the clientele is young, and VD is high on the list of complaints. "Health pollution has become an accepted way of life for a certain number of young people," says Dr. John R. Pate, chief of the District of Columbia's VD-control division. "You take the good along with the bad." Health pollution includes many disease problems. The San Francisco City Clinic concentrates on treating VD because most of the city's smaller clinics are overburdened with drug users. "I go to the Haight clinic when I want to rap or when I'm strung out," says a pretty brunette in a peasant skirt and boots, "and I come here when I have VD."

VENEREAL DISEASE RATES: A BREAKDOWN BY STATES

[Reported case rates per 100,000 of population]

State	Gonorrhea	Syphilis
Alabama	258.3	4.8
Alaska	913.7	8.5
Arizona	255.7	14.0
Arkansas	400.3	17.0
California	500.3	14.1
Colorado	227.6	2.7
Connecticut	213.8	7.2
Delaware	283.9	11.8
Florida	391.1	24.4
Georgia	599.7	32.4
Hawaii	200.3	3.2
Idaho	208.5	.6
Illinois	440.2	8.8
Indiana	154.9	6.7
Iowa	199.4	.5
Kansas	283.1	3.0
Kentucky	183.4	9.4
Louisiana	337.0	20.7
Maine	111.8	1.0
Maryland	372.5	12.5
Massachusetts	151.6	5.5
Michigan	229.3	7.6
Minnesota	127.4	1.6
Mississippi	387.9	13.0
Missouri	324.0	5.7
Montana	134.4	.7
Nebraska	267.0	1.6
Nevada	351.8	31.3
New Hampshire	72.7	.8
New Jersey	143.5	14.8
New Mexico	273.7	14.1
New York	277.6	24.3
North Carolina	366.6	8.6
North Dakota	97.7	1.2
Ohio	270.9	4.1
Oklahoma	256.1	4.4
Oregon	359.0	1.2
Pennsylvania	135.6	3.2
Rhode Island	96.7	4.9
South Carolina	513.2	12.2
South Dakota	214.8	2.1
Tennessee	468.3	6.5
Texas	423.1	26.1
Utah	94.1	3.9
Vermont	102.7	.7
Virginia	345.3	7.5
Washington	261.4	3.5
West Virginia	105.0	2.0
Wisconsin	181.5	1.5
Wyoming	74.2	1.5

Source: American Social Health Association.

Promiscuity has certainly played a part in the rising VD rate among the burgeoning homosexual population, male and female. Up to 40 per cent of new cases of syphilis occur among male homosexuals, according to some experts. "It's not unusual," says Nellis, "for some of them to have 50 to 60 contacts a month."

Venereal disease, of course, has plagued man for centuries. The first recorded epidemic of syphilis swept Europe in the late fifteenth century, giving rise to the still-popular notion that Columbus's voyagers had brought the disease back with them from the New World. But in his new book, "Microbes and Morals," bacteriologist Theodor Rosebury argues that many cases of leprosy described in the Bible were, in fact, syphilis. Gonorrhea has also been traced to ancient times. And throughout history, VD germs have been known to move freely among the high-born as well as the poor. Henry VIII, Cellini, Napoleon and Goethe are only a few of the great who paid for their indiscretions with syphilis or gonorrhea.

TWO DISEASES IN ONE

Venereal disease (a term derived from Venus, the Roman goddess of love) includes several disorders transmitted largely through sexual contact. But syphilis and gonorrhea are the most serious by far. Each has its way of attacking the body, and each presents special problems of cure and control. Syphilis is caused by a corkscrew-shaped germ, or spirochete, called Treponema pallidum (Latin for "pale corkscrew"). It thrives in the moist environment of the mucous membranes lining of the genital tract, rectum and mouth, but expires quickly outside its human host. For this reason, the disease is never transmitted by contaminated toilet seats. Inside the body, the syphilis spirochetes multiply rapidly and cause an insidious infection that is really two diseases in one.

The first stage of infection, called "primary" syphilis, occurs from two weeks to three months after exposure, usually in the form of a hard chancre, or open sore, on the penis or in the vagina, cervix or rectum. Lymph nodes in the genital areas may also be enlarged. Diagnosis can be made by examination of fluid from the chancre under a special "dark field" microscope that reveals the organisms. About a month after the chancre appears, a blood test for antibody-like substances produced in response to the spirochete can also be used to detect the disease.

If untreated, syphilis proceeds to a "secondary" stage in which the spirochetes spread through the blood stream. The original chancre may disappear, but a rash usually spreads over the entire body. At the same time, further ulcerations may occur in the mucous membranes or skin.

The secondary stage may disappear after a matter of days or months. For years, the disease may remain latent, with no symptoms, and detectable only by a blood test. The syphilis victim may experience no further trouble. But in one in four cases, the disease will emerge again in a particularly vicious fashion. The spirochetes may attack the brain, causing a form of insanity called general paresis; the spinal cord, resulting in a type of paralysis known as locomotor ataxia; the blood vessels, particularly the body's main artery, the aorta, or the optic nerve, causing blindness.

Syphilis can be transmitted only during the primary stage and after an incubation period of some ten to 90 days; the patient with latent syphilis is no longer infectious through sexual contact. But the mother, even in the latent stage, can infect her unborn child, causing death or severe deformities of the bones and teeth. Of particular concern to public-health officials is the sharp increase in congenital syphilis last year—400 cases, compared with 300 in 1970

Although less lethal than syphilis, gonorrhea is far more prevalent and harder to control. The disease is spread by a gonococcus which also thrives in the moisture of mucous membranes. The first signs of infection usually appear within a few days. In males the bad news usually comes in the form of pain while urinating and a discharge of pus from the penis. Unless treated, the gonococci may spread through the reproductive system, inflamming the prostate gland, seminal vesicles and testicles, possibly causing sterility. Another problem that makes gonorrhea hard to control is the fact that there are a number of genital infections, loosely classified as non-specific urethritis, whose symptoms in the early stages closely resemble those of gonorrhea, but which are not necessarily spread by sexual contact; some can be picked up just the way colds are. In women, gonorrhea may produce no painful symptoms; in fact, some 800,000 female carriers are at large today, unknowingly transmitting the disease to their sexual partners. In active cases, the disease may spread through the reproductive tract causing painful pelvic inflammatory disease. It also scars the Fallopian tubes—a condition that is a major cause of infertility in American women

CONTROL BY DETECTION

A major problem in the treatment of gonorrhea is that the gonococci—like the staph organisms that plague US hospitals—have become increasingly resistant to penicillin. The standard dose needed to effect a cure has increased during the last 25 years from 150,000 units to 2.4 million units. Contrary to rumor, however, no "'killer" strains of gonorrhea are being brought back to the U.S. from Southeast Asia. "They are all treatable." says Col. Jerome H. Greenberg of the Army Surgeon General's office, "though some are more resistant than U.S. strains." And importation of VD from Vietnam is not a major contributor to the current epidemic, Greenberg adds. Only 65 cases are introduced by returning GI's each week, compared with 40,000 arising among U.S. civilians.

The major means of trying to control the VD epidemic is by detecting cases and tracking down contacts. For gonorrhea, the task is far more formidable than it is for syphilis. There is as yet no simple blood test for screening patients with gonorrhea; detection depends on locating the organisms in fluid from the genitals, and in the case of women, this requires time-consuming cultures that are far from 100 per cent reliable. Since the disease has a short incubation period, it can rapidly outdistance investigators tracking it down through case findings.

Because of its relatively long incubation period, syphilis is easier to keep in check. When a syphilis victim names a sexual contact, investigators have some weeks to find him and treat him before he has infected someone else. A classic example of contact tracking was Syphilis Mary, a blond waitress at a Riverside, Calif., truck stop who worked as a prostitute in her off hours. Investigator Nellis of San Francisco learned about her from a Nebraska truck driver who had come

down with syphilis. Once he found her, she turned out to be an investigator's dream—she had meticulously jotted down the names and addresses of all her clients, a total of 311 potential carriers. Fanning out over 34 states, investigators located seven persons diagnosed as having syphilis and treated another 88 who were given preventive penicillin shots because the incubation period after contact hadn't expired. Unfortunately, some 86 contacts couldn't be located. Nonetheless, Nellis estimated that at least 1,000 cases of syphilis were prevented by the case-finding effort.

AN INFECTIOUS LOVER

A less demanding, but more typical case, Nellis recalls wryly, involved a 35-year-old businessman with syphilis who admitted that he had been cheating on his wife. He listed four women who might have given him the disease but insisted that his wife couldn't have been the source. As it turned out, the extramarital contacts proved healthy, but the wife had syphilis and, to her husband's chagrin, a lover who had infected her.

Sleuthing out syphilis can be frustrating work. "In the ghetto, they avoid you like the bill collector," says Dick Howard, a Federal VD investigator at the Hollywood-Wilshire Clinic. "In Beverly Hills, the people feel they're too important to deal with you and want to handle it themselves." Private physicians, it is frequently charged, often refuse to let investigators interview their patients. The free clinics frequented by members of the youthful subculture also tend to protect their patients by failing to report new cases or aid in case finding. "But we've never been on them about it," says Smartt. "There's an epidemic and we need all the help we can get."

With enough concentrated effort, gonorrhea can sometimes be curbed by screening for new cases and tracking down potential carriers. Since 1968, Chicago health officials have carried out routine cultures of the genital area among persons coming to city clinics and hospitals for various reasons other than VD. In all, 56,587 persons were checked last year and 9 per cent turned out to have gonorrhea. Most important, the effort sharply increased the number of cases found among female carriers who showed no symptoms. Health officials also applied group tracing, in which associates of gonorrhea victim not initially named as sex contacts are also tracked down and tested. The result for Chicago has been an 11 per cent decrease in the number of gonorrhea cases in the first nine months of last year while the national incidence has risen 9 per cent.

Many experts believe that syphilis, at least could be brought under control by case finding. The trouble is, the Federal government hasn't been willing to spend the money in the effort. Since 1962, when the U.S. Surgeon General created a major stir about the mounting incidence of syphilis, some $6.3 million has been dispensed annually, largely to pay case finders. But because the constant expenditure hasn't kept pace with inflation, the number of investigators has been trimmed from 800 in 1964 to about 500 today. This, many observers insist, is one reason why syphilis cases rose 8 per cent in 1970 and 16 per cent in 1971, the largest case load in the two decades since penicillin came into general use.

A LACK OF KNOWLEDGE

Some VD experts place their hopes on a vaccine. "No communicable disease," says Smartt, "has ever been eradicated unless there was a preventive vaccine to do so." So far, however, the picture isn't very bright. Researchers have as yet been unable to grow the syphilis spirochete in cultures. There's no reason, in the mind of some researchers, why this can't be accomplished, given the research support. "You could possibly develop a vaccine in five years," says Dr. John Knox of Houston's Baylor College of Medicine, "but at the rate they're putting money into it now, it could be 105."

The outlook for gonorrhea control through vaccines or other research developments is even gloomier. "Our basic lack of knowledge is incredible," says Dr. Leslie Norins, chief of the Venereal Disease Research Laboratory at the National Communicable Disease Center in Atlanta. "There is a crying need for fundamental research."

Gonorrhea research has been hampered in the past by the fact that there was no experimental animal that could be infected with the disease for laboratory study. But within the last year, VDRL researchers have been able to induce gonorrhea in chimpanzees and study its transmission between males and females. Investigators have also found that women infected with gonorrhea produce antibodies in the genital tract against the gonococcus that may explain why many don't develop symptoms but remain carriers of the disease. Conceivably, these findings could help toward the development of a gonorrhea vaccine. More promising has been recent work at VDRL and New York's Rockefeller University toward devising a simple blood test for gonorrhea.

Because of the stigma of VD, efforts to educate the public about syphilis and gonorrhea have lagged about as badly as research. In several cities, community groups have established telephone hotlines to provide worried callers with advice on the symptoms of VD and where to go for treatment. But most agree that the educational effort should be made in the schools—and with the earliest feasible age group. "We almost have to beat puberty," says the District of Columbia's Pate, "because they are coming into the clinics so young." He cites, in this connection, a 9-year-old girl who contracted VD from a boy friend aged 13.

A NEED FOR FUNDS

A major problem is that many teachers are uncomfortable with such subject matter. In many school districts, VD is dealt with, if at all, in moralistic tones more suitable to a Chautauqua meeting than to a health class. "When a child learns that diphtheria exists and yellow fever exists," says Smartt, "he ought to learn that gonorrhea exists, too." In California last year, Gov. Ronald Regan vetoed a bill that would have exempted VD instruction from a state law requiring schools giving sex education courses to notify parents and give them a chance to review the study materials used. The law had, in effect, crippled sex education in the state, and the amendment would have encouraged VD instruction as part of health courses.

Washington, D.C., has instituted one of the more realistic school VD programs, one that even includes instruction in the use of condoms. "Our purpose," says District VD adviser Myron Arnold, "is to teach the student something he'll remember on a Saturday night, not necessarily on an examination."

Obviously, what is needed most of all to bring about the final control of the national VD epidemic is the same kind of doorbell-ringing, mother-marching concern that led to the development of polio vaccines and puts vast sums of money into efforts to conquer cancer and curb heart disease. "If men started getting pregnant or a dozen senators came down with paresis," sums up C. S. Buchanan, director of the Georgia VD-control program, "we would have all the funds we needed."

COSTS OF UNCONTROLLED SYPHILIS

The statistics presented in Table 1 (below) indicate part of the toll imposed by syphilis upon the manpower and economy of the country.

The estimate of man-years of disability for institutionalization of the syphilitic insane is based on the total number of patients in mental institutions and upon the proportion of those diagnosed as having syphilitic psychoses. Patients in State, county, and Veterans Administration hospitals for the permanent care of the insane are included.

The cost of maintenance is based upon the number of patients with syphilitic psychoses in tax supported institutions and upon the average per patient maintenance cost. Approximately three percent of patients with syphilitic psychoses are maintained in private institutions and these have not been included in this report.

While disabilities and deaths from syphilis have been diminishing in recent years, costs and losses per case have been rising. As a result, total costs and losses from syphilitic disabilities and deaths remain high compared to previous estimates.

On the basis of findings of research conducted in Macon County, Alabama, it has been estimated that the life expectancy of a Negro male between the ages of 25 and 60 years, infected with syphilis and receiving no appreciable treatment for his infection, is reduced by about 17 percent.[2]

TABLE 1.—*Estimated annual costs of uncontrolled syphilis, United States, 1968*[1]

Man-years of syphilis disability per year:	
Institutionalization for syphilitic insanity	9,626
Disability from syphilitic blindness	4,000
Economic costs of syphilitic psychoses and syphilitic blindness per year:	
Maintenance of patients with syphilitic psychoses	$40,703,000
Compensation to syphilitic blind	4,400,000

[1] Estimates based on most recent year (1968) for which data is available.

Mr. JAVITS. Mr. President, statements on this subject have appeared in the press throughout the Nation and over radio and television. A further measure of the seriousness of the emergency here involved is that so large a group of cosponsors would get together in a relatively short time—including, incidentally, the present occupant of the Chair, the Senator from Wisconsin (Mr. NELSON)—to back this legislation.

This is not a pleasant subject. It used to be not even a polite subject. But this is a very real problem for our country, striking directly at our young people, and striking at the most respectable elements of the community and their children. It is something we must deal with, and deal with quickly, because it is really getting away from us. History has shown that when we do get after it, as the bill contemplates, the reduction is marked; but when we do not finance the effort, the result is a runaway situation, made even worse by the social conditions surrounding us today.

I am grateful to the chairman of the committee, the Senator from New Jersey (Mr. WILLIAMS), for his cosponsorship of this measure. I think the country owes him and all the other cosponsors a debt of gratitude. This is a real emergency measure, and I hope that within the next few weeks we may have action on this critical emergency, about which the Federal Government, as shown by our previous history, can be most effective.

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[2] Shafer, J. K.; Usilton, Lida J.; Gleeson, Geraldine A.; Untreated Syphilis in the Male Negro: A prospective study of the effect on life expectancy. *Public Health Reports*, 69:684–690, July 1954. Milbank Memorial Fund Quarterly, 32:262–274, July 1954.

I ask unanimous consent that the text of the bill be printed in the RECORD.

I would also like to commend Jay Cutler, minority counsel to the Health Subcommittee, and Cathy Sulzberger, research assistant, for their initiative and efforts in regard to this legislation.

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

S. 3187.

A bill to amend the Public Health Service Act so as to provide for the prevention and control of venereal disease

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

SHORT TITLE

SECTION 1. This Act may be cited as the "National Venereal Disease Prevention and Control Act".

FINDINGS AND DECLARATION OF PURPOSE

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

(1) the number of reported cases of venereal disease has reached epidemic proportions in the United States;

(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those treated by physicians;

(3) the incidence of venereal disease is particularly high among individuals in the 20–24 age group, and in metropolitan areas;

(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions;

(5) the number of cases of congenital syphilis, a preventable disease, in infants under one year of age increased by 33⅓ per centum between 1970 and 1971;

(6) health education programs in schools and through the mass media may prevent a substantial portion of the venereal disease problem; and

(7) medical authorities have no successful vaccine for syphilis or gonorrhea and no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females.

(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act to establish a national program for the prevention and control of venereal disease.

AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Part B of title III of the Public Health Service Act is amended by adding immediately after section 317 thereof the following new section:

"PROJECTS AND PROGRAMS FOR THE PREVENTION AND CONTROL OF VENEREAL DISEASE

"SEC. 318. (a) The Secretary is authorized to conduct, and render assistance to appropriate public authorities and scientific institutions in the conduct of research, training, and public health programs relating to the prevention and control of venereal disease.

"(b)(1) The Secretary is authorized to make grants to States, political subdivisions, universities, hospitals, and other public or nonprofit private institutions, agencies, institutions, or organizations, for projects for the conduct of research, demonstrations, or training for the prevention or control of venereal disease.

"(2) For the purpose of carrying out this subsection, there is authorized to be appropriated the sum of $15,000,000 for the fiscal year ending June 30, 1973, and for each of the next two succeeding fiscal years.

"(c)(1) There is authorized to be appropriated the sum of $25,000,000 for the fiscal year ending June 30, 1973, and for each of the next two succeeding fiscal years, to enable the Secretary to make grants to State health authorities to assist the States in establishing and maintaining adequate public health programs for the diagnosis and treatment of venereal disease. The sums so appropriated shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for the provision of public health services for the diagnosis and treatment of venereal disease.

"(2) In order to be approved under this subsection, a State plan for the provision of public health services for the diagnosis and treatment of venereal disease must—

"(A) provide for the administration or supervision of administration by the State health authority;

"(B) set forth the policies and procedures to be followed in the expenditure of the funds paid to the State under this subsection;

"(C) provide that the public health services furnished under the plan will include the provision of statewide laboratory services which include Darkfield microscopes for the diagnosis of both gonorrhea and syphilis, and will otherwise be in accordance with standards prescribed by regulations, including standards as to the scope and quality of such services;

"(D) contain or be supported by assurances satisfactory to the Secretary that (i) the funds paid to the State under this subsection will be used to make a significant contribution toward providing and strengthening public health services for the diagnosis and treatment of venereal disease in the various political subdivisions in order to improve the health of the people; (ii) such funds will be used to supplement and, to the extent practical, to increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided and not to supplant any non-Federal funds which would otherwise be available for such purpose; and (iii) the plan is compatible with the total health program of the State;

"(E) provide that the State health authority will from time to time, but not less often than annually, review and evaluate its State plan approved under this subsection, and submit to the Secretary appropriate modifications thereof;

"(F) provide that the State health authority will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

"(G) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this subsection; and

"(H) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

"(3) From the sums appropriated to carry out the provisions of this subsection, the several States shall be entitled for each fiscal year to allotments determined, in accordance with regulations, on the basis of the incidence of venereal disease in, and the population of, the respective States; except that no State's allotment shall be less than $50,000 for any fiscal year.

"(4)(A) From each State's allotment under this subsection for a fiscal year, the State shall be paid a Federal share of the expenditures incurred during such year under its State plan approved under this subsection. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary or by way of reimbursement, with necessary adjustments on account of previous underpayments or overpayments.

"(B) The Federal share for any State shall be such per centum (not in excess of 90 per centum) of the expenditures of such State (referred to in subparagraph (A)) as shall be established by such State.

"(C) 'State' means each of the several States of the United States, the District of Columbia, the Virgin Islands, Guam, American Samoa, Trust Territory of the Pacific Islands, and the Commonwealth of Puerto Rico.

"(D) Any amount so allotted to a State during any such fiscal year (other than the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of Puerto Rico) and remaining unobligated at the end of such year shall remain available to such State, for the purposes for which made, for the next fiscal year (and for such year only) and any such amount shall be in addition to the amounts allotted to such State for such purpose for such next fiscal year; except that any such amount remaining unobligated at the end of the sixth month following the end of such year for which it was allotted which the Secretary determines will remain unobligated by the close of such next fiscal year may be reallotted by the Secretary, to be available for the purposes for which made until the close of such next fiscal year, to other States which have need therefor, on such basis as the Secretary deems equitable and consistent with the purposes of this subsection, and any amount so reallotted to a State shall be in addition to the amounts allotted and available to the States for the same period. Any amount allotted under this subsection of this section to the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, or the Commonwealth of Puerto Rico for a fiscal year and remaining unobligated at the end of such year shall remain available to it for the purposes for which made, for the next two fiscal years (and for such years only), and any such amount shall be in addition to the amounts allotted to it for such purpose for each of such next two fiscal years; except that any such amount, remaining unobligated at the end of the first of such next two years, which the Secretary determines will remain unobligated at the close of the second of such next two years, may be reallotted by the Secretary, to be available for the purposes for which made until the close of the second of such next two years, to any other of such named States which have need thereto, on such basis as the Secretary deems equitable and consistent with the purposes of this part, and any amount so reallotted to any such named State shall be in addition to any other amounts allotted and available to it for the same period.

"(d)(1) The Secretary is authorized to make project grants to States and, with the approval of the State health authority, to political subdivisions of States, for the conduct of venereal disease prevention and control programs.

"(2) For purposes of this subsection, the term 'venereal disease prevention and control program' means a program which includes—

"(A) disease surveillance activities, including the reporting, screening, and followup of diagnostic tests and diagnosed cases of venereal disease;

"(B) casefinding and case followup activities, including contact tracing of infectious cases;

"(C) interstate epidemiologic referral and followup activities;

"(D) professional and public venereal disease education activities; and

"(E) such special studies or demonstrations to evaluate or test venereal disease control as may be prescribed by the Secretary.

"(e) Grants made under subsection (b) or (d) of this section shall be made on such

terms and conditions as the Secretary finds necessary to carry out the purposes of such subsection, and payments under any such grants shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary.

"(f) Nothing in this section shall be construed to limit or otherwise restrict the use or availability of funds which are granted to a State or to a political subdivision of a State under other provisions of this Act or any other Federal law and which are available for the conduct of venereal disease programs from being used in connection with programs assisted through grants under this section.

"(g) For the purpose of carrying out this subsection, there is authorized to be appropriated the sum of $30,000,000 for the fiscal year ending June 30, 1973, and for each of the next two succeeding fiscal years.

"(h) Each recipient of assistance under this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(i) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the assistance received under this section.

"(j) The Secretary, at the request of a recipient of a grant under this section, may reduce such grant by the fair market value of any supplies, or equipment furnished to such recipient and by the amount of pay, allowances, traveling expenses, and any other costs in connection with the detail of an officer or employee to the recipient when the furnishing of such supplies or equipment, or the detail of such officer or employee (as the case may be), is for the convenience of and at the request of such recipient and for the purpose of carrying out the program with respect to which the grant under this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies, equipment, or personal services on which the reduction of such grant is based, but such amount shall be deemed a part of the grant to such recipient and shall, for the purposes of this section, be deemed to have been paid to such agency."

(b) Section 314(d)(2) of the Public Health Service Act is amended—

(1) by striking out ", and" at the end of clause (K) and inserting in lieu thereof ";";

(2) by striking out the period at the end of clause (L) and inserting in lieu of such period "; and"; and

(3) adding after clause (L) the following new clause:

"(M) effective July 1, 1973, provide for services for the prevention and control of venereal disease.".

Mr. BEALL. Mr. President, I am pleased today to join in the introduction of the "National Venereal Disease Prevention and Control Act." Only outranked in incidence by the common cold, venereal disease has spread to unparalleled epidemic proportions in the United States. It is estimated that during 1972 there will be 624,000 new cases of gonorrhea reported. This is alarming in itself; however, it must be pointed out that for every reported case, there are approximately four cases that go unreported. The rates of syphilis and gonorrhea are thus increasing at an alarming rate, and my own State of Maryland is not exempt from this major epidemic. During the past year Maryland had 372.5 reported cases of gonorrhea per 100,000 of population and 12.5 cases of syphilis per 100,000 of population. It should be noted that the reported case rate of gonorrhea in Maryland is only exceeded by that of six other States. Particularly dismaying is that in Prince Georges County, Md., the gonorrhea rate has increased five times during the last 10 years and since 1969 the number of reported cases of gonorrhea in Baltimore increased from 8,612 to 10,538, or up 22.4 percent.

Following the outbreak of other communicable diseases such as diphtheria there is immediately a public outcry which in turn leads to action by the public, the Government, and members of the medical profession. However, because of the stigma surrounding venereal disease, the lag between public concern and organized action is much greater. I strongly believe that the time to make strides to lessen this lag is now and that is why I am pleased to join my distinguished colleagues in the sponsorship of this legislation.

For too long we have ignored, or politely turned our heads away from this problem which has plagued man for centuries. The legislation we are today introducing would authorize $15 million annually for technical assistance and project grants for research demonstration and training programs. In addition, the measure establishes State comprehensive venereal disease diagnosis and treatment programs, formula grants of $25 million, and would provide project grants of $30 million annually for VD prevention and control programs which meet certain standards.

The time has come for us to bring a focus to this disease, not only through a change in public attitudes and education, but also by more positive action. Certainly Federal leadership is essential at this point to further define the problem and bring all levels of public health, private medicine, and volunteer sources into a concerted drive against this major health hazard.

By Mr. GOLDWATER:

S. 3188. A bill to amend section 203 of title 37, United States Code, to provide additional pay for permanent professors at the U.S. Military Academy and the U.S. Air Force Academy. Referred to the Committee on Armed Services.

STEP PAY INCREASES LONG OVERDUE FOR MILITARY ACADEMY PROFESSORS

Mr. GOLDWATER. Mr. President, I am today introducing legislation providing for an increase in the compensation of permanent professors at the U.S. Military Academy and at the U.S. Air Force Academy. Mr. President, not many people know this, but a permanent professor who serves at one of these two academies does not receive any increase in pay from the time of his 26th year of service until the completion of his 36th year of service, a long 10-year gap. The trouble lies in the fact that existing law provides that military professors are excluded from the regular promotion lists.

Clearly, the present law imposes a grave inequity on the dedicated and competent individuals who are serving their country so well as instructors of our Nation's future career military leaders. Furthermore, it must be noted that professors at these two academies, who have responsibilities fully comparable to tenure professors in civilian colleges and universities, actually receive salaries which are far less than the pay of their civilian counterparts, who receive a number of very considerable fringe benefits in the bargain.

Accordingly, Mr. President, I am offering a bill today which will provide an additional $250 pay per month for professors at West Point and at the Air Force Academy after completion of 31 years of service. The bill does not cover the faculty at the Naval Academy because those professors are all civilians. My bill also will authorize use of this additional pay in computing the future retired pay of these permanent professors. The entire cost of implementing the changes on an annual basis will be no more than $27,000 in the initial years. Therefore, the Department of Defense assures me that the enactment of this legislation would not result in any increase of the budget sought by the Department.

Mr. President, the implementation of this proposal is demanded out of a sense of human fairness. The bill is needed on grounds of equity, and it is needed as a means of providing some mark of national recognition for the professors of a kind to which they are entitled. For it must be realized that each permanent professor at the Military Academy is a highly qualified professional person who, at the time of his appointment by the President, already has achieved a great stature and reputation of his own. He could with assurance look forward to higher compensation and advancement if he chose to remain in the regular line of his military service instead of accepting a professorship at a service academy.

Not only should recognition be given to this very real measure of self-sacrifice on the part of an officer who becomes a professor at one of these two academies, but it also should be observed that the responsibilities falling upon them has increased greatly in the past decade due to a tremendous enlargement in the size of the student bodies of academies and due to the increased complexity and sophistication of the curriculum of studies. In fact, the number of courses offered at West Point over the last 10 years has grown from 72 to more than 250.

Thus, Mr. President, there is no question that the officers holding professorships at the academies would enjoy very substantial opportunities for advancement by remaining in the line and staff of the regular service establishment outside of the Academy. There is no question that these gentlemen are equal to the very best professionals in their field. And there is no doubt that their counterparts in civilian life can command salaries and benefits much greater than those which attach to a military professorship status.

Accordingly, I introduce this bill, which

will authorize commencement of an additional $250 pay per month for military professors after completion of 31 years of service. My proposal is consistent with the formal recommendations made to the President regarding the pay of professors by eight out of the nine previous boards of visitors at the U.S. Military Academy. The enactment of my proposal will provide these professors with evidence that their country recognizes and is satisfied with their contributions through their present positions. Though at some future time the discrepancy in pay and benefits between military and civilian professors could pose a problem in the retention of permanent professors, this is not an immediate situation which my bill is aimed at reaching. Instead, the legislation openly proclaims that officers who are permanent professors deserve a step pay increase at the completion of 31 years of service in view of their outstanding capacities and devotion to serve their country. In short, it is my belief the present law, which does not allow for an increase in the pay of these professors for an entire 10-year period, is arbitrary and unfair and must be changed without delay.

Mr. President, I ask unanimous consent that a copy 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. 3188

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203(b) of title 37, United States Code, is amended to read as follows:

"(b) While serving as a permanent professor at the United States Military Academy or the United States Air Force Academy, an officer who has over 31 years of service computed under section 205 of this title is, in addition to the pay and allowances to which he is otherwise entitled under this title, entitled to additional pay in the amount of $250 a month. An officer while serving as a permanent professor under this section, who has over 36 years of service, is entitled to total additional pay in the amount of $500 a month. The additional pay provided by this section shall be used in the computation of retired pay."

By Mr. GURNEY:

S. 3189. A bill to establish the Chassahowitzka National Wilderness Area in the State of Florida; and

S. 3190. A bill to establish the St. Marks National Wilderness Area in the State of Florida. Referred to the Committee on Interior and Insular Affairs.

Mr. GURNEY. Mr. President, I am today introducing two bills that would provide for the preservation—as wildernesses—of appropriate sections of the St. Marks Wildlife Refuge and the Chassahowitzka Wildlife Refuge.

The Wilderness Act of 1964—Public Law 88-577—set forth procedures for studying all roadless areas, within the national refuge system, of at least 5,000 contiguous acres in order to determine if they might be included within the national wilderness preservation system. Such studies have been completed at both the St. Marks and the Chassahowitzka Wildlife Refuges, hearings have been held, and the residents and organizations in the areas concerned are overwhelmingly in favor of preserving these areas as natural wildernesses. All that is needed now, to insure that these areas remain preserved in their natural state, is for Congress to pass the enabling legislation.

The St. Marks area, in addition to having a lengthy historical heritage, is one of great natural beauty. As early as 1791, while the Spanish still controlled the area, conservationist William Bartram was writing about the abundant wildlife along the gulf coast. He, and another conversationist, Charles J. Pennock, who wrote from 1887 to 1889, told of alligators, panthers, the now extinct Carolina parakeet, turkeys, deer, bears, the rare ivory billed woodpecker, marsh and wading birds, and many other birds and animals that abounded along the gulf coast. After the Civil War, much of the surrounding area, which had been in crops and cotton, was allowed to revert to forest land, thus adding to the natural seclusion of the area. In 1931, some 64,000 of federally owned land along the gulf coast about 20 miles south of Tallahassee, was established as the St. Marks Wildlife Refuge. Since then, the area has been in a semiprotected state, open to boating and hunting, but, in places, still beautiful, untouched wilderness.

It was the purpose of the 1964 Wilderness Act to secure for the American people of present and future generations, the benfits of an enduring source of wilderness. Wilderness areas are fast disappearing in this country and unless we protect those left, they will be lost forever—for enjoyment and for study. Within a 100-mile radius of the St. Marks Wildlife Refuge, there are over 800,000 people and by the year 2000, the population is expected to reach 2,000,000. Unless steps are taken to seal off the natural wilderness area from the relentless advance of hunters, boaters, and developers that inevitably go along with population expansion, this wilderness will be artificially changed and will lose its natural wild quality.

To prevent such a loss, I am introducing this bill which would designate 17,746 acres of the St. Marks Wildlife Refuge as wilderness. Passage of this bill would prevent cars, motorboats, hunters, and commercial fishermen from using the area. In addition, wilderness designation would provide additional protection for the natural marsh upon which wildlife and the shallow Apalachee Bay waters depend. Also, the economy of the area would be stimulated by the preservation of natural wilderness; such wilderness would be a tourist attraction that would provide additional recreational benefits as well as assuring an adequate supply of valuable nutrient sources for estuaries. Combining these advantages with those derived from continuation of the wildlife management program being carried out on other parts of the refuge should serve not only to protect and enhance wildlife in the area, but also should allow them to live and be seen in their natural habitat.

Numerous organizations have come out in support of the wilderness proposal for St. Marks. In addition to the favorable recommendation of the Department of the Interior, the proposal has been endorsed by the Governor of Florida, the Florida Game and Fresh Water Fish Commission, the U.S. Department of Agriculture, the U.S. Bureau of Mines and the U.S. Bureau of Outdoor Recreation among others. Twenty-six of the 82 organizations making statements at the hearing supported the wilderness proposal. Of the total 274 oral or written statements submitted, 249 favored the idea unequivocally, and 10 more expressed support with reservations. In fact, it was as a result of the sentiment expressed that almost 6,600 additional acres were added to the original proposal.

The Chassahowitzka National Wildlife Refuge, located some 70 miles north of Tampa, consists of another 30,514 acres of terrain featuring needlerush marsh, swampland, salt water bays and the clean, clear waters of the Homosassa and Chassahowitzke Rivers. Chassahowitzka is home for 20,000 ducks, 30,000 coots, 500 white pelicans and numerous other birds and animals—some of them rare.

At the present time commercial fishing, hunting, and cattle grazing is permitted within the existing refuge. Powerboats are extensively used in the area, a product of long term practice. All of these activities—while they might be of some short term economic benefit—disturb the natural, wild environment and pose an ever increasing threat to its unspoiled character. As is the case with St. Marks, the wilderness area at Chassahowitzka will likely fall prey to developers unless it is more adequately protected. If the area remains wilderness, the wide assortment of birds, fish, and animals will continue to be a source of enjoyment to future generations of Americans.

Mail from my constituents is running very strongly in favor of including this area in the national wilderness preservation system. At the hearing on the wilderness proposal, held recently, the idea received strong support from individuals and groups alike. There is little enough wilderness land left for this area to be omitted from the wilderness system. Given its close proximity to the cities of Tampa and St. Petersburg, the area would be a tremendous educational attraction to many people who could easily benefit from the enjoyment of a true wilderness experience.

The time has long since come to put special emphasis on protecting what is left of our natural environment. The best way that can be done is to make them accessible to man on only a temporary, nonmotorized, basis. The best way to do this is to designate both the Chassahowitzka National Wildlife Refuge and the St. Marks National Wildlife Refuge as wilderness and place them under the protective umbrella of the 1964 Wilderness Act. To fail to do this would be to cheat future generations of Americans from the opportunity of serving America in its truly natural state. Wilderness, like wildlife, animals, and historic landmarks, is an integral part of our natural heritage, and should be protected.

By Mr. NELSON (for himself, Mr. MONDALE, Mr. CRANSTON, Mr. HUGHES, Mr. KENNEDY, Mr. PELL, Mr. RANDOLPH, Mr. STEVENSON, Mr. WILLIAMS, Mr. BAYH, Mr. HARTKE, Mr. HUMPHREY, Mr. MCGOVERN, and Mr. TUNNEY):

S. 3193. A bill to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes.

ECONOMIC OPPORTUNITY AMENDMENTS OF 1972

Mr. NELSON. Mr. President, I am today introducing the proposed "Economic Opportunity Amendments of 1972." This bill would extend the authorization for the Economic Opportunity Act for 2 years through June of 1973.

The most significant feature of this legislation is a new title V to establish a program of child-care centers and services. The bill also contains the Legal Services Corporation and substantially the same provisions as the Economic Opportunity Amendments passed by the last Congress.

The child-care program has been redrafted in several respects in the hopes of reaching an acceptable compromise which a bipartisan majority of both houses of Congress could agree upon and the President could sign.

The Congress during the last session labored long and hard in the development of legislation to extend the Economic Opportunity Act. The Senate Subcommittee on Employment, Manpower, and Poverty, of which I am chairman, held 18 days of hearings between March 23 and June 16. The bill passed the Senate on September 9 by a vote of 49 to 12. I am proud that the Senate has time and time again shown its confidence in the Economic Opportunity programs. Last year, by substantial majority votes, the Senate supported the child-care program which was subsequently vetoed by the President.

The conference between the Senate and the House on poverty legislation last fall was particularly long and difficult. We met in sessions all through October and November. We sought the views of the administration as to what would be acceptable child-care legislation. We thought we had reached workable agreements with all parties concerned. In fact, the Secretary of Health, Education, and Welfare stated that he was satisfied, although after the conference had completed its work he sent a letter expressing some misgivings on the delivery system. The veto of the Economic Opportunity Amendments last December 10 came as a particular shock and disappointment.

With 5 million children of working mothers in the country and only 700,000 child-care places, the need for an adequate network of child-care facilities is just as great today as it was in December when the President vetoed the child development program as part of the Economic Opportunity Act extension legislation.

The Federal commitment to the early years of life must not be tied to the welfare rolls. Most of the poor are not on welfare. The Headstart program carries no welfare requirement nor welfare stigma.

It would be tragic if an expanded Federal commitment to the early years of life should turn out to be a program that requires a mother to sign up for welfare so that her child may be helped.

Our proposed legislation would build on the successful Headstart experience, extending it to the children of modest-income working mothers as well as the children of the poor.

In this compromise measure we have tried to meet the President's objections. I hope that we will be able to work out acceptable legislation in the interest of the Nation's children.

The veto message on last year's bill objected to the system of prime sponsorship contained in the legislation. That system would have authorized any jurisdiction of 5,000 or more persons to be a prime sponsor—that is, to run its own child-care program contracting directly with the Secretary of HEW.

To meet the objections of the President we have compromised substantially from last year's position and propose a greatly enhanced role for States in the administration of a child-care system, while at the same time seeking to protect the interest of parents and local control. In the legislation we are introducing today, only cities and counties of 25,000 or more persons would have the right to be prime sponsors. In the balance of the State, the State would assume administrative responsibility for child-care programs. A State would submit a plan to the Secretary of Health, Education, and Welfare, providing for a State child-care council consisting 50 percent of parents and 50 percent of public representatives appointed by the Governor, which would be responsible for the planning and coordination of child-care services in the State. The State plan would also provide for designating local program areas covering geographical areas of the State having not more than 50,000 population.

Within those areas, local policy councils would be established and parents of children in the programs would make up 50 percent of the membership of those councils. Through these arrangements, we believe it will be possible to both meet the concerns about administrative feasibility while preserving the principle of parent control of child-care programs.

Let me emphasize that throughout the bill are provisions designed to insure that the child-care program is family centered. Parents must request the child-care services.

Parents compose half of the membership of the policymaking councils. Priority is given to Headstart-type programs which have emphasized parent participation through the years. The Statement of Findings and Purpose sets forth the congressional intent that:

(1) Child care programs must build upon the role of the family as the primary and most fundamental influence on the development of children and will be available only to children whose parents or legal guardians request them.

We have attempted to focus more sharply the bill's priorities: First, funds are available for programs for preschool children, particularly for Headstart-type programs to prepare children to benefit from their school experience. These programs are not limited to children of working mothers, although, of course, where there is no parent at home during the day, full-day care is necessary whereas part-day Headstart programs may be used by children with a parent at home during the day.

In addition to the priority on Headstart-type projects for preschool children, the bill places priority on day-care programs for economically disadvantaged children of working mothers. For these children, after-school care is needed until the parents return home in the evening. Summer day care is also a necessity. One of the real problems facing working parents is that so often their children must be left alone while they are at work. These latchkey children are both a family and all too often a social problem for the community.

The bill I am introducing today reduces the overall authorization for child-care programs from $2 billion to $1.5 billion.

Fiscal year 1973 would be a planning year and the program would be fully authorized in fiscal year 1974. We have also included in the child-care legislation the fee schedule negotiated between the Secretary of Health, Education, and Welfare and the members of the Senate-House conference on last year's child development legislation. While the child-care provisions of the vetoed bill received more than their share of criticism, I believe all parties are agreed that the fee schedule in that legislation is a fair one. It provides free child-care services to children in families earning up to $4,320 and it provides reasonable fees on a sliding scale basis for child care up to the Bureau of Labor Statistics low, adequate budget level of $6,960—for an urban family of four.

Mr. President, the bill I am introducing today also contains the Legal Services Corporation language from the conference report. Recent developments have served to underline the need to remove the legal services program from political influence as this Corporation proposal would do.

And finally, we have included in this bill those provisions contained in last year's bill on the activities of the Office of Economic Opportunity itself. The bill contains the prohibition against further spin-off of Office of Economic Opportunity programs without congressional approval, and provisions for earmarking of OEO funds previously approved by the Congress.

The bill also contains the new title VII providing for community economic development programs.

Mr. President, I ask unanimous consent that a summary of the new legislation be printed in the RECORD at the conclusion of my remarks.

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

SUMMARY OF NELSON-MONDALE CHILD CARE PROGRAM

1. A new title V entitled "Child Care Centers and Services" would be added to the Economic Opportunity Act.

2. This new child care legislation would provide a substantially increased role for the States.

(a) States would be designated as prime sponsors except for localities having a population of 25,000 persons or more which apply for local prime sponsorship designation and which the Secretary determines have the capability of effectively carrying out child care programs.

(b) State child care councils would have a planning and coordinating role and would monitor all child care programs in the State pursuant to approved State plans.

3. Priority would be given to Headstart-type preschool programs and to economically disadvantaged children of working mothers. Full subsidies would be limited to the poor and partial subsidies on a sliding-scale basis would be available to the near-poor (up to $6,960 for a family of four in an urban area).

4. Child Care Councils and local policy councils consisting half of parents and half of representatives appointed by public officials would have policy-making responsibilities concerning child care projects.

5. The legislation would provide for a planning period of one full year (fiscal year 1973) and then the child care program would be fully operational in fiscal year 1974. (One year later than last year's vetoed bill.)

6. Appropriations would be authorized at $1.5 billion level for fiscal year 1974—a reduction of $500 million from last year's vetoed child development legislation.

Mr. MONDALE. Mr. President, today I am privileged to introduce, with the distinguished junior Senator from Wisconsin (Mr. NELSON), a bill to establish a comprehensive child-care program. This measure represents a revision of the child-development bill I introduced last session, which was subsequently adopted by the Congress and vetoed by the President.

PURPOSE

Our bill seeks to better meet the need for quality, family-oriented, preschool programs among millions of young children whose mothers are working, or who, because of poverty, are denied adequate health care, nutrition, or educational opportunity.

It recognizes and specifically provides that child-care programs must be totally voluntary, and must build upon and strengthen the role of the family as the primary and fundamental influence on the development of the child.

It assures that parents will have the opportunity to choose among the greatest possible variety of family-supporting services including part-day programs like Headstart, after school or full day developmental day care for children of working mothers, in-the-home tutoring and child-development classes for parents and prospective parents.

Finally, by clarifying and modifying the vetoed bill with respect to the President's concerns about the administrative delivery system, the State role, the cost, and the relationship of these programs to the family, the measure we introduce today is designed to gain not only passage by the Congress, but also the cooperation and support of the administration.

These are the elements of our compromise.

Under our new bill, parents retain a full voice in decisions concerning curriculum, policy, and program funding.

We have increased our priority on strengthening family life by making full day care available only to children whose parents are already out of the home all day. Services for children whose mothers are at home are limited to part-day programs or in-the-home tutoring that builds on the mother-child relationship.

We have increased the role of the States by reducing by over two-thirds the number of localities that will be eligible to administer their own programs and deal directly with Washington.

We have reduced by 25 percent the funds authorized for these programs.

And we have postponed for 1 year the effective date of this bill.

We believe, and we hope, that with these changes which I will describe more fully later in my statement—and with the retention of our priorities on parental involvement, quality programs, services for both poor and middle-income children, local initiatives, protection for existing Headstart programs and other elements—we can enact this bill into law and begin better meeting the needs of parents and children.

THE NEED

The critical effect of the first 5 years of life has been well documented. We know that the beginning years of life are the most important for a child's intellectual growth, and for his social, emotional, physical, and motivational development. These early years are the formative years—they are the years in which permanent foundations are laid for a child's feelings of self-worth, his sense of self-respect, his motivation, his initiative, and his ability to learn and achieve.

We know that a child's intelligence is not fixed, once and for all, at birth. We have learned that his intelligence is shaped by his experiences, and that his mental development is heavily determined by the conditions and the environment he encounters in the first few years of life.

We know that children are most eager and often most able to learn during their early childhood years. As Dr. Benjamin Bloom concluded in "Stability and Change in Human Characteristics":

> As time goes on—more and more powerful changes are required to produce a given amount of change in a child's intelligence—and the emotional cost it exacts is increasingly severe.
>
> To a very great extent, a child's experiences at the beginning are critical determinants of his entire future life.

Yet we have never adequately provided for these early childhood years; and we have particularly neglected many of the children with the greatest economic and social need.

Today, there are over 3 million preschool children whose families have incomes below the poverty level, and probably an equal number from families living in near poverty. In spite of the love and attention these children receive from their families, many are growing up without adequate nutrition and health care and without the kind of intellectual stimulation during their early years that is necessary for success in an increasingly technical society.

Recent findings by the Mississippi Medicaid Commission indicate the magnitude of health needs alone. The extent of undetected and untreated health problems among poor children examined by that commission—and their implications for child development—are frightening. The commission found 1,301 medical abnormalities in the 1,178 children it examined, including: 305 cases of multiple cavities; 97 cases of faulty vision; 217 cases of enlarged tonsils; 57 cases of hernia; 48 cases of intestinal parasites—mostly hookworm; 53 cases of poor hearing; and 32 other medical conditions requiring immediate treatment.

Many poor children—Mexican Americans, Indians, Eskimos, Puerto Ricans, and members of their minority groups—grow up learning English as a second language, or not at all. Besides being burdened with possible nutritional and intellectual deprivation in their early years, they are confronted with an alien language and an alien culture when they begin school.

And we have neglected as well the needs of an increasing number of preschool children whose mothers are working. Some of these children are receiving healthful and stimulating care while their parents work, but many are not. Many are left in purely custodial and unlicensed day-care centers, and others—the so-called latchkey children—are left alone to look after themselves. Consider these facts:

In 1971, 43 percent of the Nation's mothers worked outside the home, compared to only 18 percent in 1948.

One out of every three mothers with preschool children is working today, compared to one out of eight in 1948.

In 1971, 1.3 million mothers of children under 6 were single parents bringing up children without a husband, and half of these mothers worked.

Yet, there are fewer than 700,000 spaces in licensed day-care centers to serve the over 5 million preschool children whose mothers work.

And although some existing Federal programs, such as title IV of the Social Security Act, help provide day care for these children, much of it is inadequate. Dr. Edward Zigler, Director of HEW's Office of Child Development, has estimated that only about 20 percent of these day-care programs are developmental, or comprehensive—and that in "many instances we are paying for service that is harmful to children."

Thus, it comes as no surprise that one chapter in a recent OEO publication entitled "Day Care: Resources for Decisions" concluded:

> Over 90 percent of all full-day centers in the United States are privately operated for profit.
>
> Most are custodial programs because that's all that most working mothers can afford . . . Day care in America is a scattered phenomena; largely private, cursorily supervised, growing and shrinking in response to national adult crises, largely unrelated to children's needs . . .

The need for quality day-care opportunities among families near but above the poverty line can hardly be overemphasized. There are 1 million children

of working mothers in families with incomes between $4,000 and $7,000—incomes which are just a little too high to qualify for most federally assisted day-care programs, such as those under Headstart and title IV of the Social Security Act, and too low to afford quality day care in private programs. Indeed, these families living in near poverty have perhaps the greatest unmet need for quality day care.

Some people would like us to believe that the day-care needs of the near poor and working parents have been adequately met by the recently enacted liberalization of income tax deductions for child care. In fact, the President suggested as much in his veto message of the child-development bill, but the facts do not support this optimism.

In response to my inquiry concerning the tax savings under this new income tax deduction, the Treasury has provided the following information:

A family of four with an income of $5,000 which spends $500 for child care would realize no tax savings;

A family of four with a $7,000 income which spends $700 for child care would realize a savings of only $77;

A family of four with a $10,000 income which spends $1,000 for child care would realize only $190 tax savings;

A family of four with an income of $18,000 and child-care expenses of $1,000 would save $250 in taxes.

Mr. President, I ask unanimous consent that copies of my correspondence with the Treasury Department be included at the close of my remarks.

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

(See exhibit 1.)

Mr. MONDALE. Mr. President, this correspondence makes it quite evident that income tax deductions for child care provide practically no assistance to families with incomes between $4,000 and $8,000. In fact, as with most income-tax deductions, these child-care deductions offer more assistance to the upper middle class than the near poor.

Thus quality preschool and child care in this country is a privilege for the very rich, and, to the limited extent that public programs are currently provided, for the very poor.

By providing services only at the socio-economic extremes, we are neglecting the majority of our children and, in a very real sense, we are assigning poor children to a "track" system even before they enter the public schools. Perhaps most tragically we are ignoring the enormous opportunity for children to learn from one another.

That is precisely why the bill we are introducing today retains the fee schedule from last year's conference report which provides free services for families with incomes up to $4,320, modest fees for families with incomes between $4,320 and $6,960, and a sliding scale of fees above that level.

INCREASING NATIONAL AWARENESS

This need for developmental child care and preschool education was recognized by President Nixon shortly after he took office. In his February 1969 economic opportunity message to the Congress, the President stated:

> So crucial is the matter of early growth that we must make a national commitment to providing all American children an opportunity for healthful and stimulating development during the first 5 years of life.

Later that same year, when he created the Office of Child Development in HEW to serve as the focal point for this effort, the President gave an eloquent summary of the need many poor children, in particular, have for developmental child care and preschool educational opportunities. He said:

> We have learned, first of all, that the process of learning how to learn begins very, very early in the life of the infant child. Children begin this process in the very earliest months of life, long before they are anywhere near a first grade class, or even kindergarten, or play school group. We have also learned that for the children of the poor this ability to learn can begin to deteriorate very early in life, so that the youth begins school well behind his contemporaries and seemingly rarely catches up. He is handicapped as surely as a child crippled by polio is handicapped; and he bears the burden of that handicap through all his life. It is elemental that, even as in the case of polio, the effects of prevention are far better than the effects of cure.
>
> Increasingly we know something about how this can be done. With each passing year—almost with each passing month, such is the pace of new developments in this field of knowledge—research workers in the United States and elsewhere in the world are learning more about the way in which an improverished environment can develop a "learned helplessness" in children. When there is little stimulus for the mind, and especially when there is little interaction between parent and child, the child suffers lasting disabilities, particularly with respect to the development of a sense of control of his environment. None of this follows from the simple fact of being poor, but it is now fully established that an environment that does not stimulate learning is closely associated in the real world with poverty in its traditional forms. As much as any one thing it is this factor that leads to the transmission of poverty from one generation to the next. It is no longer possible to deny that the process is all too evidently at work in the slums of America's cities, and that is a most ominous aspect of the urban crisis.
>
> It is just as certain that we shall have to invent new social institutions to respond to this new knowledge.

Congressional interest in this problem increased at the same time. In 1969 several of us introduced legislation and we began hearings and investigations. Encouraged by the success of Headstart, and responsive to the expressed needs of poor and working families throughout the Nation, the Congress had devoted increasingly greater attention to child-care needs during each of the last 3 years.

Since the original bills were introduced, they have been the subject of over 30 days of congressional hearings, during which more than 200 witnesses have presented their suggestions concerning this legislation. After debate and discussion on the floor of each House, last year's bill was adopted in final form, by bipartisan votes of 63 to 17 in the Senate and 210 to 186 in the House of Representatives.

The 1970 White House Conference on Children focused more public attention on these needs. In a unique weighted vote, the delegates to that conference identified as their top priority the provision of "comprehensive family-oriented child development programs including health services, day care, and early childhood education." Specifically, the White House Conference said:

> We recommend that the Federal Government fund comprehensive child care programs, which will be family centered, locally controlled, and universally available, with initial priority to those whose needs are greatest. These programs should provide for active participation of family members in the development and implementation of the program. These programs—including health, early childhood education and social services—should have sufficient variety to insure that families can select the options most appropriate to their needs. A major educational program should also be provided to inform the public about the elements essential for quality in child care services, about the inadequacies of custodial care, and the nature of the importance of child care services as a supplement, not a substitute, for the family as the primary agent for the child's development as a human being.

In addition, numerous national organizations have identified comprehensive child care and preschool education as a top priority, including the education commission of the States; the chief State school officers, and the coalition of over 20 national organizations which was closely consulted in the development of the vetoed bill, composed of Amalgamated Clothing Workers; AFL–CIO; Americans for Democratic Action; Americans for Indian Opportunity Action Council; Black Child Development Institute; Committee for Community Affairs; Common Cause; Day Care and Child Development Council of America, Inc.; Friends Committee on National Legislation; Interstate Research Associates; International Ladies Garment Workers Union; League of Women Voters; Leadership Conference on Civil Rights; National Council of Churches; National Council of Negro Women; National Education Association; National League of Cities and U.S. Conference of Mayors; National Organization of Women, president and vice president for legislation; National Welfare Rights Organization; United Auto Workers; U.S. Catholic Conference; Family Life Division; and Washington Research Project Action Council.

Following the veto many of these organizations and others met, agreed to continue working for comprehensive child-care legislation, and drew up a list of principles any bill should include. Our bill supports and reflects those principles. I ask unanimous consent that this list, and the organizations associated with it, may be printed at the end of my remarks.

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

(See exhibit 2.)

FEDERAL ROLE IN CHILD CARE

Mr. MONDALE. Mr. President, a great deal of concern has been expressed about the proper role of the Federal Government in the provision of comprehensive child care and preschool education. This is a legitimate concern and we have a

responsibility to deal with it directly. I would like to try to set the record straight.

First—although some would have us believe otherwise—the question is not whether the Federal Government should become involved in the provision of child care services. The Federal Government is, and has for some time been involved in providing child care services. This involvement dates back to day care under the Lanham Act during World War II. It includes, at present, the highly successful Headstart program, preschool programs supported under the Elementary and Secondary Education Act and day care for welfare recipients funded under the Social Security Act.

Second—although at times this fact is sometimes overlooked—there is no disagreement between the administration and the sponsors of comprehensive child care legislation about whether the Federal Government should expand its support for child care programs. The administration is requesting a $750 million, one year, increase in child care under FAP—while the bill vetoed last December authorized only $1.6 billion increase over 2 years.

Thus, the question before us again this year is not whether we are going to have Federal support for increased child care, but rather how it is going to be structured, who will be served, how much parental control will be included and what kinds of services will be provided to these children and their families.

THE COMPREHENSIVE CHILD CARE BILL

Mr. President, the bill we are introducing today contains the following elements which I believe are essential to the provision of quality services to families and children. As I suggested earlier, some of these elements have been revised and clarified in an effort to resolve the concerns expressed in the veto message.

FIRST: PARENTAL CONTROL AND FAMILY INVOLVEMENT

This bill, as the previous bill, is designed to maximize parental control and strengthen family life.

Unlike child care under the administration's welfare reform proposal (H.R. 1), child care under our bill is totally voluntary. It specifically requires—as did the vetoed bill—that programs and services shall be available only to children whose parents or legal guardians request them.

Parents whose children are served under this act compose at least 50 percent of the governing boards in our bill—which decide what services will be offered, which programs will be funded, and what curriculums, policies and personnel shall be approved.

Our bill provides opportunities for parents and other family members to become involved as volunteers or paid personnel with opportunities for inservice training and career advancement.

Finally, and again unlike the child care under the welfare reform proposal, mothers are not required to get out of the house and leave their children for the full day in order for a family to be eligible for services under this bill. Our bill specifically authorizes a wide variety of services—including full day child care, part day child care such as Headstart, or in the home services to children and their families who request them—that are designed to build on the family and parental involvement that already exists. We don't want to break up families or diminish parental involvement with their children. In fact, full-day services under this bill are available only to children whose parents are already out of the home in work or training all day, or children such as the handicapped who may in some cases have special needs for full-day service. For children whose mothers are in the home, eligibility is limited to a wide variety of part-day preschool education. Services are available—such as half-day nursery school programs several days a week—that are designed to build on and strengthen family life.

SECOND: QUALITY

Our bill assures that child care programs contain comprehensive nutritional, educational, health, and social services. Child care programs must be designed to help prepare children who are poor, or whose parents are working to take full advantage of school—not simply to provide mind-numbing custodial care while parents work—and our bill is drafted to assure that.

THIRD: EFFICIENT AND RESPONSIVE ADMINISTRATIVE STRUCTURE

Our bill contains major modifications with respect to the delivery system. In order to meet the administration's concerns that the locally based administrative structure in the vetoed bill was unworkable, we reduced by over two-thirds the number of localities eligible to administer their own program and deal directly with Washington—by raising the population criteria for prime sponsorship from 5,000 to 25,000. Thus, in order to be eligible to administer child care programs, a locality or combination of localities must have a population in excess of 25,000. This one modification has the effect of reducing the number of localities potentially eligible to be prime sponsors from almost 7,000 under the previous bill to about 2,100. And our new bill clarifies the responsibility of the HEW Secretary to determine whether an eligible prime sponsor applicant has the capability of effectively carrying out child care programs.

Although we continue to believe that localities which run their own schools are capable of running their own child care programs, this population modification represents our best judgment about how to balance the needs for local flexibility, local control and responsiveness to parents with the interests of simplified administration and enhanced State involvement. In order to retain local initiative and involvement in areas where the State will be prime sponsor, our bill provides for the establishment of program areas—not to exceed 50,000 in population—with councils composed of parents and representatives of the localities to participate in the approval of the child care plan and projects for that area.

FOURTH: PRIORITIES FOR ECONOMICALLY DISADVANTAGED

Priority will be given to children from families with an annual income below the lower living standard budget determined by the Bureau of Labor Statistics—currently $6,900 for an urban family of four—by reserving 65 percent of all Federal funds for such children. In addition, our bill retains the fee schedule agreed to by the administration which provides free services to children from families with incomes up to $4,320 and a fee limitation of $316 on an urban family of four earning $6,900.

FIFTH: SOCIOECONOMIC DIVERSITY

To the extent possible, each program will include children from a broad range of socioeconomic backgrounds. Up to 35 percent of the available funds may be spent to include children whose families have an income above the lower living standard budget, with fees charged on a sliding scale according to ability to pay. Priority within this group will be given to those with the greatest need, especially children of working mothers and single parents.

SIXTH: FUNDING AND COSTS

In order to meet criticisms about cost, the effective date has been postponed 1 year and the authorization for the first program year has been cut by 25 percent from the previous bill. Thus, $100 million is authorized for planning, training, and technical assistance in fiscal year 1973 and $1.5 billion—which includes the existing $500 million authorization for Headstart—for program operation beginning fiscal year 1974.

Federal funds would pay 90 percent of program costs, with 100 percent funding for programs serving migrant and Indian children.

SEVENTH: NEEDS OF MINORITY, INDIAN, MIGRANT, AND BILINGUAL CHILDREN

Funds are provided for year-round programs for migrant children, and for programs on Indian reservations. In addition, each local program must provide equitably for the needs of all minority group, Indian, and migrant children in the area served, with particular emphasis on the needs of children from bilingual families for the development of skills in English and the other language spoken in the home.

EIGHTH: PROTECTION OF CURRENT HEADSTART PROGRAMS

Our bill builds heavily on the experience with comprehensive programs under Headstart. To assure coordination and efficient administration of all child development programs, Headstart will be incorporated into the comprehensive legislation. However, funds will be set aside to assure continuation of such programs for the Headstart target group at no less than the 1972 level, and the first $500 million of the fiscal year 1974 authorization is reserved for programs serving poor children, with priority to continued financial assistance for Headstart projects. In addition, community action and Headstart agencies will be given an opportunity to comment on the comprehensive child development plan in their area before it is approved by the Secretary.

NINTH: TRAINING AND TECHNICAL ASSISTANCE

Assistance is provided for local community groups and governmental agencies to develop comprehensive child development programs and to train the professional and paraprofessional personnel, especially members of the community necessary to conduct quality programs.

THE CHALLENGE

Mr. President, the Forum on Development Child Care Services of the 1970 White House Conference on Children identified the challenge before us:

There are two clear issues in developmental child care for American children: the comprehensiveness and quality of care which all children deserve; and the responsiveness and flexibility of social institutions to the changing needs and desire of American parents. The best care, with stimulating and nurturing personnel, will be wasted if offered in programs which will not be used by families as they adjust their own special, economic, and personal needs. Simply keeping the child during parents' working hours without applying our utmost expertise and common sense for his sound development is as cruel and absurd as feeding him only minimal nutrition required to sustain life and expecting a vigorous and healthy body. We need not just day care centers so mothers can work, nor just preschools. Rather, we must respond as a nation to the changes that we as individuals are living, changes in our views of family roles and in the needs of our families with children. Our lives are changing more rapidly than our institutions. We must develop a network of voluntary supplementary child care, flexible enough to be part of family life, able to promote the full development of our children, and readily available to all families with children. We must commit our heads, our hearts, and our pocketbooks.

The comprehensive child care bill which we are introducing today, provides the mechanism and the resources to begin meeting that challenge.

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. 3193

A bill to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes

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 "Economic Opportunity Amendments of 1972".

EXTENSION OF ECONOMIC OPPORTUNITY ACT

SEC. 2. (a) Sections 171, 245, 321, 408, 615, and 835 of the Economic Opportunity Act of 1964, as amended, are each amended by striking out "five succeeding fiscal years" and inserting in lieu thereof "seven succeeding fiscal years".

(b) Section 523 of such Act is amended by striking out "four succeeding fiscal years" and inserting in lieu thereof "six succeeding fiscal years".

AUTHORIZATION OF APPROPRIATIONS

SEC. 3. (a)(1) For the purpose of carrying out parts A, B, and E of title I (relating to work and training) of the Economic Opportunity Act of 1964, there are authorized to be appropriated $900,000,000 for the fiscal year ending June 30, 1972, and such amounts as the Congress may determine to be necessary for the fiscal year ending June 30, 1973.

(2) For the purpose of carrying out Neighborhood Youth Corps programs under paragraphs (1) and (2) of section 123(a) of such Act, there is further authorized to be appropriated $500,000,000 for the fiscal year ending June 30, 1972. No State shall receive less than $3,000,000 of the amounts appropriated pursuant to this paragraph or six-tenths of 1 per centum of the amounts so appropriated, whichever is less.

(b) For the purposes of carrying out the Project Headstart program described in section 222(a)(1) of the Economic Opportunity Act of 1964 and the Follow Through program described in section 222(a)(2) of such Act, there are authorized to be appropriated $500,000,000 for the fiscal year ending June 30, 1972, and $1,000,000,000 for the fiscal year ending June 30, 1973.

(c)(1) For the purpose of carrying out titles II, III, VI, VII, VIII, IX, and X of the Economic Opportunity Act of 1964, there are authorized to be appropriated $950,000,000 each for the fiscal year ending June 30, 1972, and for the succeeding fiscal year.

(2) Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, of the amounts appropriated pursuant to paragraph (1) of this subsection for each fiscal year, the Director of the Office of Economic Opportunity shall for each such fiscal year reserve and make available not less than $328,900,000 for programs under sections 221, 226, and 227 of the Economic Opportunity Act of 1964 and not less than $61,000,000 for Legal Services programs under section 222(a)(3) and title IX of such Act, and the remainder of such amounts shall be allocated and made available, subject to the provisions of section 616 of such Act, in such a manner that for each such fiscal year—

(A) $378,900,000 shall be for the purpose of carrying out title II of which $114,000,000 shall be for the purpose of carrying out the Comprehensive Health Services program described in section 222(a)(4), $62,500,000 shall be for the purpose of carrying out the Emergency Food and Medical Services program described in section 222(a)(5), $25,000,000 shall be for the purpose of carrying out the Family Planning program described in section 222(a)(6), $8,800,000 shall be for the purpose of carrying out the Senior Opportunities and Services program described in section 222(a)(7), $18,000,000 shall be for the purpose of carrying out the Alcoholic Counseling and Recovery program described in section 222(a)(8), $18,000,000 shall be for the purpose of carrying out the Drug Rehabilitation program described in section 222(a)(9), $5,000,000 shall be for the purpose of carrying out the Environmental Action program described in section 222(a)(10), $10,000,000 shall be for the purpose of carrying out the Rural Housing Development and Rehabilitation program described in section 222(a)(11), and $117,600,000 shall be for the purpose of carrying out programs and activities authorized under sections 230, 231, 232, and 233 of such title;

(B) $38,000,000 shall be for the purpose of carrying out part B of title II (relating to assistance for migrant and seasonal farmworkers);

(C) $18,000,000 shall be for the purpose of carrying out title VI (relating to administration and coordination) and title X (relating to evaluation);

(D) $58,000,000 shall be for the purpose of carrying out title VII (relating to community economic development); and

(E) $45,000,000 shall be for the purpose of carrying out part A of title VIII (relating to VISTA).

If the amounts appropriated pursuant to paragraph (1) of this subsection for any fiscal year are not sufficient to assure that the full amount specified for each of the purposes set forth in clauses (A) through (E) of this paragraph will be provided for each such fiscal year, then the amounts specified for each such purpose in each such clause (after deducting from any amount so specified any amount otherwise specifically provided for such purpose by an appropriation Act for that fiscal year) shall be prorated to determine the allocation required for each such purpose.

(3) In addition to the amounts authorized to be appropriated and allocated pursuant to paragraphs (1) and (2) of this subsection, there are further authorized to be appropriated for carrying out the Economic Opportunity Act of 1964 the following sums:

(A) $2,000,000 for the fiscal year ending June 30, 1972, and $62,000,000 for the fiscal year ending June 30, 1973, to be used for the Community Economic Development program under title VII;

(B) $79,000,000 for the fiscal year ending June 30, 1972, and $109,000,000 for the fiscal year ending June 3, 1973, to be used for the Legal Services program under title IX;

(C) $5,000,000 for the fiscal year ending June 30, 1973, to be used for the Rural Housing Development and Rehabilitation program described in section 222(a)(11);

(D) $8,000,000 each for the fiscal year ending June 30, 1972, and for the fiscal year ending June 30, 1973, to be used for Domestic Volunteer Service programs under title VIII.

TRANSFER OF FUNDS

SEC. 4. (a) Section 616 of the Economic Opportunity Act of 1964 is amended by inserting: "for the fiscal year ending June 30, 1971, and not to exceed 25 per centum" immediately before the words "for fiscal years ending thereafter".

(b) Section 616 of such Act is further amended by striking out the semicolon the first time it appears therein and all matter thereafter through "$10,000,000" the second time it appears in such section.

COMPREHENSIVE HEALTH SERVICES CHARGES

SEC. 5. Section 222(a)(4)(A)(ii) of the Economic Opportunity Act of 1964 is amended by striking out "such services may be available on an emergency basis or pending a determination of eligibility to all residents of such areas" and inserting in lieu thereof "pursuant to such regulations as the Director may prescribe, persons provided assistance through programs assisted under this paragraph who are not members of low-income families may be required to make payment, or have payment made in their behalf, in whole or in part for such assistance."

DRUG REHABILITATION PROGRAM

SEC. 6. (a) Section 222(a)(8) of the Act is amended by striking out the last sentence thereof.

(b) Section 222(a)(9) of the Act is amended by striking out the last sentence and inserting in lieu thereof the following: "The Director is authorized to undertake special programs aimed at promoting employment opportunities for rehabilitated addicts enrolled and participating in methadone maintenance treatment or therapeutic programs, and assisting employers in dealing with addiction and drug abuse and dependency problems among formerly hard-core unemployed so that they can be maintained in employment. In undertaking such programs, the Director shall give special priority to veterans and employers of significant numbers of veterans, with priority to those areas within the States having the highest percentages of addicts. The Director is further authorized to establish procedures and policies which will allow clients to complete a full course of rehabilitation even though they become nonlow income by virtue of becoming employed as a part of the rehabilitation process.

NEW SPECIAL EMPHASIS PROGRAMS

SEC. 7. Section 222(a) of the Economic Opportunity Act of 1964 is further amended by inserting at the end thereof the following:

"(10) An 'Environmental Action' program through which low-income persons will be paid for working on projects designed to combat pollution or to improve the environment. Projects may include, without limitation: cleanup and sanitation activities, including solid waste removal; reclamation and rehabilitation of eroded or ecologically damaged areas, including areas affected by strip mining; conservation and beautification activities, including tree planting and recreation area development; the restoration and maintenance of the environment; and the improvement of the quality of life in urban and rural areas.

"(11) A program to be known as 'Rural Housing Development and Rehabilitation' designed to assist low-income families in rural areas to construct and acquire ownership of adequate housing, to rehabilitate or repair existing substandard units in such areas, and to otherwise assist families in obtaining standard housing. Financial assistance under this paragraph shall be provided to rural housing development corporations and cooperatives serving areas which are defined by the Farmers Home Administration as rural areas, and shall be used for, but not limited to, such purposes as administrative expenses; revolving development funds; nonrevolving land, land development and construction writedowns; rehabilitation or repair of substandard housing; and loans to low-income families. Loans under this paragraph may be used for, but not limited to, such purposes as the purchase of new housing units, the repair, rehabilitation and purchase of existing units, and to supplement existing Federal loan programs in order that low-income families may benefit from them. The repayment period of such loans shall not exceed thirty-three years. No loans under this paragraph shall bear an interest rate of less than 1 per centum per annum, except that if the Director, after having examined the family income of the applicant, the projected housing costs of the applicant, and such other factors as he deems appropriate, determines that the applicant would otherwise be unable to participate in this program, he may waive the interest in whole or in part and for such periods of time as he may establish except that (1) no such waiver may be granted to an applicant whose adjusted family income (as defined by the Farmers Home Administration) is in excess of $3,700 per annum and (2) any applicant for whom such a waiver is provided shall be required to commit at least 20 per centum of his adjusted family income toward the mortgage debt service and other housing costs. Family incomes shall be recertified annually, and monthly payments for all loans under this paragraph adjusted accordingly.

COMMUNITY ACTION BOARDS

SEC. 8. The last sentence of section 211(b) of the Economic Opportunity Act of 1964 is amended by striking out "three" and inserting in lieu thereof "six" and by striking out "six" and inserting in lieu thereof "twelve".

NON-FEDERAL CONTRIBUTION CEILING

SEC. 9. Section 225(c) of the Economic Opportunity Act of 1964 is amended by inserting after the second sentence thereof the following new sentence: "The Director shall not require non-Federal contributions in excess of 20 per centum of the approved cost of programs or activities assisted under this Act."

TERMINATION OF ASSISTANCE

SEC. 10. Section 231 of the Economic Opportunity Act of 1964 is amended by adding at the end thereof the following:

"(d) If any member of a board to which section 211(b) applies files an allegation with the Director that an agency receiving assistance under this section is not observing any requirement of this Act, or any regulation, rule, or guideline promulgated by the Director under this Act, the Director shall promptly investigate such allegation and shall consider it; and, if after such investigation and consideration he finds reasonable cause to believe that the allegations are true, he shall hold a hearing, upon the conclusion of which he shall notify all interested persons of his findings. If he finds that the allegations are true, and that, after being afforded a reasonable opportunity to do so, the agency has failed to make appropriate corrections, he shall, forthwith, terminate further assistance under this title, to such agency until he has received assurances satisfactory to him that further violations will not occur."

DISTRIBUTION OF FINANCIAL ASSISTANCE

SEC. 11. Section 244 of the Economic Opportunity Act of 1964 is amended by adding at the end thereof the following:

"(8) Consistent with the provisions of this Act, the Director shall assure that financial assistance under this title will be distributed on an equitable basis in any community so that all significant segments of the low-income population are being served."

AMENDMENT TO MIGRANT FARMWORKERS PROGRAM

SEC. 12. Section 312(b)(3) of the Economic Opportunity Act of 1964 is amended by inserting after the word "Government" the words "employment or".

PLAN REPORTING DATE

SEC. 13. Paragraph (3) of section 632 of the Economic Opportunity Act of 1964 is amended by inserting at the end thereof the following: "Such plan shall be presented to the Congress no later than August 1, 1972, and the documents updating such plan shall be presented to the Congress no later than January 31 of each succeeding calendar year."

GUIDELINES

SEC. 14. Part B of title VI of the Economic Opportunity Act of 1964 is amended by adding at the end thereof the following new section:

"GUIDELINES

"SEC. 639. All rules, regulations, instructions, and application forms published or promulgated pursuant to this Act shall be published in the Federal Register at least thirty days prior to their effective date."

COMPREHENSIVE CHILD CARE

SEC. 15. (a) Title V of the Economic Opportunity Act of 1964 is amended to read as follows:

"TITLE V—CHILD CARE CENTERS AND SERVICES

"STATEMENT OF FINDINGS AND PURPOSE

"SEC. 501. (a) The Congress finds that—

"(1) child care programs must build upon the role of the family as the primary and most fundamental influence on the development of children and must be provided only to children whose parents or legal guardians request them;

"(2) many of the over three million children of preschool age living in poverty do not receive adequate health care, nutrition, and educational opportunities;

"(3) there are over five million preschool children and twenty million school-age children whose mothers are working full or part time but there are fewer than seven hundred thousand openings in licensed day care facilities to serve them;

"(4) comprehensive family-oriented child care programs, including a full range of health, education, and social services, can enhance the opportunity for children to attain their full potential;

"(5) children with special needs must receive full and special consideration in planning any child care programs with priority to preschool children with the greatest economic and social need;

"(6) while no mother should be forced to work outside the home as a condition for using child care programs, such programs are essential to many parents who undertake or continue full- or part-time employment, training, or education;

"(7) comprehensive child care programs not only provide a means of delivering a full range of essential services to children, but can also furnish meaningful employment opportunities for many individuals including older persons, parents, young persons, and volunteers from the community; and

"(8) it is essential that the planning and operation of such programs be undertaken as a partnership of parents, community, and State and local government with appropriate assistance from the Federal Government.

"(b) It is the purpose of this title (1) to provide child care centers and services of high quality to children whose parents request them, with priority for those children who need them most, (2) to recognize and build upon the experience and success gained through the Headstart program and other child care programs, (3) to provide quality child care services with emphasis on programs for children of preschool age regardless of economic, social, and family background and full day care services for children of working mothers and single parent families, (4) to provide that decisions on the nature and funding of such programs be made at the local level with the full involvement of parents and other individuals and organizations interested in child care, and (5) to establish the legislative framework for comprehensive child care services.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 502. (a) For the purpose of carrying out this title, there is authorized to be appropriated $1,500,000,000 for the fiscal year ending June 30, 1974. Any amounts appropriated for such fiscal year which are not obligated at the end of such fiscal year may be obligated in the succeeding fiscal year.

"(b) For the purpose of providing training, technical assistance, planning, and such other activities as the Secretary deems necessary and appropriate to prepare for the implementation of this title, there is authorized to be appropriated $100,000,000 for the fiscal year ending June 30, 1973.

"ALLOCATION OF FUNDS

"SEC. 503. (a) The amounts appropriated for carrying out this title for any fiscal year after June 30, 1973, shall be made available in the following manner:

"(1) $500,000,000 shall first be used for the purpose of providing assistance under parts A, B, and E of this title for child care programs focused upon young children from low-income families, giving priority to continued financial assistance for Headstart projects;

"(2) not to exceed 10 per centum of the remaining amounts so appropriated shall be used for the purpose of carrying out parts B, C, D, and E of this title, as the Secretary deems appropriate; and

"(3) the remainder of such amounts shall be used for the purpose of carrying out part A of this title.

"(b)(1) From the amounts available for carrying out comprehensive child care programs under part A of this title, the Secretary shall reserve the following:

"(A) not less than that proportion of the total amount available for carrying out such part A as is equivalent to that proportion which the total number of children of migrant agricultural workers bears to the total number of economically disadvantaged children in the United States, which shall be apportioned among programs serving children of migrant agricultural workers on an equitable basis, and to the extent practicable in proportion to the relative numbers of children served in each such program;

"(B) not less than that proportion of the total amount available for carrying out such part A as is equivalent to that proportion which the total number of children in Indian

tribal organizations bears to the total number of economically disadvantaged children in the United States, which shall be apportioned among programs serving children in Indian tribal organizations on an equitable basis, and to the extent practicable in proportion to the relative numbers of children in each such program;

"(C) not less than 10 per centum of the total amount available for carrying out such part A, which shall be made available for the purposes of section 512(2)(H) of such part (relating to special activities for handicapped children);

"(D) not to exceed 5 per centum of the total amount available for carrying out such part A, which shall be made available under section 514(f)(3) of such part (relating to model programs).

"(2) The Secretary shall allocate the remainder of the amounts available for part A of this title (except for funds made available under paragraphs (1) and (3) of this subsection) among the States, and within the States among local areas, so as to provide, to the extent practicable, for the geographical distribution of such remainder in such a manner that—

"(A) 50 per centum thereof shall be apportioned among the States, and within each such State among local areas, in proportion to the relative numbers of children through age five in each such State and local area, respectively; and

"(B) 50 per centum thereof shall be apportioned among the States, and within each such State among local areas, in proportion to the relative numbers of economically disadvantaged children of working mothers and single parents in each such State and local area, respectively.

For the purposes of clauses (A) and (B) of this paragraph, there shall be excluded those children who are counted under clauses (A) and (B) of subsection (b)(1) of this section.

"(3) Not to exceed 5 per centum of the total funds allotted for use within a State pursuant to paragraph (2) shall be made available to enable States to carry out the provisions of section 513(a) of this title.

"(c) Any portion of any apportionment under subsection (b) for a fiscal year which the Secretary determines will not be required, for the period for which such apportionment is available, for carrying out programs under this part shall be available for reapportionment from time to time, on such dates during such period as the Secretary shall fix, to other States or local areas on an equitable basis, taking into account the original apportionments to the States and local areas. Any amount reapportioned to a State or local area under this subsection during a year shall be deemed part of its apportionment under subsection (b) for such year.

"(d) In determining the numbers of children for purposes of allocating and apportioning funds under this section, the Secretary shall use the most recent satisfactory data available to him.

"(e) As soon as practicable after funds are appropriated to carry out this title for any fiscal year, the Secretary shall publish in the Federal Register the allocations and apportionments required by this section.

"PART A—COMPREHENSIVE CHILD CARE PROGRAMS

"PROGRAMS ASSISTED

"SEC. 511. The Secretary of Health, Education, and Welfare shall provide financial assistance to prime sponsors and to other public and private agencies and organizations pursuant to plans and applications approved in accordance with the provisions of this part for the purpose of carrying out child care programs for children whose parents or legal guardians request them, including—

"(1) preschool programs providing full-day services and activities for children when there is no parent at home to provide care;

"(2) preschool programs providing part-day services and activities designed to prepare children for school in the years before they enter the elementary school grades;

"(3) in-home services and consultation to assist families with children of preschool age in providing for the healthy growth and development of each child's full potential;

"(4) day care programs providing services and activities (including recreation and tutoring programs) for school-age children at times when school is not in session and there is no parent at home to provide care, including after-school and, where necessary, before-school hours and during summer and other vacation periods;

"(5) parent and child centers, special programs for children with identified needs (including but not limited to handicapped children), and follow-through and other supplementary services and activities, involving the participation of parents.

"USES OF FUNDS

"SEC. 512. Funds available for this part may be used (in accordance with approved applications) for programs including the following services and activities:

"(1) planning and developing child care programs, including the operation of pilot programs to test the effectiveness of new concepts, programs, and delivery systems;

"(2) establishing, maintaining, and operating child care programs, which may include—

"(A) comprehensive health, nutritional, education, social, and other services to assist children in attaining their full potential and to prepare children for school;

"(B) full-day and part-day child care services (including after-school and summer programs), with appropriate health, nutritional, education, social, and other services;

"(C) food and nutritional services;

"(D) rental, lease or lease-purchase, mortgage amortization payments, remodeling, renovation, alteration, construction, or acquisition of facilities, including mobile facilities, and the acquisition of necessary equipment and supplies;

"(E) programs designed (i) to meet the special needs of minority group, Indian, and migrant children with particular emphasis on the needs of children from bilingual families for the development of skills in English and the other language spoken in the home, and (ii) to meet the needs of all children to understand the history and cultural backgrounds of minority groups which belong to their communities;

"(F) medical, dental, psychological, educational, and other appropriate diagnosis, identification, and treatment of visual, hearing, speech, nutritional, and other physical, mental, and emotional problems;

"(G) prenatal and other medical services to expectant mothers who cannot afford such services, designed to help reduce malnutrition, infant and maternal mortality, and the incidence of mental retardation and other handicapping conditions, and postpartum and other medical services (including family planning information) to such recent mothers;

"(H) incorporation within child care programs of special activities designed to identify and ameliorate physical, mental, and emotional handicaps and special learning disabilities and, where necessary because of the severity of such handicaps, establishing, maintaining, and operating separate child care programs designed primarily to meet the needs of handicapped children including emotionally disturbed children;

"(I) preservice an inservice educational and other training designed to prepare professional and paraprofessional personnel and parents and other family members to provide child care and related services;

"(J) dissemination of information in the functional language of those to be served to assure that parents are well informed of child care programs available to them and may become directly involved in such programs;

"(K) services, including in-home services, and training in the fundamentals of child care, for parents, older family members, and others functioning in the capacity of parents, youth, and prospective parents;

"(L) programs designed to extend comprehensive prekindergarten early childhood education techniques and gains (particularly parent participation) into kindergarten and early primary grades (one through three), in cooperation with local educational agencies;

"(M) such other services and activities as the Secretary deems appropriate in furtherance of the purposes of this part; and

"(3) staff and other administrative expenses of Child Care Councils established and operated in accordance with this part.

"STATE PLAN

"SEC. 513. (a) The Secretary shall approve a plan submitted by any State which sets forth satisfactory provisions for establishing and maintaining a State Child Care Council which meets the requirements of section 515 and which sets forth provisions for carrying out activities under the supervision of such Council for the purposes of—

"(1) identifying child care goals and needs within the State;

"(2) assisting prime sponsors other than the State in the establishment of Child Care Councils and strengthening the capability of such Councils to effectively plan, supervise, coordinate, monitor, and evaluate child care programs;

"(3) providing for the cooperation and participation of State agencies providing child care and related services, including health, family planning, mental health, education, nutrition, and family, social, and rehabilitative services, in the development and implementation of the comprehensive child care plan of the State and where requested by any local prime sponsor;

"(4) encouraging the full utilization of resources and facilities for child care programs within the State;

"(5) disseminating the results of research on child care programs;

"(6) conducting programs for the exchange of personnel involved in child care programs within the State;

"(7) assisting public and private agencies and organizations in the acquisition or improvement of facilities for child care programs;

"(8) monitoring and evaluating federally-assisted child care programs and projects within the State;

"(9) assessing State and local licensing codes as they relate to child care programs within the State; and

"(10) developing information useful in reviewing prime sponsorship plans under section 514(g) and comprehensive child care plans under section 516(b)(3).

"(b) A State applying for designation as prime sponsor for geographical areas within the State which are not otherwise served by a local prime sponsor shall, in addition to the provisions required to be included in its prime sponsorship plan in accordance with section 514, set forth in its State plan adequate provisions—

"(1) for designating local program areas each of which shall serve a geographical area covered by (A) a unit of general local government, or (B) units of general local government serving a total population of not more than fifty thousand persons;

"(2) for establishing and maintaining with respect to each local program area a local policy council composed so that (A) not less than half of the members of each such council shall be parent members who shall be chosen initially by the parent member of Headstart policy committees where they exist, and at the earliest practicable time by the parent members of project pol-

icy committees established pursuant to section 517(a)(2) of this part, and (B) the remainder shall be public members appointed by the chief executive officers or the governing bodies, as appropriate, of the units of general local government within the local program area;

"(3) to assure that project applications shall be approved by the Child Care Council only if previously approved by the local policy council for the appropriate local program area;

"(4) to assure that contracts for the operation of programs through public or private agencies or organizations shall be entered into only if previously approved by the local policy council for the appropriate local program area; and

"(5) for the development and preparation with full participation and approval of the appropriate local policy council of that portion of the comprehensive child development plan to be submitted by the State which affects each local program area.

"PRIME SPONSORS OF CHILD CARE PROGRAMS

"SEC. 514 (a) In accordance with the provisions of this section, a State, unit or combination of units of general local government, Indian tribal organization, or public or private nonprofit agency or organization, meeting the requirements of this part may be designated by the Secretary as a prime sponsor for the purpose of entering into arrangements to carry out child care programs under this part, if the Secretary determines that any such applicant for prime sponsorship designation has the capability of effectively carrying out child care programs under this part and has submitted a satisfactory prime sponsorship plan which—

"(1) describes the prime sponsorship area to be served;

"(2) sets forth satisfactory provisions for establishing and maintaining a Child Care Council which meets the requirements of section 515;

"(3) provides that such Council will be responsible for developing and preparing a comprehensive child care plan for each fiscal year and any modifications thereof;

"(4) sets forth arrangements under which such Council will be responsible for planning, supervising, conducting, coordinating, monitoring, and evaluating child care programs in the prime sponsorship area;

"(5) in the case of an applicant which is a State or a unit or combination of units of general local government, provides for the operation of programs under this part through contracts with public or private agencies or organizations, including but not limited to community action agencies, single-purpose Headstart agencies, local public and private educational agencies and institutions, community development corporations, parent cooperatives, organizations of Indians, and employer and employee organizations, which will serve children in a community or neighborhood or other area possessing a commonality of interest; and

"(6) sets forth satisfactory provisions for coordination with educational agencies and providers of educational services;

"(7) provides assurances that such Council will, by contract or other arrangement with State, local, or other public or private nonprofit agencies or organizations, provide, where available—

"(A) child-related family, social, and rehabilitative services;

"(B) health (including family planning) and mental health services;

"(C) nutrition services; and

"(D) training of professional and paraprofessional personnel.

"(b) The Secretary shall approve a prime sponsorship plan submitted by a State if he determines that the plan so submitted meets the requirements of subsection (a) of this section and sets forth adequate arrangements for serving all geographical areas under its jurisdiction except for areas with respect to which local prime sponsors are designated under this section.

"(c)(1) The Secretary shall approve a prime sponsorship plan submitted by a unit of general local government which is (A) a city having a population of twenty-five thousand or more persons, or (B) a county or other unit of general local government having a population of twenty-five thousand or more persons (excluding the number of such persons included within the population of any city which is designated as a prime sponsor under clause (A) of this paragraph), if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in the area covered by such unit of general local government.

"(2) In the event that the area under the jurisdiction of a unit of general local government described in clause (A) or (B) of paragraph (1) of this subsection includes any common geographical area with that covered by another such unit of general local government, the Secretary shall designate to serve such area the unit of general local government which he determines has the capability of more effectively carrying out the purposes of this part with respect to such area and which has submitted a plan which meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in such area.

"(d) The Secretary shall approve a prime sponsorship plan submitted by a combination of units of general local government having a total population of twenty-five thousand or more persons (excluding the number of such persons included within the population of any city which is designated as a prime sponsor under clause (A) of subsection (c)(1)), if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in the area covered by the combination of such units of general local government.

"(e) The Secretary shall approve a prime sponsorship plan submitted by an Indian tribal organization if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in the area to be served.

"(f) The Secretary may approve a prime sponsorship plan submitted by a unit or combination of units of general local government regardless of population size or by a public or private nonprofit agency, including but not limited to a community action agency, single-purpose Headstart agency, public or private educational agency or institution, community development corporation, parent cooperative, organization of migrant agricultural workers, organization of Indians, employer organization, labor union, or employee or labor-management organization, if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes provisions setting forth—

"(1) arrangements for serving children in a community or neighborhood or other urban or rural area possessing a commonality of interest in any area (A) with respect to which there is no prime sponsorship designation in effect, or (B) with respect to any portion of an area where a designated prime sponsor is found not to be satisfactorily implementing child care programs which adequately meet the purposes of this part, or (C) for making available special services, in accordance with criteria established by the Secretary, designed to meet the needs of economically disadvantaged or preschool children or children of working mothers or single parents; or

"(2) arrangements for providing comprehensive child care programs on a year-round basis to children of migrant agricultural workers and their families; or

"(3) arrangements for carrying out model programs especially designed to be responsive to the needs of economically disadvantaged, minority group, bilingual, or preschool children.

"(g) The Governor shall be given not less than thirty nor more than sixty days to review applications for prime sponsorship designation submitted by any applicant other than the State, to offer recommendations to the applicant, and to submit comments to the Secretary.

"(h) A prime sponsorship plan submitted under this section may be disapproved or a prior designation of a prime sponsor may be withdrawn only if the Secretary, in accordance with regulations which he shall prescribe, has provided (1) written notice of intention to disapprove such plan, including a statement of the reasons therefor, (2) a reasonable time in which to submit corrective amendments to such plan or undertake other necessary corrective action, and (3) an opportunity for a public hearing upon which basis an appeal to the Secretary may be taken as of right.

"(i)(1) If any party is dissatisfied with the Secretary's final action under subsection (h) with respect to the disapproval of its plan submitted under this section or the withdrawal of its prime sponsorship designation, such party may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such party is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence. The Secretary may make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

"(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(j) When any unit or combination of units of general government or other prime sponsor is maintaining a pattern and practice of discrimination against minority group persons, the Secretary shall approve the application for prime sponsorship of an alternative unit of government or public or private nonprofit agency or organization in the area which will equitably serve minority and economically disadvantaged persons.

"(k) In the event that a State, a unit or combination of units of general local government, or an Indian tribal organization has not submitted a comprehensive child care plan under section 516 or the Secretary has not approved a plan so submitted, or where the Secretary has not designated or has withdrawn designation of prime sponsorship under this section, or where the needs of migrants, preschool-age children, or the children of working mothers or single parents, minority groups, or the economically disadvantaged are not being served, the Sec-

retary may directly fund projects, including those in rural areas without regard to population, that he deems necessary in order to serve the children of the particular area.

"CHILD CARE COUNCILS

"SEC. 515. (a) Every State and other prime sponsor designated under section 514 shall establish and maintain a Child Care Council composed of not less than 10 members as follows—

"(1) not less than half of the members of such Council shall be parents of children served in child care programs under this part; and

"(2) the remaining members shall be appointed by the prime sponsor to represent the public, but (A) not less than half of such members shall be persons who are broadly representative of the general public, including government agencies, public and private agencies and organizations in such fields as economic opportunity, health, education, welfare, employment and training, business or financial organizations or institutions, labor unions, and employers, and (B) the remaining members, the number of which shall be either equal to or one less than the number of members appointed under clause (A), shall be persons who are particularly skilled by virtue of training or experience in child development, child health, child welfare, or other child care services, except that the Secretary may waive or reduce the requirement of this clause (B) to the extent that he determines, in accordance with regulations which he shall prescribe, that such persons are not available to the area to be served.

At least one-third of the total membership of the Child Care Council shall be parents who are economically disadvantaged. Each Council shall select its own chairman.

"(b) In accordance with procedures which the Secretary shall establish pursuant to regulations, every State and other prime sponsor designated under section 514 shall provide, with respect to its Child Care Council—

"(1) in the case of the Child Care Council of a State, (A) that the parent members described in paragraph (1) of subsection (a) of this section shall be chosen by the parent members of local policy councils established pursuant to section 513 of this part, and (B) that the public members described in paragraph (2) of subsection (a) of this section shall be appointed by the Governor of the State;

"(2) in the case of the Child Care Council of a prime sponsor other than a State, (A) that the parent members described in paragraph (1) of subsection (a) of this section shall be chosen initially by the parent members of Headstart policy committees where they exist, and at the earliest practicable time by the parent members of project policy committees established pursuant to section 517(a)(2) of this part, and (B) that the public members described in paragraph (2) of subsection (a) of this section shall be appointed by the chief executive officer or the governing body, whichever is appropriate, of the prime sponsor;

"(3) for such terms of office and other policies and procedures of an organizational nature, including nomination and election procedures, as are appropriate in accordance with the purposes of this part;

"(4) that such Council shall have responsibility for approving basic goals, policies, actions, and procedures for the prime sponsor, and for planning, general supervision and oversight, overall coordination, personnel, budgeting, funding of projects, and monitoring and evaluation of projects each year according to criteria established by the Secretary; and

"(5) that such Council shall, upon its own initiative or upon request of a project applicant or any other party in interest, conduct public hearings before acting upon applications for financial assistance submitted by project applicants under this part.

"COMPREHENSIVE CHILD CARE PLANS

"SEC. 516. (a) Financial assistance under this part may be provided by the Secretary for any fiscal year to a State or other prime sponsor designated under section 514 only pursuant to a comprehensive child care plan which is submitted by such prime sponsor and approved by the Secretary in accordance with the provisions of this part. Any such plan shall set forth a comprehensive program for providing child care services in the prime sponsorship area which—

"(1) provides that programs or services under this title shall be provided only for children whose parents or legal guardians request them;

"(2) identifies child care needs and goals within the area and describes the purposes for which the financial assistance will be used;

"(3) meets the needs of children in the prime sponsorship area, to the extent that available funds can be reasonably expected to have an effective impact with priority to children who have not attained six years of age;

"(4)(A) provides that funds received under section 503(a)(1) will be used for child care programs and services focused upon young children from low-income families, giving priority to continued financial assistance for Headstart projects by reserving for such projects from such funds in any fiscal year an amount at least equal to the aggregate amount received by public or private agencies and organizations within the prime sponsorship area for programs during the fiscal year ending June 30, 1973, under section 222(a)(1) of the Economic Opportunity Act of 1964, and (B) provides that programs receiving funds under section 503 (d) will give priority to providing services for economically disadvantaged children by reserving not less than 65 per centum of the cost of programs receiving such funds for the purpose of serving children of families having an annual income below the lower living standard budget as determined under paragraph (5) of section 571;

"(5) gives priority thereafter to providing child care programs and services to children of working mothers and single parents not covered under paragraph (4);

"(6) provides procedures for the approval of project applications submitted in accordance with section 517;

"(7) provides, in the case of a prime sponsor located within or adjacent to a metropolitan area, for coordination with other prime sponsors located within such metropolitan area, and arrangements for cooperative funding where appropriate, and particularly for such coordination where appropriate to meet the needs for child care services of children of parents working or participating in training or otherwise occupied during the day within a prime sponsorship area other than that in which they reside;

"(8) provides that, to the extent feasible, each program within the prime sponsorship area will include children from a range of socioeconomic backgrounds;

"(9) provides comprehensive services (A) to meet the special needs of minority group children and children of migrant agricultural workers with particular emphasis on the needs of children from bilingual families for development of skills in English and in the other language spoken in the home, and (B) to meet the needs of all children to understand the history and cultural background of minority groups which belong to the communities;

"(10) provides equitably for the child care needs of children from each minority group and significant segment of the economically disadvantaged residing within the area served;

"(11) provides, insofar as possible, for coordination of child care programs with other social programs (including but not limited to those relating to employment and manpower) so as to keep family units intact or in close proximity during the day;

"(12) provides for direct parent participation in the conduct, overall direction, and evaluation of programs;

"(13) includes to the extent feasible a career development plan for paraprofessional and professional training, education, and advancement on a career ladder;

"(14) provides that, insofar as possible, persons residing in communities being served by such projects will receive jobs, including in-home and part-time jobs and opportunities for training in programs under part B of this title, with special consideration for career opportunities for low-income persons;

"(15) provides for the regular and frequent dissemination of information in the functional language of those to be served, to assure that parents and interested persons in the community are fully informed of the activities of the Child Care Council and of delegate agencies;

"(16) assures that procedures and mechanisms for coordination have been developed in cooperation with agencies and organizations carrying out preschool programs and administrators of local educational agencies and nonpublic schools, at the local level, to provide continuity between programs for preschool and elementary school children and to coordinate programs conducted under this part and programs conducted pursuant to section 222(a)(2) of the Economic Opportunity Act of 1964 and the Elementary and Secondary Education Act of 1965;

"(17) establishes arrangements in the area served for the coordination of programs conducted under the auspices of or with the support of business or financial institutions or organizations, industry, labor, employee and labor-management organizations, and other community groups;

"(18) sets forth provisions describing any arrangements for the delegation, under the supervision of the Child Care Council, to public or private agencies, institutions, or organizations, of responsibilities for the delivery of programs, services, and activities for which financial assistance is provided under this part or for planning or evaluation services to be made available with respect to programs under this part;

"(19) contains plans for regularly conducting surveys and analyses of needs for child care programs in the prime sponsorship area and for submitting to the Secretary a comprehensive annual report and evaluation in such form and containing such information as the Secretary shall require by regulation;

"(20) provides that services for handicapped children, at both the State and local levels, will be used wherever available in programs approved under the plan;

"(21) provides assurances satisfactory to the Secretary that the non-Federal share requirements will be met;

"(22) provides for such fiscal control and funding accounting procedures as the Secretary may prescribe to assure proper disbursement of and accounting for Federal funds paid to the prime sponsor;

"(23) provides that special consideration will be given to project applications submitted by public and private nonprofit agencies and organizations with ongoing programs; and

"(24) provides assurance that in developing plans for any facilities due consideration will be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"(b) No comprehensive child care plan of modification thereof submitted by a prime sponsor under this section shall be approved by the Secretary unless he determines, in accordance with regulations which the Secretary shall prescribe, that—

"(1) each community action agency or single-purpose Headstart agency in the area to be served previously responsible for the administration of programs under this part or under section 222(a)(1) of the Economic Opportunity Act of 1964 has had an opportunity to submit comments to the prime sponsor and to the Secretary;

"(2) the local educational agency for the area to be served and other appropriate educational and training agencies and institutions have had an opportunity to submit comments to the prime sponsor and to the Secretary; and

"(3) in the case of a plan submitted by a prime sponsor other than the State, the State Child Care Council has had an opportunity to submit comments to the prime sponsor and to the Secretary.

"(c) A comprehensive child care plan submitted under this section may be disapproved or a prior approval withdrawn only if the Secretary, in accordance with regulations which he shall prescribe, has provided (1) written notice of intention to disapprove such plan, including a statement of the reasons therefor, (2) a reasonable time to submit corrective amendments to such plan or undertake other necessary corrective action, and (3) an opportunity for a public hearing upon which basis an appeal to the Secretary may be taken as of right.

"(d) In order to contribute to the effective administration of this title, the Secretary shall establish appropriate procedures to permit prime sponsors to submit jointly a single comprehensive child care plan for the areas served by such prime sponsors.

"PROJECT APPLICATIONS

"SEC. 517. (a) Financial assistance under this part may be provided to a project applicant for any fiscal year only pursuant to a project application which is submitted by a public or private agency and which provides—

"(1) that funds will be provided for carrying out any child care program under this part only to a qualified public or private agency or organization, including but not limited to a community action agency, single-purpose Headstart agency, public or private educational agency or institution, community development corporation, parent cooperative, organization of migrant agricultural workers, organization of Indians, private organization interested in child development, employer or business organization, labor union, or employee or labor-management organization;

"(2) for establishing and maintaining project policy committees composed of not less than 10 members as follows—

"(A) not less than half of the members of each such committee shall be parents of children served by such a project, and

"(B) the remaining members of each such committee shall consist of (i) persons who are representative of the community and who are approved by the parent members, and (ii) one person who is particularly skilled by virtue of training or experience in child development, child health, child welfare, or other child care services, except that the Secretary may waive the requirement of this clause (ii) where he determines, in accordance with regulations which he shall prescribe, that such person is not available to the area to be served;

"(3) for direct participation of such project policy committees in the development and preparation of project applications under this part;

"(4) that adequate provision will be made for training and other administrative expenses of such project policy committees (including necessary expenses to enable low-income members to participate in council or committee meetings);

"(5) that project policy committees shall have responsibility for approving basic goals, policies, actions, and procedures for the project applicant, and for planning, overall conduct, personnel, budgeting, location of centers and facilities, and direction and evaluation of projects;

"(6) that programs assisted under this part will provide for such comprehensive health, nutritional, education, social, and other services, as are necessary for the full development of each participating child;

"(7) that adequate provision will be made for the regular and frequent dissemination of information in the functional language of those to be served, to assure that parents and interested persons are fully informed of project activities;

"(8) that with respect to child care services provided by programs assisted under this part—

(A) no charge will be made with respect to any child who is a member of any family with an annual income equal to or less than $4,320 with appropriate adjustments in the case of families having more than two children, except to the extent that payment will be made by a third party (including a public agency); and

"(B) such charges as the Secretary may provide will be made with respect to any child of any other family, in accordance with an appropriate fee schedule established by him, based upon the ability of the family to pay, which payment may be made in whole or in part by a third party in behalf of such family, except that any such charges with respect to any family with an income of less than the lower living standard budget (as determined in accordance with paragraph (5) of section 571) shall not exceed the sum of (i) an amount equal to 10 per centum of any family income which exceeds the highest income level at which no charges would be made with respect to children of such family under subparagraph (A) but does not exceed 85 per centum of such lower living standard budget, and (ii) an amount equal to 15 per centum of any family income which exceeds 85 per centum of such lower living standard budget but does not exceed 100 per centum of such lower living standard budget, and, if more than two children from the same family are participating, additional charges may be made not to exceed the sum of the amounts calculated in accordance with clauses (i) and (ii) with respect to each such additional child;

"(9) that children will in no case be excluded from the programs operated pursuant to this part because of their participation in nonpublic preschool or school programs or because of the intention of their parents to enroll them in nonpublic schools when they attain school age;

"(10) that programs will, to the extent appropriate, employ paraprofessional aides and volunteers, especially parents, older children, students, older persons, and persons preparing for careers in child care programs;

"(11) that no person will be denied employment in any program solely on the ground that he fails to meet State or local teacher certification standards;

"(12) that programs assisted under this part will provide for the utilization of personnel, including paraprofessional and volunteer personnel, adequate to meet the needs of each participating child;

"(13) that there are assurances satisfactory to the Secretary that the non-Federal share requirements will be met; and

"(14) that provision will be made for such fiscal control and fund accounting procedures as the Secretary shall prescribe to assure proper disbursement of and accounting for Federal funds.

"(b) A project application may be approved by a prime sponsor upon its determination that such application meets the requirements of this section and that the programs provided for therein will otherwise further the objectives and satisfy the appropriate provisions of the prime sponsor's comprehensive child care plan as approved pursuant to section 516.

"(c) A project application from a public or private nonprofit agency which is also a prime sponsor under section 513(f) shall be submitted directly to the Secretary together with the comprehensive child care plan.

"(d) A prime sponsor may disapprove a project application only if it provides to the project applicant a written statement of the reasons therefor. Such project applicant may submit an appeal to the Secretary requesting the direct approval of such application or modification thereof. Any such appeal shall include such comments, including the project applicant's response to the prime sponsor's statement of reasons for disapproval, as the project applicant may deem appropriate or as the Secretary may require.

"(e) A project application submitted directly to the Secretary may be approved by the Secretary upon his determination that it meets the requirements of subsection (a) of this section.

"ADDITIONAL CONDITIONS FOR PROGRAMS INCLUDING CONSTRUCTION

"SEC. 518. (a) Applications for financial assistance for projects including construction may be approved only if the Secretary determines that construction of such facilities is essential to the provision of adequate child care services, and that rental, lease or lease-purchase, remodeling, or renovation of adequate facilities is not practicable.

"(b) If any facility assisted under this part shall cease to be used for the purposes for which it was constructed, the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds unless the Secretary determines in accordance with regulations that there is good cause for releasing the applicant or other owner from the obligation to do so. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

"(c) All laborers and mechanics employed by contractors or subcontractors on all construction, remodeling, renovation, or alteration projects assisted under this part 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 the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"(d) In the case of loans for construction, the Secretary shall prescribe the interest rate and the period within which such loan shall be repaid, but such interest rates shall not be less than 3 per centum per annum and the period within which such loan is to be repaid shall not be more than twenty-five years.

"(e) The Federal assistance for construction may be in the form of grants or loans, provided that total Federal funds to be paid to other than public or private nonprofit agencies and organizations will not exceed 50 per centum of the construction cost, and will be in the form of loans. Repayment of loans shall, to the extent required by the

Secretary, be returned to the prime sponsor from whose financial assistance the loan was made, or used for additional loans or grants under this title. Not more than 15 per centum of the total financial assistance provided to a prime sponsor under this part shall be used for construction of facilities, with no more than 7½ per centum of such assistance usable for grants for construction.

"(f) In the case of a project for the construction of facilities and in the development of plans for such facilities due consideration shall be given to excellence of architecture and design and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"USE OF PUBLIC FACILITIES FOR CHILD DEVELOPMENT PROGRAMS

"SEC. 519. (a) The Secretary, after consultation with other appropriate officials of the Federal Government, shall within eighteen months after enactment of this title report to the Congress with respect to the extent to which facilities owned or leased by Federal departments agencies, and independent authorities could be made available to public and private nonprofit agencies and organizations, through appropriate arrangements, for use as facilities for child care programs under this title during times and periods when not utilized fully for their usual purposes, together with his recommendations (including recommendations for changes in legislation) or proposed actions for such use.

"(b) The Secretary may require, as a condition to the receipt of assistance under this part, that any prime sponsor under this part agree to conduct a review and provide the Secretary with a report as to the extent to which facilities owned or leased by such prime sponsor, or by other agencies in the prime sponsorship area, could be made available, through appropriate arrangements, for use as facilities for child care programs under this title during times and periods when not utilized fully for their usual purposes, together with the prime sponsor's proposed actions for such use.

"PAYMENTS

"SEC. 520. (a) In accordance with this section, the Secretary shall pay from the applicable allocation or apportionment under section 503 the Federal share of the costs of programs, services, and activities, in accordance with plans or applications which have been approved as provided in this part. In making such payment to any prime sponsor, the Secretary shall include in such costs an amount for staff and other administrative expenses for the Child Care Council not to exceed an amount which is reasonable when compared with such costs for other prime sponsors.

"(b)(1) Except as provided in paragraphs (2) and (3) of this subsection, the Secretary shall pay an amount not in excess of 90 per centum of the cost of carrying out programs, services, and activities under this part. The Secretary may, in accordance with such regulations as he shall prescribe, approve assistance in excess of such percentage if he determines that such action is required to provide adequately for the child care needs of economically disadvantaged children.

"(2) The Secretary shall pay an amount equal to 100 per centum of the costs of providing child care programs for children of migrant agricultural workers and their families under this part.

"(3) The Secretary shall pay an amount equal to 100 per centum of the costs of providing child care programs for children in Indian tribal organizations under this part.

"(c) The non-Federal share of the costs of programs assisted under this part may be provided through public or private funds and may be in the form of cash, goods, services, or facilities (or portions thereof that are used for program purposes), reasonably evaluated, or union or employer contributions. Fees collected for services provided pursuant to section 517(a)(8) shall not be used to make up the non-Federal share, but shall be used by the project applicant for the same purposes as payments under this section, except that, in the case of projects assisted under a comprehensive child care plan, such fees shall be turned over to the appropriate prime sponsor for distribution in the same manner as the prime sponsor's allocation under section 516 (a)(4).

"(d) If, with respect to any fiscal year, a prime sponsor or project applicant provides non-Federal contributions for any program, service, or activity exceeding its requirements, such excess may be applied toward meeting the requirements for such contributions for the subsequent fiscal year under this part.

"(e) No State or unit of general local government shall reduce its expenditures for child care programs by reason of assistance under this part.

"PART B—TRAINING, TECHNICAL ASSISTANCE, PLANNING, AND EVALUATION

"PRESERVICE AND INSERVICE TRAINING

"SEC. 531. The Secretary is authorized to make payments to provide financial assistance to enable individuals employed or preparing for employment in child care programs assisted under this title, including volunteers, to participate in programs of preservice training for professional and nonprofessional personnel, to be conducted by any agency carrying out a child care program, or any institution of higher education, including a community college, or by any combination thereof.

"TECHNICAL ASSISTANCE AND PLANNING

"SEC. 532. The Secretary shall, directly or through grant or contract, make technical assistance available to prime sponsors and to project applicants participating or seeking to participate in programs assisted under this title on a continuing basis to assist them in planning, developing, and carrying out child care programs.

"EVALUATION

"SEC. 533. (a) The Secretary shall, through the Office of Child Development unless the Secretary determines otherwise, make an evaluation of Federal involvement in child care activities and services, which shall include—

"(1) enumeration and description of all Federal activities which affect child care;

"(2) analysis of expenditures of Federal funds for such activities and services;

"(3) determination of the effectiveness of such activities and services;

"(4) the extent to which preschool, minority group, and economically disadvantaged children and their parents have participated in programs under this title; and

"(5) such recommendations to the Congress as the Secretary may deem appropriate.

"(b) The results of the evaluation required by subsection (a) of this section shall be reported to the Congress not later than eighteen months after the date of enactment of this title.

"(c) The Secretary shall establish such procedures as may be necessary to conduct an annual evaluation of Federal involvement in child care programs, and shall report the results of each such evaluation to Congress.

"(d) Prime sponsors and project applicants assisted under this title and departments and agencies of the Federal Government shall, upon request by the Secretary, make available, consistent with other provisions of law, such information as the Secretary determines is necessary for purposes of making the evaluation required under subsection (c) of this section.

"(e) The Secretary may enter into contracts with public or private agencies, organizations, or individuals to carry out the provisions of this section.

"(f) The Secretary shall reserve for the purposes of this section not less than 1 per centum, and may reserve for such purposes not more than 2 per centum, of the amounts available under paragraphs (2) and (3) of section 503(a) of this title for any fiscal year.

"FEDERAL STANDARDS FOR CHILD CARE SERVICES

"SEC. 534. (a) Within six months after the enactment of the Economic Opportunity Amendments of 1971, the Secretary shall, after consultation with other Federal agencies and with the Committee established pursuant to subsection (c) of this section, promulgate a common set of program standards which shall be applicable to all programs providing child care services with Federal assistance under this title, to be known as the Federal Standards for Child Care Services. If the Secretary disapproves the Committee's recommendations, he shall state the reasons therefor.

"(b) The Federal Interagency Day Care Requirements, as approved by the Department of Health, Education, and Welfare, the Office of Economic Opportunity, and the Department of Labor on September 23, 1968, shall be applicable to all programs providing child care services with Federal assistance under this title.

"(c) The Secretary shall, within sixty days after enactment of this title, appoint a Special Committee on Federal Standards for Child Care Services, which shall include parents of children enrolled in child care programs, representatives of public and private agencies and organizations administering child care programs, and specialists and others interested in the care and development of children. Not less than one-half of the membership of the Committee shall consist of parents of children participating in programs conducted under section 222(a)(1) of this Act and title IV of the Social Security Act and part A of this title. Such Committee shall participate in the development of Federal Standards for Child Care Services and modifications thereof as provided in subsection (a).

"DEVELOPMENT OF UNIFORM MINIMUM CODE FOR FACILITIES

"SEC. 535. (a) The Secretary shall, within sixty days after enactment of the Economic Opportunity Amendments of 1971, appoint a special committee to develop a uniform minimum code for facilities, to be used in licensing child development facilities. Such standards shall deal principally with those matters essential to the health, safety, and physical comfort of the children and the relationship of such matters to the Federal Standards for Child Care Services under section 534.

"(b) The special committee appointed under this section shall include parents of children participating in child care programs and representatives of State and local licensing agencies, public health officials, fire prevention officials, the construction industry and unions, public and private agencies or organizations administering child care programs, and national agencies or organizations interested in the care and development of children. Not less than one-half of the membership of the committee shall consist of parents of children enrolled in programs conducted under section 222(a)(1) of this Act and title IV of the Social Security Act and part A of this title.

"(c) Within one year after its appointment, the special committee shall complete a proposed uniform minimum code for facilities and shall hold public hearings on the proposed code prior to submitting its final recommendation to the Secretary for his approval.

"(d) After considering the recommendations submitted by the special committee in

accordance with subsection (c), the Secretary shall promulgate standards which shall be applicable to all facilities receiving Federal financial assistance under this title or in which programs receiving Federal financial assistance under this title are operated. If the Secretary disapproves the committee's recommendations, he shall state the reasons therefor. The Secretary shall also distribute such standards and urge their adoption by States and local governments. The Secretary may from time to time modify the uniform code for facilities in accordance with procedures set forth in this section.

"PART C—FACILITIES FOR CHILD CARE PROGRAMS

"MORTGAGE INSURANCE FOR CHILD CARE FACILITIES

"SEC. 541. (a) It is the purpose of this part to assist and encourage the provision of urgently needed facilities for child care programs.

"(b) For the purpose of this part—

"(1) The term 'child care facility' means a facility of a public or private profit or nonprofit agency or organization, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the provision of child care programs.

"(2) The terms 'mortgage', 'mortgagor', 'mortgagee', 'maturity date', and 'State' shall have the meanings respectively set forth in section 207 of the National Housing Act.

"(c) The Secretary of Health, Education, and Welfare is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon.

"(d) In order to carry out the purpose of this section, the Secretary of Health, Education, and Welfare is authorized to insure any mortgage which covers a new child care facility, including equipment to be used in its operation, subject to the following conditions:

"(1) The mortgage shall be executed by a mortgagor, approved by the Secretary of Health, Education, and Welfare, who demonstrate ability successfully to operate one of more child care programs. The Secretary of Health, Education, and Welfare may in his discretion require any such mortgagor to be regulated or restricted as to minimum charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary of Health, Education, and Welfare may make such contracts with and acquire for not to exceed $100 such stock or interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the Child Care Facility Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary of Health, Education, and Welfare under the insurance.

"(2) The mortgage shall involve a principal obligation in an amount not to exceed $250,000 and not to exceed 90 per centum of the estimated replacement cost of the property or project, including equipment to be used in the operation of the child care facility, when the proposed improvements are completed and the equipment is installed.

"(3) The mortgage shall—

"(A) provide for complete amortization by periodic payments within such term as the Secretary of Health, Education, and Welfare shall prescribe, and

"(B) bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum on the principal obligation outstanding at any time as the Secretary of Health, Education, and Welfare finds necessary to meet the mortgage market.

"(4) The Secretary of Health, Education, and Welfare shall not insure any mortgage under this section unless he has determined that the child care facility to be covered by the mortgage will be in compliance with the Uniform Minimum Code for Facilities approved by the Secretary pursuant to section 535.

"(5) The Secretary of Health, Education, and Welfare shall not insure any mortgage under this section unless he has also received from the prime sponsor designated under part A of this title comments concerning the consistency of the facility with the prime sponsor's comprehensive child care plan.

"(6) In the plans for such child care facility, due consideration shall be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"(e) The Secretary of Health, Education, and Welfare shall fix and collect premium charges for the insurance of mortgages under this section which shall be payable annually in advance by the mortgagee, either in cash or in debentures of the Child Care Facility Insurance Fund (established by subsection (h)) issued at par plus accrued interest. In the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any one time, without taking into account delinquent payments or prepayments. In addition to the premium charge herein provided for, the Secretary of Health, Education, and Welfare is authorized to charge and collect such amounts as he may deem reasonable for the appraisal of a property or project during construction; but such charges for appraisal and inspection shall not aggregate more than 1 per centum of the original principal face amount of the mortgage.

"(f) The Secretary of Health, Education, and Welfare may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

"(g)(1) The Secretary of Health, Education, and Welfare shall have the same functions, powers, and duties (insofar as applicable) with respect to the insurance of mortgages under this section as the Secretary of Housing and Urban Development has with respect to the insurance of mortgages under title II of the National Housing Act.

"(2) The provisions of subsections (e), (g), (h), (i), (j), (k), (l), and (n) of section 207 of the National Housing Act shall apply to mortgages insured under this section; except that, for the purposes of their application with respect to such mortgages, all references in such provisions to the General Insurance Fund shall be deemed to refer to the Child Care Facility Insurance Fund, and all references in such provisions to 'Secretary' shall be deemed to refer to the Secretary of Health, Education, and Welfare.

"(h)(1) There is hereby created a Child Care Facility Insurance Fund which shall be used by the Secretary of Health, Education, and Welfare as a revolving fund for carrying out all the insurance provisions of this section. All mortgages insured under this section shall be insured under and be the obligation of the Child Care Facility Insurance Fund.

"(2) The general expenses of the operations of the Department of Health, Education, and Welfare relating to mortgages insured under this section may be charged to the Child Care Facility Insurance Fund.

"(3) Moneys in the Child Care Facility Insurance Fund not needed for the current operations of the Department of Health, Education, and Welfare with respect to mortgages insured under this section shall be deposited with the Treasurer of the United States to the credit of such Fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States. The Secretary of Health, Education, and Welfare may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the Child Care Facility Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

"(4) Premium charges, adjusted premium charges, and appraisal and other fees received on account of the insurance of any mortgage under this section, the receipts derived from property covered by such mortgages and from any claims, debts, contracts, property, and security assigned to the Secretary of Health, Education, and Welfare in connection therewith, and all earnings on the assets of the Fund, shall be credited to the Child Care Facility Insurance Fund. The principal or, and interest paid and to be paid on, debentures which are the obligation of such Fund, cash insurance payments and adjustments, and expenses incurred in the handling, management, renovation, and disposal of properties acquired, in connection with mortgages insured under this section, shall be charged to such Fund.

"(5) In order to provide initial capital for the Child Care Facility Insurance Fund and to assure the soundness of such Fund thereafter, there are authorized to be appropriated such sums as may be necessary, in addition to any amounts which may be made available by the Secretary pursuant to section 503(a)(2) of this title.

"PART D—FEDERAL GOVERNMENT CHILD CARE PROGRAMS

"PROGRAM AUTHORIZED

"SEC. 546. (a) The Secretary is authorized to provide financial assistance for the purpose of establishing and operating child care programs (including the lease, rental, or construction of necessary facilities and the acquisition of necessary equipment and supplies) for the children of employees of the Federal Government.

"(b) Employees of any Federal agency or group of such agencies employing eighty or more working parents of young children who desire to participate in a program under this part shall—

"(1) designate or create for the purpose an agency child care committee, the membership of which shall be broadly representative of the working parents employed by the agency or agencies; and

"(2) submit to the Secretary a plan approved by the official in charge of such agency or agenices, which—

"(A) provides that the child care program shall be administered under the direction of the agency child care committee;

"(B) provides that the program will meet the Federal Standards for Child Care Services promulgated under section 534 of this title;

"(C) provides a means of determining priority of eligibility among parents wishing to use the services of the program;

"(D) provides for a scale of fees based upon the parents' financial status; and

"(E) provides for competent management, staffing, and facilities for such program.

"(c) The Secretary shall not make payments under this section unless he has received approval of the plan from the official in charge of the agency whose employees will be served by the child care program.

"PAYMENTS

"SEC. 547. (a) Not more than 80 per centum of the total cost of child care programs under

this part shall be paid from Federal funds available under this title.

"(b) The share of the total cost not available under paragraph (a) may be provided through public or private funds and may be in the form of cash, goods, services, or facilities (or portions thereof that are used for program purposes), reasonably evaluated, fees collected from parents, or union or employer contributions.

"(c) If, in any fiscal year, a program under this part provides non-Federal contributions exceeding its requirements under this section, such excess may be used to meet the requirements for such contributions for the succeeding fiscal year.

"(d) In providing financial assistance under this part, the Secretary shall, insofar as feasible, distribute funds among the States according to the same ratio as the number of Federal employees in that State bears to the total number of Federal employees in the United States.

"PART E—RESEARCH AND DEMONSTRATION

"DECLARATION OF PURPOSES

"SEC. 551. The purposes of this part are to focus national research efforts to attain a fuller understanding of the processes of child development and the effects of organized programs upon these processes; to develop effective programs for research into child development; and to assure that the result of research and development efforts are reflected in the conduct of programs affecting children through the improvement and expansion of child care and related programs.

"RESEARCH AND DEMONSTRATION PROJECTS

"SEC. 552. (a) In order to further the purposes of this part, the Secretary shall carry out a program of research and demonstration projects, which shall include but not be limited to—

"(1) research to determine the nature of child development processes and the impact of various influences upon them, to develop techniques to measure and evaluate child development, to develop standards to evaluate professional and paraprofessional child care personnel, and to determine how child care and related programs conducted in either home or institutional settings affect child development processes;

"(2) research to test alternative methods of providing child care and related services, and to develop and test innovative approaches to achieve maximum development of children;

"(3) evaluation of research findings and the development of these findings and the effective application thereof;

"(4) dissemination and application of research and development efforts and demonstration projects to child care and related programs and early childhood education, using regional demonstration centers and advisory services where feasible;

"(5) production of informational systems and other resources necessary to support the activities authorized by this part; and

"(6) integration of national child development research efforts into a focused national research program, including the coordination of research and development conducted by other agencies, organizations, and individuals.

"(b) In order to carry out the program provided for in subsection (a), the Secretary is authorized to make grants to or enter into contracts or other arrangements with public or private nonprofit agencies (including other Government agencies), organizations, and institutions, and to enter into contracts with private agencies, organizations, institutions, and individuals.

"COORDINATION OF RESEARCH

"SEC. 553. (a) Funds available to any Federal department or agency for the purposes stated in section 551 or the activities stated in section 552(a) shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Secretary for such use as is consistent with the purposes for which such funds were provided, and the funds so transferred shall be expendable by the Secretary for the purposes for which the transfer was made.

"(b) The Secretary shall coordinate, through the Office of Child Development established under section 572 of this title, all child development research, training, and development efforts conducted within the Department of Health, Education, and Welfare and, to the extent feasible, by other agencies, organizations, and individuals.

"(c) A Child Care and Development Research Council, consisting of a representative of the Office of Child Development established under section 572 of this title (who shall serve as chairman), and representatives from the Federal agencies administering the Social Security Act and the Elementary and Secondary Education Act of 1965 and from the National Institute of Mental Health, the National Institute of Child Health and Human Development, the Office of Economic Opportunity, the Department of Labor, and other appropriate agencies, shall meet at least annually and at such more frequent times as they may deem necessary, in order to assure coordination of child care and development and related activities under their respective jurisdictions and to carry out the provisions of this part so as to assure—

"(1) maximum utilization of available resources through the prevention of duplication of activities;

"(2) a division of labor, insofar as is compatible with the purposes of each of the agencies or authorities specified in this paragraph, to assure maximum progress toward the achievement of the purposes of this part; and

"(3) recommendation of priorities for federally funded research and development activities related to the purposes of this part and those stated in section 501.

"ANNUAL REPORT

"SEC. 554. The Secretary shall make an annual report to Congress summarizing his activities and accomplishments during the preceding year under this part; the grants, contracts, or other arrangements entered into during the preceding year under this part, and making such recommendations as he may deem appropriate.

"PART F—GENERAL PROVISIONS

"DEFINITIONS

"SEC. 571. As used in this title, the term—

"(1) 'Secretary' means the Secretary of Health, Education, and Welfare;

"(2) 'State' means the several States and the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"(3) 'child care programs' means programs provided on a full-day or part-day basis which provide the educational, nutritional, social, medical, phychological, and physical services needed for children to attain their full potential;

"(4) 'children' means individuals who have not attained the age of fifteen;

"(5) 'economically disadvantaged children' means any children of a family having an annual income below the lower living standard budget (adjusted for regional and metropolitan, urban, and rural differences, and family size), as determined annually by the Bureau of Labor Statistics of the Department of Labor;

"(6) 'handicapped children' includes mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services;

"(7) 'program' includes, but is not limited to, any program, service, or activity, which is conducted full or part time, in child care facilities, in schools, in neighborhood centers, or in homes, and includes child care services for children whose parents are working or receiving education or training;

"(8) 'parent' means any person who has day-to-day parental responsibility for any child;

"(9) 'single parent' means any person who has sole day-to-day responsibility for any child;

"(10) 'working mother' means any mother who requires child care services in order to undertake or continue full- or part-time work training, or education outside her home;

'(11) 'minority group' includes, but is not limited to, persons who are Negro, American Indian, Spanish-surnamed American, Portuguese, or Oriental, and, as determined by the Secretary, children who are from environments in which a dominant language is other than English and who, as a result of language barriers, do not have an equal educational opportunity, and, for the purpose of this paragraph, Spanish-surnamed Americans include persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry;

"(12) 'bilingual' includes, but is not limited to, persons who are Spanish-surnamed, American Indian, Oriental, Portuguese, or others who have learned during childhood to speak the language of the minority group of which they are members and who, as a result of language barriers, do not have an equal educational opportunity;

"(13) 'local educational agency' means any such agency as defined in section 801(f) of the Elementary and Secondary Education Act of 1965;

"(14) 'institution of higher education' means any such institution as defined in section 1201(a) of the Higher Education Act of 1965.

"OFFICE OF CHILD DEVELOPMENT

"SEC. 572. The Secretary shall take all necessary action to coordinate child care programs under his jurisdiction. To this end, he shall establish within the Department of Health, Education, and Welfare an Office of Child Development, administered by a Director, which shall be the principal agency of the Department for the administration of this title and for the coordination of programs and other activities relating to child care.

"NUTRITION SERVICES

"SEC. 573. In accordance with the purposes of this title, the Secretary of Health, Education, and Welfare shall establish procedures to assure that adequate nutrition services will be provided in child care programs under this title. Such services shall make use of the Special Food Service Program for children as defined under section 13 of the National School Lunch Act of 1946 and the Child Nutrition Act of 1966, to the fullest extent appropriate and consistent with the provisions of such Acts.

"SPECIAL PROVISIONS

"SEC. 574. (a) The Secretary may make such grants, contracts, or agreements, establish such procedures, policies, rules, and regulations, and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this title, as he may deem necessary to carry out the provisions of this title, including necessary adjustments in payments on account of overpayments or underpayments. Subject to the provisions of section 575, the Secretary may also withhold funds otherwise payable under this title in order to recover any amounts expended in the current or immediately prior fiscal year in violation of any provision of this title or any term or condition of assistance under this title.

"(b) The Secretary shall prescribe regula-

tions to assure that programs under this title have adequate internal administrative controls, accounting requirements, personnel standards, evaluation procedures, and other policies as may be necessary to promote the effective use of funds.

"(c) The Secretary shall not provide financial assistance for any program, service, or activity under this title unless he determines that persons employed thereunder, other than persons who serve without compensation, shall be paid wages which shall not be lower than whichever is the highest of (A) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 206), if section 6(a)(1) of such Act applied to the participant and if he were not exempt under section 13 thereof, (B) the State or local minimum wage for the most nearly comparable covered employment, or (C) the prevailing rates of pay for persons employed in similar occupations by the same employer.

"(d) The Secretary shall not provide financial assistance for any program under this title which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be engaged, in any way or to any extent, in the conduct of political activities in contravention of section 603 of this Act.

"(e) The Secretary shall not provide financial assistance for any program under this title unless he determines that no funds will be used for and no person will be employed under the program on the construction of so much of any facility as is for use for sectarian instruction or as a place for religious worship or on the operation or maintenance of any facility other than in connection with the use of such facility for child care programs.

"(f) A child participating in a program assisted under this title shall not be required to undergo medical or psychological examination (except to the extent related to learning ability), immunization (except to the extent necessary to protect the public from epidemics of contagious diseases), or treatment, if his parent or guardian objects thereto in writing on religious grounds.

"WITHHOLDING OF GRANTS

"SEC. 575. Whenever the Secretary, after reasonable notice and opportunity for a hearing for any prime sponsor or project applicant, finds—

"(1) that there has been a failure to comply substantially with any requirement set forth in the plan of any such prime sponsor approved under section 516; or

"(2) that there has been a failure to comply substantially with any requirement set forth in the application of any such project applicant approved pursuant to section 517; or

"(3) that in the operation of any program or project carried out by any such prime sponsor or project applicant under this title there is a failure to comply substantially with any applicable provision of this title or regulation promulgated thereunder;

the Secretary shall notify such prime sponsor or project applicant of his findings and that no further payment may be made to such sponsor or applicant under this title (or in his discretion that any such prime sponsor shall not make further payments under this title to specified project applicants affected by the failure) until he is satisfied that there is no longer any such failure to comply, or the noncompliance will be promptly corrected. The Secretary may authorize the continuation of payments with respect to any project assisted under this title which is being carried out pursuant to such plan or application and which is not involved in the noncompliance.

"ADVANCE FUNDING

"SEC. 576. (a) For the purpose of affording adequate notice of funding available under this title, such funding for grants, contracts, or other payments under this title is authorized to be included in the appropriations Act for the fiscal year preceding the fiscal year for which they are available for obligation.

"(b) In order to effect a transition to the advance funding method of timing appropriation action, subsection (a) shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

"PUBLIC INFORMATION

"SEC. 577. Applications for designation as prime sponsors, comprehensive child care plans, project applications, and all written material pertaining thereto shall be made readily available without charge to the public by the prime sponsor, the applicant, and the Secretary.

"FEDERAL CONTROL NOT AUTHORIZED

"SEC. 578. No department, agency, officer, or employee of the United States shall, under authority of this title, exercise any direction, supervision, or control over, or impose any requirements or conditions with respect to, the personnel, curriculum, methods of instruction, or administration of any educational institution.

"NONDISCRIMINATION PROVISIONS

"SEC. 579. (a) The Secretary shall not provide financial assistance for any program under this title unless the grant, contract, or agreement with respect to such program specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

"(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with, any program or activity receiving assistance under this title. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if on the ground of sex that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program or activity receiving assistance under this title.

"LIMITATION ON RESEARCH AND EXPERIMENTATION

"SEC. 580. The Secretary is directed to establish appropriate procedures to ensure that no child shall be the subject of any research or experimentation under this title other than routine testing and normal program evaluation unless the parent or guardian of such child is informed of such research or experimentation and is given an opportunity as of right to except such child therefrom.

"PARENTAL RESPONSIBILITY

"SEC. 581. Nothing in this title shall be construed or applied in such manner as to infringe upon or usurp the moral and legal rights and responsibilities of parents or guardians with respect to the moral, mental, emotional, or physical development of their children. Nor shall any section of this title be construed or applied in such a manner as to permit any invasion of privacy otherwise protected by law, or to abridge any legal remedies for any such invasion which are otherwise provided by law."

(b) In order to achieve, to the greatest degree feasible, the consolidation and coordination of programs providing child care services, while assuring continuity of existing programs during transition to the programs authorized under this title, the Economic Opportunity Act of 1964 is amended, effective July 1, 1974, as follows:

(1) Section 222(a)(1) of such Act is repealed.

(2) Section 162(b) of such Act is amended by inserting after "day care for children" the following: "(wherever feasible, through child care programs under title V of this Act)".

(3) Section 123(a)(6) of such Act is amended by inserting after "day care for children" the following: "(wherever feasible, through child care programs under title V of this Act)".

(4) Section 312(b)(1) of such Act is amended by inserting after "day care for children" the following: "(wherever feasible, through child care programs under title V of this Act)".

(c) The Director of the Office of Economic Opportunity and the Secretary of Health, Education, and Welfare shall take all necessary steps to coordinate programs under their jurisdictions which provide day care, with a view to establishing, insofar as possible, a common set of program standards and regulations, and mechanisms for coordination at the State and local levels.

(d) (1) Section 203(j)(1) of the Federal Property and Administrative Services Act of 1949 is amended by striking out "or civil defense" and inserting in lieu thereof "civil defense, or the operation of child care facilities".

(2) Section 203(j)(3) of such Act is amended—

(A) by striking out, in the first sentence, "or public health" and inserting in lieu thereof "public health, or the operation of child care facilities",

(B) by inserting after "handicapped," in clause (A) and clause (B) of the first sentence the following: "child care facilities,", and

(C) by inserting after "public health purposes" in the second sentence the following: ", or for the operation of child care facilities,".

(3) Section 203(j) of such Act is amended by adding at the end thereof the following new paragraph:

"(8) The term 'child care facility' means any such facility as defined in 541(b)(1) of the Economic Opportunity Act of 1964."

COMMUNITY ECONOMIC DEVELOPMENT

SEC. 16. (a) The Economic Opportunity Act is amended by inserting immediately after title VI the following new title:

"TITLE VII—COMMUNITY ECONOMIC DEVELOPMENT

"STATEMENT OF PURPOSE

"SEC. 701. The purpose of this title is to encourage the development of special programs by which the residents of urban and rural low-income areas may, through self-help and mobilization of the community at large, with appropriate Federal assistance, improve the quality of their economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

"PART A—SPECIAL IMPACT PROGRAMS

"STATEMENT OF PURPOSE

"SEC. 711. The purpose of this part is to establish special programs of assistance to private locally initiated community corporations and related nonprofit agencies, including cooperatives, or organizations conducting activities which (1) are directed to the solution of the critical problems existing in particular communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) within those urban and rural areas having concentrations or substantial numbers of low-income persons; (2) are of sufficient size, scope, and duration to have an appreciable impact in such com-

munities, neighborhoods, and rural areas in arresting tendencies toward dependency, chronic unemployment, and community deterioration, and (3) hold forth the prospect of continuing to have such impact after the termination of financial assistance under this title.

"ESTABLISHMENT OF PROGRAMS

"SEC. 712. (a) The Director is authorized to provide financial assistance to community development corporations and to cooperatives and other nonprofit agencies in conjunction with qualifying community development corporations for the payment of all or part of the costs of programs which are designed to carry out the purposes of this part. Such programs shall be restricted in number so that each is of sufficient size, scope, and duration to have an appreciable impact on the area served. Such programs may include—

"(1) economic and business development programs, including programs which provide financial and other assistance (including equity capital) to start, expand, or locate businesses in or near the areas served so as to provide employment and ownership opportunities for residents of such areas, and programs including those described in title IV of this Act for small businesses in or owned by residents of such areas;

"(2) community development and housing activities which create new training, employment, and ownership opportunities and which contribute to an improved living environment; and

"(3) manpower training programs for unemployed or low-income persons which support and complement economic, business, housing, and community development programs, including without limitation activities such as those described in part B of title I of this Act.

"(b) The Director shall conduct programs assisted under this part so as to contribute, on an equitable basis between urban and rural areas, to the elimination of poverty and the establishment of permanent economic and social benefits in such areas.

"REQUIREMENTS FOR FINANCIAL ASSISTANCE

"SEC. 713. (a) The Director, under such regulations as he may establish, shall not provide financial assistance for any program or component project under this part unless he determines that—

"(1) such community development corporation is responsive to residents of the area under guidelines established by the Director;

"(2) all projects and related facilities will, to the maximum feasible extent, be located in the area served;

"(3) projects will, where feasible, promote the development of entrepreneurial and management skills and the ownership or participation in ownership of assisted businesses and housing, cooperatively or otherwise, by residents of the area served;

"(4) projects will be planned and carried out with the maximum participation of local businessmen and financial institutions and organizations by their inclusion on program boards of directors, advisory councils, or through other appropriate means;

"(5) the program will be appropriately coordinated with local planning under this Act, the Demonstration Cities and Metropolitan Development Act of 1966, and with other relevant planning for physical and human resources of the areas served;

"(6) the requirements of subsections 122 (e) and 124(a) of this Act have been met;

"(7) preference will be given to low income or economically disadvantaged residents of the areas served in filing jobs and training opportunities; and

"(8) training programs carried out in connection with projects financed under this part shall be designed wherever feasible to provide those persons who successfully complete such training with skills which are also in demand in communities, neighborhoods, or rural areas, other than those for which programs are established under this part.

"(b) Financial assistance under this section shall not be extended to assist in the relocation of establishments from one location to another if such relocation would result in an increase in unemployment in the area of original location.

"(c) The level of financial assistance for related purposes under this Act to the area served by a special impact program shall not be diminished in order to substitute funds authorized by this part.

"APPLICATION OF OTHER FEDERAL RESOURCES

"SEC. 714. (a) SMALL BUSINESS ADMINISTRATION PROGRAMS.—

"(1) Funds granted under this part which are invested, directly or indirectly, in a small business investment company or a local development company shall be included as 'private paid-in capital and paid-in surplus,' 'combined paid-in capital and paid-in surplus,' and 'paid-in capital' for purposes of sections 302, 303, and 502, respectively, of the Small Business Investment Act of 1958.

"(2) Within ninety days of the enactment of the Economic Opportunity Amendments of 1971, the Administrator of the Small Business Administration, after consultation with the Director, shall prescribe such regulations as may be necessary and appropriate to insure the availability to community development corporations of such programs as shall further the purposes of this part.

"(b) ECONOMIC DEVELOPMENT ADMINISTRATION PROGRAMS.—

"(1) Areas selected for assistance under this part shall be deemed 'redevelopment areas' within the meaning of section 401 of the Public Works and Economic Development Act of 1965, and shall qualify for assistance under the provisions of title I and title II of that Act and shall be deemed to fulfill the overall economic development planning requirements of section 202(b)(10) thereof.

"(2) Within ninety days of the enactment of the Economic Opportunity Amendments of 1971, the Secretary of Commerce, after consultation with the Director, shall prescribe such regulations as may be necessary and appropriate to insure the availability to community development corporations of such programs as shall further the purposes of this part.

"(c) PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development, after consultation with the Director shall take all necessary steps (1) to assure that community development corporations assisted under this part or their subsidiaries, shall qualify as sponsors under section 106 of the Housing and Urban Development Act of 1968, and sections 221, 235, and 236 of the National Housing Act of 1949; (2) to assure that land for housing and business location and expansion is made available under title I of the Housing Act of 1949 as may be necessary to carry out the purposes of this part; and (3) to assure that funds are available under section 701(b) of the Housing Act of 1954 to community development corporations assisted under this part.

"(d) COORDINATION AND COOPERATION.—The Director shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, so that contracts, subcontracts, and deposits made by the Federal Government or in connection with programs aided with Federal funds are placed in such a way as to further the purposes of this part.

"(e) REPORTING ON OTHER FEDERAL RESOURCES.—On or before six months after the date of enactment of the Economic Opportunity Amendments of 1971, and annually thereafter, the Director shall submit to the Congress a detailed report setting forth a description of all Federal agency programs which he finds relevant to achieving the purposes of this part and the extent to which such programs have been made available to community development corporations receiving financial assistance under this part including specifically the availability and effectiveness of programs referred to in subsections (a), (b), and (c) of this section. Where appropriate, the report required under this subsection also shall contain recommendations for the more effective utilization of Federal agency programs for carrying out the purposes of this part.

"FEDERAL SHARE

"SEC. 715. Federal grants to any program carried out pursuant to this part, including grants used by community development corporations for capital investments, shall (1) not exceed 90 per centum of the cost of such program including costs of administration unless the Director determines that assistance in excess of such percentage is required in furtherance of the purposes of this part, and (2) be made available for deposit to the grantee, under conditions which the Director deems appropriate, within thirty days following approval by the Director and the local community development corporation of the grant agreement. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services. Capital investments made with funds granted as a result of the Federal share of the costs of programs carried out under this part, and the proceeds from such capital investments, shall not be considered Federal property.

"PART B—RURAL PROGRAMS

"STATEMENT OF PURPOSE

"SEC. 721. It is the purpose of this part to meet the special economic needs of rural communities or areas with concentrations or substantial numbers of low-income persons by providing support to self-help programs which promote economic development and independence. Such programs should encourage low-income families to pool their talents and resources so as to create and expand rural economic enterprise.

"FINANCIAL ASSISTANCE

"SEC. 722. (a) The Director is authorized to provide financial assistance, including loans having a maximum maturity of 15 years and in amounts not resulting in an aggregate principal indebtedness of more than $3,500 at any one time, to any low-income rural family where, in the judgment of the Director, such financial assistance has a reasonable possibility of effecting a permanent increase in the income of such families, or will contribute to the improvement of their living or housing conditions, by assisting or permitting them to—

"(1) acquire or improve real estate or reduce encumbrances or erect improvements thereon;

"(2) operate or improve the operation of farms not larger than family sized, including but not limited to the purchase of feed, seed, fertilizer, livestock, poultry, and equipment; or

"(3) participate in cooperative associations, or to finance nonagricultural enterprises which will enable such families to supplement their income.

"(b) The Director is authorized to provide financial assistance to local cooperative associations in rural areas containing concentrations or substantial numbers of low-income persons for the purpose of defraying all or part of the costs of establishing and operating cooperative programs for farming, purchasing, marketing, processing, and to improve their income as producers and their purchasing power as consumers, and to provide such essentials as credit and health services. Costs which may be defrayed shall include but not be limited to—

"(1) administrative costs of staff and overhead;

"(2) costs of planning and developing new enterprises;

"(3) costs of acquiring technical assistance; and

"(4) initial capital where it is determined by the Director that the poverty of the families participating in the program and the social conditions of the rural area require such assistance.

"LIMITATIONS ON ASSISTANCE

"SEC. 723. (a) No financial assistance shall be provided under this part unless the Director determines that—

"(1) any cooperative association receiving assistance has a minimum of fifteen active members, a majority of which are low-income rural persons;

"(2) adequate technical assistance is made available and committed to the programs being supported;

"(3) such financial assistance will materially further the purposes of this part; and

"(4) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met.

"(b) The level of financial assistance for related purposes under this Act to the area served by a program under this part shall not be diminished in order to substitute funds authorized by this part.

"PART C—SUPPORT PROGRAMS

"TRAINING AND TECHNICAL ASSISTANCE

"SEC. 731. (a) The Director shall provide directly or through grants, contracts, or other arrangements such technical assistance and training of personnel as may be required to effectively implement the purposes of this title. No financial assistance shall be provided to any public or private organization under this section unless the Director provides the beneficiaries of these services with opportunity to participate in the selection of and to review the quality and utility of the services furnished them by such organization.

"(b) Technical assistance to community development corporations and both urban and rural cooperatives may include planning, management, legal, preparation of feasibility studies, product development, marketing, and the provision of stipends to encourage skilled professionals to engage in full-time activities under the direction of a community organization financially assisted under this title.

"(c) Training for employees of community development corporations and for employees and members of urban and rural cooperatives shall include, but not be limited to, on-the-job training, classroom instruction, and scholarships to assist them in development, managerial, entrepreneurial, planning, and other technical and organizational skills which will contribute to the effectiveness of programs assisted under this title.

"DEVELOPMENT LOAN FUND

"SEC. 732. (a) The Director is authorized to make or guarantee loans (either directly or in cooperation with banks or other organizations through agreements to participate on an immediate or deferred basis) to community development corporations and to cooperatives eligible for financial assistance under section 712 of this title, to families under section 722(a), and to local cooperatives eligible for financial assistance under section 722(b) for business, housing, and community development projects who the Director determines will carry out the purposes of this title. No loans, guarantees, or other financial assistance shall be provided under this section unless the Director determines that—

"(1) there is reasonable assurance of repayment of the loan;

"(2) a loan is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs; and

"(3) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made.

Loans made by the Director pursuant to this section shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus such additional charge, if any, toward covering other costs of the program as the Director may determine to be consistent with its purposes except that, for the five years following the date on which funds are initially available to the borrower, the rate of interest shall be set at a rate considered appropriate by the Director in light of the particular needs of the borrower, which rate shall not be lower than 1 per centum. All such loans shall be repayable within a period of not more than thirty years.

"(b) The Director is authorized to adjust interest rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by him, and to take such other actions in respect to such loans as he shall determine to be necessary or appropriate, consistent with the purposes of this section.

"(c)(1) To carry out the lending and guaranty functions authorized under this part, there shall be established a Development Loan Fund consisting of two separate accounts, one of which shall be a revolving fund called the Rural Development Loan Fund and the other of which shall be a revolving fund called the Community Development Loan Fund. The capital of each such revolving fund shall remain available until expended.

"(2) The Rural Development Loan Fund shall consist of (A) repayments of principal and interest and other receipts from the lending and guaranty operations of such revolving fund and the revolving fund previously established under section 306 of this Act, the assets and liabilities of which shall be transferred to the Rural Development Loan Fund, effective July 1, 1972, and (B) such amounts as may be deposited in such Fund by the Director out of funds made available from appropriations for the purposes of carrying out this title.

"(3) The Community Development Loan Fund shall consist of (A) repayments of principal and interest and other receipts from the lending and guaranty operations of such revolving fund, and (B) such amounts as may be deposited in such fund by the Director out of funds made available from appropriations for the purpose of carrying out this title. The Secretary may make deposits in the Community Development Loan Fund in any fiscal year in which he has made available for grants to community development corporations not less than $60,000,000 out of funds made available from appropriations for the purpose of carrying out this title.

"EVALUATION AND RESEARCH

"SEC. 733. (a) Each program for which grants are made under this title shall provide for a thorough evaluation of the effectiveness of the program in achieving its purposes, which evaluation shall be conducted by such public or private organizations as the Director may designate, and all or part of the costs of evaluation may be paid from funds appropriated to carry out this part. The results of such evaluations, together with the Director's findings and recommendations concerning the program, shall be included in the report required by section 608 of this Act.

"(b) The Director shall conduct, either directly or through grants or other arrangements, research designed to suggest new programs and policies to achieve the purposes of this title in such ways as to provide opportunities for employment, ownership, and a better quality of life for low-income residents. The Director shall particularly investigate the feasibility and most appropriate manner of establishing development banks and similar institutions and shall report to the Congress on his research findings and recommendations not later than June 30, 1973.

"PART D—GENERAL

"PROGRAM DURATION AND AUTHORITY

"SEC. 741. The Director shall carry out programs provided for in this title during the fiscal year ending June 30, 1972, and for the two succeeding fiscal years. For each fiscal year only such sums may be appropriated as the Congress may authorize by law."

(b) Part D of title I of the Economic Opportunity Act of 1964 is repealed.

(c) Effective after June 30, 1972, part A of title III of the Economic Opportunity Act of 1964 is repealed.

LEGAL SERVICES PROGRAM AND EVALUATION OF PROGRAMS

SEC. 17. (a) The Economic Opportunity Act of 1964 is amended by adding at the end thereof the following new titles:

"TITLE IX—NATIONAL LEGAL SERVICES CORPORATION

"DECLARATION OF POLICY

"SEC. 901. The Congress hereby finds and declares that—

"(1) it is in the public interest to provide greater access to attorneys and appropriate institutions for the orderly resolution of grievances and as a means of securing orderly change, responsiveness, and reform;

"(2) many low-income persons are unable to afford the cost of legal services or of access to appropriate institutions;

"(3) access to legal services and appropriate institutions for all citizens of the United States not only is a matter of private and local concern, but also is of appropriate and important concern to the Federal Government;

"(4) the integrity of the attorney-client relationship and of the adversary system of justice in the United States require that there be no political interference with the provision and performance of legal services;

"(5) existing legal services programs have provided economical, effective, and comprehensive legal services to the client community so as to bring about a peaceful resolution of grievances through resort to orderly means of change; and

"(6) a private nonprofit corporation should be created to encourage the availability of legal services and legal institutions to all citizens of the United States, free from extraneous interference and control.

"ESTABLISHMENT OF CORPORATION

"SEC. 902. (a) There is established a nonprofit corporation, to be known as the 'National Legal Services Corporation' (hereinafter referred to as the 'Corporation') which shall not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this title, and, to the extent consistent with this title, to the District of Columbia Nonprofit Corporation Act. The right to repeal, alter, or amend this title is expressly reserved.

"(b) No part of the net earnings of the Corporation shall inure to the benefit of any private person, and it shall be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 and as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

"PROCESS OF INCORPORATION AND ORGANIZATION

"SEC. 903. (a) There shall be a transition period of six months following the date of enactment of the Economic Opportunity Amendments of 1972 for the process of incorporation and initial organization of the Corporation.

"(b) There is established an incorporating trusteeship composed of the following persons or their designees: the president of the American Bar Association, the president of the National Legal Aid and Defender Association, the president of the Association of

American Law Schools, the president of the American Trial Lawyers Association, and the president of the National Bar Association. The incorporating trusteeship shall meet within thirty days after the enactment of the Economic Opportunity Amendments of 1972 to carry out the provisions of this section.

"(c)(1) Not later than sixty days after the enactment of the Economic Opportunity Amendments of 1972, the incorporating trusteeship, after consulting with and receiving the recommendations of national organizations of persons eligible for assistance under this title, shall establish the initial Clients Advisory Council to be composed of eleven members selected, in accordance with procedures established by the incorporating trusteeship, from among individuals eligible for assistance under this title.

"(2) Not later than sixty days after the enactment of the Economic Opportunity Amendments of 1972, the incorporating trusteeship, after consulting with and receiving the recommendations of associations of attorneys actively engaged in conducting legal services programs, shall establish the initial Project Attorneys Advisory Council to be composed of eleven members selected in accordance with procedures established by the incorporating trusteeship, from among attorneys who are actively engaged in providing legal services under any existing legal services program.

"(3) To assist in carrying out the provisions of this subsection, the Director of the Office of Economic Opportunity shall compile a list of all legal services programs publicly funded during the fiscal year ending June 30, 1972, and the subsequent fiscal year and furnish such list to the incorporating trusteeship. In order to carry out the provisions of this subsection, the Director of the Office of Economic Opportunity shall make available to the incorporating trusteeship such administrative services and financial and other resources as it may require.

"(d) Not later than ninety days after the enactment of the Economic Opportunity Amendments of 1972, all lists required to be submitted as provided in section 904(a) for persons to serve on the initial board of directors shall be submitted to the President.

"(e) During the ninety-day period of incorporation of the Corporation the incorporating trusteeship shall take whatever actions are necessary to incorporate the Corporation, including the filing of articles of incorporation under the District of Columbia Nonprofit Corporation Act, and to prepare for the first meeting of the board of directors, except the selection of the executive director of the Corporation.

"(f) During the ninety-day period immediately following the period specified in subsection (e) of this section the board shall take whatever action is necessary to prepare to begin to carry out the activities of the Corporation six months after the enactment of the Economic Opportunity Amendments of 1972.

"DIRECTORS AND OFFICERS

"SEC. 904. (a) The Corporation shall have a board of directors consisting of seventeen individuals appointed by the President, by and with the consent of the Senate, one of whom shall be elected annually by the board to serve as chairman. Members of the board shall be appointed as follows:

"(1) Six members shall be appointed from among individuals in the general public, not less than three of whom shall be members of the bar of the highest court of a State.

"(2) Two members shall be appointed from lists of nominees submitted by the Judicial Conference of the United States.

"(3) Two members shall be appointed from among individuals who are eligible for assistance under this title from lists of nominees submitted by the Clients Advisory Council.

"(4) Two members shall be appointed from among former legal services project attorneys from lists of nominees submitted by the Project Attorneys Advisory Council.

"(5) Five members shall be appointed as follows—

"(A) one member from lists of nominees submitted by the American Bar Association;

"(B) one member from lists of nominees submitted by the Association of American Law Schools;

"(C) one member from lists of nominees submitted by the National Bar Association;

"(D) one member from lists of nominees submitted by the National Legal Aid and Defender Association; and

"(E) one member from lists of nominees submitted by the American Trial Lawyers Association. Each initial list and any subsequent list shall include at least three and not more than ten names for each position to be filled.

"(b) The directors appointed under subsection (a) shall be appointed for terms of three years except that—

"(1) the terms of the directors first taking office shall be effective on the ninety-first day after the enactment of the Economic Opportunity Amendments of 1972;

"(2) the terms of the directors first taking office shall expire, as designated by the President at the time of appointment, as follows—

"(A) in the case of directors appointed under paragraph (1) of section 904(a), two at the end of three years, two at the end of two years, and two at the end of one year;

"(B) in the case of directors appointed under paragraph (2) of section 904(a), one at the end of two years, and one at the end of one year;

"(C) in the case of directors appointed under paragraph (3) of section 904(a), one at the end of three years and one at the end of one year;

"(D) in the case of directors appointed under paragraph (4) of section 904(a), one at the end of three years and one at the end of two years; and

"(E) in the case of directors appointed under paragraph (5) of section 904(a), (i) the term of the director appointed under clause (A) shall expire at the end of three years, (ii) the term of the director appointed under clause (B) shall expire at the end of three years, (iii) the term of the director appointed under clause (C) shall expire at the end of two years, (iv) the term of the director appointed under clause (D) shall expire at the end of one year, and (v) the term of the director appointed under clause (E) shall expire at the end of one year; and

"(3) any director appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

"(c) The Corporation shall have an executive director, who shall be an attorney, and such other officers, as may be named and appointed by the board of directors at rates of compensation fixed by the board, who shall serve at the pleasure of the board. No individual shall serve as executive director of the Corporation for a period in excess of six years. The executive director shall serve as a member of the board ex officio and shall serve without a vote.

"(d) No political test or qualification shall be used in selecting, appointing, or promoting any officer, attorney, or employee of the Corporation. No officers or employees of the Corporation shall receive any salary from any source other than the Corporation during the period of employment by the Corporation.

"(e) All meetings of the board, executive committee of the board, and advisory councils shall, whenever appropriate, be open to the public, and proper notice of such meetings shall be provided to interested parties and the public a reasonable time prior to such meetings.

"(f) No member of the board may participate in any decision, action, or recommendation with respect to any matter which directly benefits that member or any firm or organization with which that member is then currently associated.

"(g) Any board after the initial board shall, in consultation with the respective advisory councils, provide for rules with respect to the subsequent meetings of the Clients Advisory Council and the Project Attorneys Advisory Council.

"ADVISORY COUNCILS; EXECUTIVE COMMITTEE

"SEC. 905. (a) The board, after consulting with and receiving the recommendations of national organizations of persons eligible for assistance under this title, shall provide for the selection of a Clients Advisory Council subsequent to the first such council established under section 903(c)(1) of this title to be composed of not more than eleven members selected in accordance with procedures established by the board, including terms of office, qualifications, and method of selection and appointment, from among individuals who are eligible for assistance under this title. Such procedures must insure that all areas of the country and significant segments of the client population are represented, and in no event may more than one representative on such council be from any one State. The Clients Advisory Council shall advise the board of directors and the executive director on policy matters relating to the needs of the client community and may act as liaison between the client community and legal services programs through such activities as it deems appropriate, including informational programs in languages other than English. The Clients Advisory Council shall submit the lists of individuals for appointment as members of the board in accordance with section 904(a).

"(b) The board, after consulting with and receiving the recommendations of associations of attorneys actively engaged in conducting legal services programs, shall provide for the selection of a Project Attorneys Advisory Council subsequent to the first such council established under section 903(c)(2) of this title to be composed of not more than eleven members selected in accordance with procedures established by the board, including terms of office, qualifications, and method of selection and appointment, from among attorneys who are actively engaged in providing legal services under this title. Such procedures must ensure that all areas of the country are represented, and in no event may more than one representative on such council be from any one State. The Project Attorneys Advisory Council shall advise the board of directors and the executive director on policy matters relating to the furnishing of legal services to members of the client community. The Project Attorneys Advisory Council shall submit the lists of individuals for appointment as members of the board in accordance with section 904(a).

"(c) The board shall provide for sufficient resources for each Advisory Council in order to pay such reasonable travel costs and expenses as the board may determine.

"(d) The board may establish an executive committee of not less than five members nor more than seven members which shall include the chairman of the board, at least one director appointed pursuant to paragraph (1) of section 904(a), one director appointed pursuant to paragraph (3) or (4) of section 904(a), and one director appointed pursuant to paragraph (5) of section 904.

"ACTIVITIES AND POWERS OF THE CORPORATION

"SEC. 906. (a) Effective six months after the enactment of the Economic Opportunity Amendments of 1972, in order to carry out the purposes of this title, the Corporation is authorized to—

"(1) provide financial assistance to quali-

fied programs furnishing legal services to members of the client community;

"(2) provide financial assistance to pay the costs of contracts or other agreements made pursuant to section 903 of this title;

"(3) carry out research, training, technical assistance, experimental, legal paraprofessional and clinical assistance programs;

"(4) through financial assistance and other means, increase opportunities for legal education among individuals who are members of a minority group or who are economically disadvantaged;

"(5) provide for the collection and dissemination of information designed to coordinate and evaluate the effectiveness of the activities and programs for legal services in various parts of the country;

"(6) offer advice and assistance to all programs providing legal services and legal assistance to the client community conducted or assisted by the Federal Government including—

"(A) reviewing all grants and contracts for the provision of legal services to the client community made under other provisions of Federal law by any agency of the Federal Government and making recommendations to the appropriate Federal agency;

"(B) reviewing and making recommendations to the President and Congress concerning any proposal whether by legislation or executive action, to establish a federally assisted program for the provision of legal services to the client community; and

"(C) upon request of the President, providing training, technical assistance, monitoring and evaluation services to any federally assisted legal services program;

"(7) establish such procedures and take such other measures as may be necessary to assure that attorneys employed by the Corporation and attorneys paid in whole or in part from funds provided by the Corporation carry out the same duties to their clients and enjoy the same protection from interference as if such an attorney was hired directly by the client, and to assure that such attorneys adhere to the same Code of Professional Responsibility and Canons of Ethics of the American Bar Association as are applicable to other attorneys;

"(8) establish standards of eligibility for the provision of legal services to be rendered by any grantee or contractee of the Corporation with special provision for priority for members of the client community whose means are least adequate to obtain private legal services;

"(9) establish policies consistent with the best standards of the legal profession to assure the integrity, effectiveness, and professional quality of the attorneys providing legal services under this title; and

"(10) carry on such other activities as would further the purposes of this title.

"(b) In the performance of the functions set forth in subsection (a), the Corporation is authorized to—

"(1) make grants, enter into contracts, leases, cooperative agreements, or other transactions, in accordance with bylaws established by the board of directors appropriate to conduct the activities of the Corporation;

"(2) accept unconditional gifts or donations of services, money, or property, real, personal, or mixed, tangible or intangible, and use, sell, or otherwise dispose of such property for the purpose of carrying out its activities;

"(3) appoint such attorneys and other professional and clerical personnel as may be required and fix their compensation in accordance with the provision of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule rates;

"(4) promulgate regulations containing criteria specifying the manner of approval of applications for grants based upon the following considerations—

"(A) the most economical, effective, and comprehensive delivery of legal services to the client community in both urban and rural areas;

"(B) peaceful resolution of grievances and resort to orderly means of seeking change; and

"(C) maximum utilization of the expertise and facilities of organizations presently specializing in the delivery of legal services to the client community;

"(5) establish and maintain a law library;

"(6) establish procedures for the conduct of legal services programs assisted by the Corporation containing a requirement that the applicant will give assurances that the program will be supervised by a policymaking board on which the members of the legal profession constitute a majority (except that the Corporation may grant waivers of this requirement in the case of a legal services program which, upon the date of enactment of the Economic Opportunity Amendments of 1972, has a majority of persons who are not lawyers on its policymaking board) and members of the client community constitute at least one-third of the members of such board.

"(c) In any case in which services, otherwise authorized, are performed for the Federal Government by the Corporation, the Corporation shall be reimbursed for the cost of such services pursuant to an agreement between the executive director of the Corporation and the head of the agency of the Federal Government concerned.

"(d) The Corporation shall ensure that attorneys employed full time in programs funded by the Corporation refrain from any outside practice of law unless permitted as pro bono publico activity pursuant to guidelines established by the Corporation.

"(e) The Corporation shall insure (1) that all attorneys who are not representing a client or group of clients refrain, while engaged in activities carried on by legal services programs funded by the Corporation, from undertaking to influence the passage or defeat of any legislation by the Congress or State or local legislative bodies by representations to such bodies, their members, or committees, unless such bodies, their members, or their committees request that the attorney make representation to them, and (2) that no funds provided by the Corporation shall be utilized for any activity which is planned and carried out to disrupt the orderly conduct of business by the Congress or State or local legislative bodies, for any demonstration, rally, or picketing aimed at the family or home of a member of a legislative body for the purpose of influencing his actions as a member of that body, and for conducting any campaign of advertising carried on through the commerical media for the purpose of influencing the passage or defeat of legislation.

"(f) The Corporation shall insure that no attorneys or other persons employed by it or employed or engaged in programs funded by the Corporation shall, in any case, solicit the client community or any member of the client community for professional employment; and no funds of the Corporation shall be expanded in pursuance of any employment which results from any such solicitation. For the purpose of this subsection, solicitation does not include mere announcement or advertisement, without more, of the fact that the National Legal Services Corporation is in existence and that its services are available to the client community, and does not include any conduct or activity which is permissible under the Code of Professional Responsibility and Canons of Ethics of the American Bar Association governing solicitation and advertising.

"(g) The Corporation shall establish guidelines for consideration of possible appeals to be implemented by each grantee or contractee of the Corporation to insure the efficient utilization of resources. Such guidelines shall in no way interfere with the attorney's responsibilities and obligations under the Canons of Professional Ethics and the Code of Professional Responsibility.

"(h) At a reasonable time prior to the Corporation's approval of any grant or contract application, the Corporation shall notify the State bar association of the State in which the recipient will offer legal services. Notification shall include a reasonable description of the grant or contract application.

"(i) No funds or personnel made available by the Corporation pursuant to this title shall be used to provide legal services with respect to any criminal proceeding.

"NONPROFIT AND NONPOLITICAL NATURE OF THE CORPORATION

"SEC. 907. (a) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

"(b) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as reasonable compensation for services.

"(c) The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

"(d) The Corporation shall insure that all employees of legal services programs assisted by the Corporation, while engaged in activities carried on by legal services programs, refrain (1) from any partisan or nonpartisan political activity associated with a candidate of public or party office, and (2) from any voter registration activity other than legal representation or any activity to provide voters or prospective voters with transportation to the polls. Employees of the Corporation or of programs assisted by the Corporation shall not at any time identify the Corporation or the program assisted by the Corporation with any partisan or nonpartisan political activity associated with a candidate for public or party office. The Board of Directors of the Corporation shall set appropriate guidelines for the private political activities of full-time employees of the Corporation or of programs assisted by the Corporation.

"ACCESS TO RECORDS AND DOCUMENTS RELATED TO THE CORPORATION

"SEC. 908. (a) Copies of all records and documents pertinent to each grant and contract made by the Corporation shall be maintained in the principal office of the Corporation in a place readily accessible and open to public inspection during ordinary working hours for a period of at least five years subsequent to the making of such grant or contract.

"(b) Copies of all reports pertinent to the evaluation, inspection, or monitoring of grantees and contractees shall be maintained for a period of at least three years in the principal office of the Corporation subsequent to such evaluation, inspection, or monitoring visit. Upon request, the substance of such reports shall be furnished to the grantee or contractee who is the subject of the evaluation, inspection, or monitoring visit.

"(c) The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing regulations and guidelines, and it shall publish in the Federal Register on a timely basis all its bylaws, regulations, and guidelines.

"(d) The Corporation shall be subject to the provisions of the Freedom of Information Act.

"FINANCING OF THE CORPORATION

"SEC. 909. In addition to any funds reserved and made available for payment to the Corporation from appropriations for car-

rying out the Economic Opportunity Act of 1964 for any fiscal year, there are further authorized to be appropriated for payment to the Corporation such sums as may be necessary for any fiscal year. Funds made available to the Corporation from appropriations for any fiscal year shall remain available until expended.

"RECORDS AND AUDIT OF THE CORPORATION AND THE RECIPIENTS OF ASSISTANCE

"SEC. 910. (a) The accounts of the Corporation shall be audited annually in accordance with generally accepted auditing standards by any independent licensed public accountant certified or licensed by a regulatory authority of a State or political subdivision. Each such audit shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person conducting the audit, consistent with the necessity of maintaining the confidentiality required by the best standards of the legal profession, and full facilities for verifying transactions with the balance, or securities held by depositories fiscal agents, and custodians shall be afforded to any such person. The report of each such independent audit shall be included in the annual report required under this title. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the assets and liabilities, and surplus or deficit of the Corporation, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the income and expenses of the Corporation during the year, and a statement of the sources and application of funds, together with the opinion of the independent auditor of those statements.

"(b)(1) The accounts and operations of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited annually by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States, consistent with the necessity of maintaining the confidentiality required by the best standards of the legal profession. Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representative of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or used by the Corporation pertaining to its accounts and operations, including the reports pertinent to the evaluation, inspection, or monitoring of grantees and contractors required to be maintained by section 908(b) and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in the possession and custody of the Corporation.

"(2) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform the Congress of the operations and conditions of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other transaction or undertaking observed in the course of the audit, which in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the executive director and to each member of the board at the time submitted to the Congress.

"(c)(1) Each grantee or contractee, other than a recipient of a fixed price contract awarded pursuant to competitive bidding procedures, under this title shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(2) The Corporation or any of its duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers and records of the recipient that are pertinent to assistance received under this title. The Comptroller General of the United States, or any of his duly authorized representatives shall also have access thereto for such purpose during any fiscal year for which Federal funds are available to the Corporation.

"REPORTS TO CONGRESS

"SEC. 911. The Corporation shall prepare an annual report for transmittal to the President and the Congress on or before the 30th day of January of each year, summarizing the activities of the Corporation and making such recommendations as it may deem appropriate. This report shall include finding and recommendations concerning the preservation of the attorney-client relationships and adherence to the Code of Professional Responsibility of the American Bar Association in the conduct of programs supported by the Corporation. The report shall include a comprehensive and detailed report of the operations, activities, financial condition, and accomplishments of the Corporation, together with the additional views and recommendations, if any, of members of the board.

"DEFINITIONS

"SEC. 912. As used in this title, the term—

"(1) 'State' means the several States and the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"(2) 'Corporation' means the National Legal Services Corporation established pursuant to this title;

"(3) 'client community' means individuals unable to obtain private legal counsel because of inadequate financial means;

"(4) 'member of the client community' includes any person unable to obtain private legal counsel because of inadequate financial means;

"(5) 'legal services' includes legal advice, legal representation, legal research, education concerning legal rights and responsibilities, and similar activities (including, in areas where a significant portion of the client community speaks a language other than English as the predominant language, or is bilingual, services to those members of the client community in the appropriate language other than English);

"(6) 'legal profession' refers to that body composed of all persons admitted to practice before the highest court of at least one State of the United States; and

"(7) 'nonprofit', as applied to any foundation, corporation, or association means a foundation, corporation, or association, no part of the net earnings of which inures, or may lawfully inure to the benefit of any private shareholder or individual.

"PROHIBITION ON FEDERAL CONTROL

"SEC. 913. Nothing contained in this title shall be deemed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the Corporation or any of its grantees or contractees or employees, or over the charter or bylaws of the Corporation, or over the attorneys providing legal services pursuant to this title, or over the members of the client community receiving legal services pursuant to this title.

"SPECIAL LIMITATIONS

"SEC. 914. The board shall prescribe procedures to ensure that—

"(1) financial assistance shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations, unless the grantee or contractee has been given reasonable notice and opportunity to show cause why such action should not be taken; and

"(2) financial assistance shall not be terminated, an application for refunding shall not be denied, and an emergency suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee or contractee has been afforded reasonable notice and opportunity for a timely, full, and fair hearing.

"COORDINATION

"SEC. 915. The President may direct that particular support functions of the Federal Government, such as the General Services Administration, the Federal telecommunications system, and other facilities, be utilized by the Corporation or its grantees or contractees to the extent not inconsistent with other applicable law.

"TRANSFER MATTERS

"SEC. 916. (a) Notwithstanding any other provision of law, on and after such date as may be prescribed by the Director of the Office of Management and Budget, or six months after the enactmentof the Economic Opportunity Amendments of 1972, whichever is the earlier, all rights of the Office of Economic Opportunity to capital equipment in the possession of legal services programs assisted pursuant to sections 222(a)(3), 230, 232, or any other provision of the Economic Opportunity Act of 1964, shall become the property of the National Legal Services Corporation.

"(b) Effective six months after the date of enactment of the Economic Opportunity Amendments of 1972, all personnel, assets, liabilities, property, and records as determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function of the Director under section 222(a)(3) of this Act shall be transferred to the Corporation. Personnel transferred (except personnel under schedule A of the excepted service) under this subsection shall be transferred in accordance with applicable laws and regulations, and shall not be reduced in classification or compensation for one year after such transfer. The Director shall take whatever action is necessary and reasonable to seek suitable employment for personnel who would otherwise be transferred pursuant to this subsection who do not wish to transfer to the Corporation.

"(c) Collective bargaining agreements in effect on the date of enactment of the Economic Opportunity Amendments of 1972 covering employees transferred pursuant to subsection (b) of this section shall continue to be recognized by the Corporation until altered or amended pursuant to law.

"TITLE X—EVALUATION

"COMPREHENSIVE EVALUATION OF PROGRAM

"SEC. 1001. (a) The Director shall provide for evaluations that describe and measure with appropriate means and to the extent feasible, the impact of programs, their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services and

including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. He may, for these purposes, contract or make other arrangements for independent evaluations of those programs or individual projects.

"(b) The Director shall to the extent feasible develop and publish standards for evaluation of program effectiveness in achieving the objectives of this Act.

"(c) The Director may require community action agencies to provide independent evaluations.

"(d) Federal agencies administering programs related to this Act shall—

"(1) cooperate with the Director in the discharge of his responsibility to plan and conduct evaluations of such poverty-related programs as he judges appropriate to the fullest extent permitted by other applicable law; and

"(2) provide the Director with such statistical data, program reports, and other materials as they presently collect and compile on program operations, beneficiaries, and effectiveness.

"(e) In carrying out evaluations under this title, the Director shall, whenever possible, arrange to obtain the opinions of program participants about the strengths and weaknesses of the programs.

"(f) The Director may consult, when appropriate, with State agencies, in order to provide for jointly sponsored objective evaluation studies of programs on a State basis.

"(g) The Director shall publish summaries of the results of evaluative research and evaluations of program impact and effectiveness no later than sixty days after its completion.

"(h) The Director shall take necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

"(i) The Director shall publish summaries of the results of activities carried out pursuant to this title in the report required by section 608."

(b)(1) The Director of the Office of Economic Opportunity shall take such action as may be necessary, in cooperation with the executive director of the National Legal Services Corporation, to arrange for the orderly continuation by such corporation of financial assistance to legal services programs assisted pursuant to sections 222(a)(2), 230, 232, or any other provision of the Economic Opportunity Act of 1964. Whenever the Director of the Office of Economic Opportunity determines that an obligation to provide financial assistance pursuant to any contract or grant agreement for such legal services will extend beyond six months after the date of enactment of this Act, he shall include in any such contract or agreement provisions to assure that the obligation to provide such financial assistance may be assumed by the National Legal Services Corporation, subject to such modifications of the terms and conditions of that contract or grant agreement as the Corporation determines to be necessary.

(2) Effective six months after the date of enactment of this Act, section 222(a)(3) of the Economic Opportunity Act of 1964 is repealed.

(3) Notwithstanding any other provision of law, after the enactment of this Act but prior to the enactment of appropriations to carry out this title, the Director of the Office of Economic Opportunity shall, out of appropriations then available to him, make funds available to assist in meeting the organizational expenses of the National Legal Services Corporation and in carrying out its activities.

(4) Title VI of the Economic Opportunity Act of 1964 is amended by inserting after section 622 thereof the following new section:

"INDEPENDENCE OF NATIONAL LEGAL SERVICES CORPORATION

"SEC. 623. Nothing in this Act, except title IX, and no reference to this Act unless such reference refers to title IX, shall be construed to affect the powers and activities of the National Legal Services Corporation."

(c)(1) Subsection (a) of section 113, subsections (b) and (c) of section 132, section 154, section 233, and section 314(b) of the Economic Opportunity Act of 1964 are repealed.

(2) Section 632(2) of such Economic Opportunity Act of 1964 is amended by striking out "carry on a continuing evaluation of all activities under this Act, and".

(3) Sections 132 and 314 of such Act are each amended by striking out "(a)".

SPECIAL PROGRAMS AUTHORIZED

SEC. 18. Part B of title II of the Economic Opportunity Act of 1964 is amended by adding at the end thereof the following new sections:

"DESIGN AND PLANNING ASSISTANCE GRANTS

"SEC. 226. (a) The Director shall make grants or enter into contracts to provide financial assistance for the operating expenses of programs conducted by community-based design and planning organizations to provide technical assistance and professional architectural and related services relating to housing, neighborhood facilities, transportation and other aspects of community planning and development to persons and community organizations or groups not otherwise able to afford such assistance. Such programs shall be conducted with maximum use of the voluntary services of professional and community personnel. In providing assistance under this section, the Director shall afford priority to persons in urban or rural poverty areas with substandard housing, substandard public service facilities, and generally blighted conditions. Design and planning services to be provided by such organizations shall include—

"(1) comprehensive community or area planning and development;

"(2) specific projects for the priority planning and development needs of the community; and

"(3) educational programs directed to local residents emphasizing their role in the planning and development process in the community.

"(b) No assistance may be provided under this section unless such design and planning organization—

"(1) is a nonprofit organization located in the neighborhood or area to be served with a majority of the governing body of such organization comprised of residents of that neighborhood or area;

"(2) has as a primary function the goal of bringing about, through the involvement of the appropriate community action agency or otherwise, maximum possible participation of local residents, especially low-income residents, in the planning and decision-making regarding the development of their community; and

"(3) will carry out its design and planning services principally through the voluntary participation of professional and community personnel (including, where available, VISTA volunteers).

"(c) Design and planning organizations receiving assistance under this section shall not subcontract with any profitmaking organization or pay fees for architectural or other professional services.

"(d) The Director shall make whatever arrangements are necessary to continue pilot or demonstration projects of demonstrated effectiveness of the type described in this section receiving assistance under section 232 of this Act during the fiscal year ending June 30, 1971.

"YOUTH RECREATION AND SPORTS PROGRAM

"SEC. 227. (a) In order to provide to disadvantaged youth recreation and physical fitness instruction and competition with high-quality facilities and supervision and related educational and counseling services (including instruction concerning study practices, career opportunities, job responsibilities, health and nutrition, and drug abuse education) through regular association with college instructors and athletes and exposure to college and university campuses and other recreational facilities, the Director shall make grants or enter into contracts for the conduct of an annual youth recreation and sports program concentrated in the summer months and with continued activities throughout the year, so as to offer disadvantaged youth living in areas of rural and urban poverty and opportunity to receive such recreation and educational instruction, information, and services and to participate in such physical fitness programs and sports competitions.

"(b) No assistance may be provided under this section unless satisfactory assurances are received that not less than 90 per centum of the youths participating in each program to be assisted under this section are from families with incomes below the poverty level, as determined by the Director, and that such participating youths and other neighborhood residents, through the involvement of the appropriate community action agency or otherwise, will have maximum participation in program planning and operation.

"(c) Programs under this section shall be administered by the Director, through grants or contracts with any qualified organization of colleges and universities or such other qualified nonprofit organizations active in the field with access to appropriate recreational facilities as the Director shall determine in accordance with regulations which he shall prescribe. Each such grant or contract and subcontract with participating institutions of higher education or other qualified organizations active in the field shall contain provisions to assure that the program to be assisted will provide a non-Federal contribution (in cash or in-kind) of no less than 20 per centum of the direct costs necessary to carry out the program. Each such grant, contract, or subcontract shall include provisions for—

"(1) providing opportunities for disadvantaged youth to engage in competitive sports and receive sports skills and physical fitness instruction and education in good health and nutrition practices;

"(2) providing such youth with instruction and information regarding study practices, career opportunities, job responsibilities, and drug abuse;

"(3) carrying out continuing related activities throughout the year;

"(4) meeting the requirements of subsection (b) of this section;

"(5) enabling the contractor and institutions of higher education or other qualified organizations active in the field located conveniently to such areas of poverty and the students and personnel of such institutions or organizations active in the field to participate more fully in the community life and in solutions of community problems; and

"(6) serving metropolitan centers of the United States and rural areas, within the limits of program resources."

FUNCTIONS OF DIRECTOR

SEC. 19. Notwithstanding any other provision of law, unless enacted hereafter in limitation of the provisions of this section, no new transfers or delegations of programs administered by the Director of the Office of Economic Opportunity under titles II, III, VI, VII, and X of the Economic Opportunity Act of 1964, as amended, shall be made to the head of any other agency, during the fiscal

year ending June 30, 1972, and the succeeding fiscal year.

PUERTO RICO

SEC. 20. (a) Notwithstanding any other provision of law, the Director of the Office of Economic Opportunity shall reserve, for the purpose of section 225(a) of the Economic Opportunity Act of 1964, not more than 4 per centum of the appropriated sums for the fiscal year ending June 30, 1972, for Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, according to their respective needs.

(b) Effective after June 30, 1972, section 225(a) of such Act is amended by striking out "Puerto Rico,".

(c) Effective after June 30, 1972, the first sentence of paragraph (1) of section 609 of such Act is amended by striking out the word "or" the second time it appears in such sentence and inserting in lieu thereof a comma and the following: "Puerto Rico, or".

TECHNICAL PROVISIONS

SEC. 21. (a) The application of the formula prescribed by section 225(a) of the Economic Opportunity Act of 1964 for the allotment of funds among the States may be waived by the Director to the extent he deems necessary to prevent hardship in the allotment of funds for programs under title II of such Act resulting from the discontinuance of the authorization for section 222(a)(1) of such title by this Act.

(b) The Director may extend assistance under sections 221 and 222(a) of the Economic Opportunity Act of 1964 to a community action agency or other agency which is in excess of the maximum prescribed in section 225(c) of such Act, if he determines, in accordance with such regulations as he shall prescribe, that the ability of such agency to provide its share of the program costs pursuant to such section 225(c) has been impaired by virtue of the discontinuance of the authorization for section 222(a)(1) of such Act to an extent which justifies such additional assistance.

AMENDMENTS TO THE OLDER AMERICANS ACT OF 1965

SEC. 22. (a) Section 611(a) of the Older Americans Act of 1965 (42 U.S.C. 3044(b)) is amended by adding at the end thereof the following new sentence: "The Director of ACTION may approve assistance in excess of 90 per centum of the cost of the development and operation of such projects if he determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this section."

(b) The amendment made by subsection (a) of this section shall be effective from the date of enactment of this section. In the case of any project with respect to which, prior to such date, a grant or contract has been made under such section or with respect to any project under the Foster Grandparent program in effect prior to September 17, 1969, contributions in cash or in kind from the Bureau of Indian Affairs, Department of the Interior, toward the cost of the project may be counted as part of the cost thereof which is met from non-Federal sources.

EXHIBIT 1

DECEMBER 17, 1971.

Hon. JOHN CONNALLY,
Secretary, Department of Treasury,
Washington, D.C.

DEAR SECRETARY CONNALLY: I would appreciate your aid in assessing the potential usage of the child care deduction from income taxes approved by Congress recently.

Would you please outline for me the effects—in terms of dollars saved—of this deduction for families in the categories listed on the enclosed sheet.

In assessing these individual situations, would you please indicate your assumptions about usage of the standard deductions vs. itemizing by taxpayers in the various income level groups?

If you have any questions, Ellen Hoffman of my staff will be glad to assist you. She can be reached on 225-8701.

I would appreciate receiving this information by the close of business on Thursday, December 30.

Thank you for your cooperation in this matter.

Sincerely,

WALTER F. MONDALE.

DEPARTMENT OF THE TREASURY,
Washington, D.C., January 25, 1972.

Hon. WALTER F. MONDALE,
U.S. Senate, Washington, D.C.

DEAR SENATOR MONDALE: Your letter of December 17, 1971 to Secretary Connally, requesting information as to the tax savings which will result from the child care deduction for families in various circumstances has been referred to this office for reply. A table is enclosed, based on the outline accompanying your letter, showing the amount of tax saving which would result from the child care deduction for the cases you described.

In computing the tax savings certain assumptions were made. It was assumed that each family had deductible expenses, exclusive of the child care deduction equal to 15 percent of its adjusted gross income, which is probably fairly typical. Thus lower income families would normally use the $1,300 minimum standard deduction and would benefit from this provision only if their child care expenses are rather substantial. It was also assumed that the families had no dependents other than children under 15. This assumption has only a marginal effect on the tax savings shown, except in the lower income classes where extra exemptions may make the family nontaxable. Some additional assumptions are contained in footnotes to the table.

I hope this information will be helpful to you.

Sincerely,

JOEL SEGALL,
Deputy Assistant Secretary.

TAX SAVING FROM THE CHILD CARE DEDUCTION BY INCOME CLASS, TYPE AND SIZE OF FAMILY, AND AMOUNT EXPENDED FOR CHILD CARE, UNDER REVENUE ACT OF 1971 [1]

Adjusted gross income [2]	Number of parents [3]	Number of children [4]	Child care expenditure [5]	Tax saving [6]
1. $4,000:				
A	2	1	$400	0
B	1	1	400	0
2. $5,000:				
A	2	1	500	0
B	1	1	500	0
C	2	2	1,000	63
3. $6,000:				
A	2	1	600	32
B	1	1	600	36
C	2	1	300	0
D	1	1	300	0
4. $7,000:				
A	2	1	700	77
B	1	1	700	83
5. $8,000:				
A	2	1	400	57
	2	1	1,600	264
B	1	1	400	57
	1	1	1,600	282
C	2	2	800	119
D	1	2	800	131
6. $10,000:				
A	2	1	500	95
B	1	1	500	110
C	2	1	1,000	190
	2	1	1,600	304
	2	1	2,400	453
D	1	1	1,000	220
	1	1	1,600	334
	1	1	2,400	486
7. $15,000:				
A	2	1	500	110
B	1	1	500	125
C	2	1	1,000	220
	2	1	1,600	352
	2	1	2,400	528
	2	1	3,600	759
D	1	1	1,000	250
	1	1	1,600	393
	1	1	2,400	577
	1	1	3,600	850
8. $18,000:				
A	2	1	600	150
	2	1	1,000	250
	2	1	1,600	384
B	2	2	1,000	229
	2	2	1,600	361
	2	2	3,200	713
C	1	2	1,000	270
	1	2	1,600	421
	1	2	3,200	818
D	2	3	2,400	528
	2	3	3,600	790
	2	3	4,800	1,018
E	1	3	2,400	605
	1	3	3,600	880
	1	3	4,800	1,151
9. $25,000:				
A	2	1	1,000	0
	2	1	1,600	0
	2	1	2,000	0
B	1	2	1,000	0
	1	2	1,600	0
	1	2	2,000	0
C	2	2	2,000	0
	2	2	3,600	28
	2	2	4,800	364
D	1	2	2,400	0
	1	2	3,600	32
	1	2	4,800	413
E	2	3	2,400	0
	2	3	3,600	28
	2	3	4,800	364
F	1	3	2,400	0
	1	3	3,600	32
	1	3	4,800	405

[1] Each family is assumed to have itemizable deductions equal to 15 percent of adjusted gross income, exclusive of the amount paid for child care. Thus they would normally use the $1,300 minimum standard deduction if their incomes were less than $8,667 and they had no child care expenses. The families with $6,000 or less adjusted gross income and no tax saving are cases where the child care deduction is not large enough to make it profitable to itemize. The 15-percent deduction is a standard deduction up to $13,333, above this level it represents itemized deductions other than child care.

[2] In most cases adjusted gross income will equal or closely approximate gross income.

[3] Where there are 2 parents, a joint return is assumed. In the case of a single parent, head of household treatment is assumed.

[4] In this table all children are assumed to be under 15. Therefore the total number of personal exemptions allowed is the sum of the number of parents and the number of children indicated.

[5] It is assumed that where child care expenditures exceed $200 a month for 1 child or $300 a month for 2 children a domestic servant is involved, so no cutback in allowable deduction occurs as a result of these limits on care outside the household.

[6] Above $18,000 adjusted gross income the deduction otherwise allowable is reduced by 50 percent of income in excess of this amount. Thus at the $25,000 level only child care expenses in excess of $3,500 are deductible.

Source: Office of the Secretary of the Treasury, Office of Tax Analysis.

EXHIBIT 2

STATEMENT OF PRINCIPLES

In rejecting the Comprehensive Child Development Act which Congress passed last year, the President rejected American children and their families. What is more, he established a double standard for poor children, whom he would condemn to custodial day care while he forces their parents to work under the guise of "welfare reform."

Nothing is more critical to the future of this country than that every child have the opportunity to fully develop his physical, intellectual, and social potential as a human being. This nation must be prepared to commit its resources to help families realize this potential in their children, when they seek such support outside the home.

We reject the President's contention in his veto message that public support for child development programs is not necessary, or that it would in some way destroy the family. On the contrary, as the President's own White House Conference on Children emphasized, such programs are urgently needed and, when properly developed, they will strengthen families.

The undersigned organizations are committed to certain principles which were embodied in the legislation which was passed

by bipartisan majorities of both houses of Congress last year. We reaffirm those principles as follows:

1 that programs must be of high quality, comprehensive, and developmental, oriented to the needs of children and available to all children;

2 that parents must be directly involved in policy decisions affecting their own children;

3 that programs must be locally controlled and flexible enough to meet individual community needs;

4 that programs must be designed to include children with a variety of socioeconomic backgrounds;

5 that adequate protections must be provided to assure that the needs of minority group and economically disadvantaged children are met; and

6 that this nation must make a substantiol commitment of new public funds to begin to meet the compelling and immediate need for these services.

Amalgamated Clothing Workers.

AFL–CIO.

Americans for Democratic Action.

Americans for Indian Opportunity Action Council.

Black Child Development Institute.

Center for Community Change.

Child Welfare League of America.

Children's Foundation.

Common Cause.

Friends Committee on National Legislation.

Health and Welfare Council of the National Capital Area.

International Ladies Garment Workers Union.

Interstate Research Associates.

Leadership Conference on Civil Rights.

League of Women Voters.

National Board of the Young Women's Christian Association of the U.S.A.

National Council of Churches.

National Council of Jewish Women.

National Council of Negro Women.

National Council on Hunger and Malnutrition.

National Education Association.

National Urban Coalition.

National Urban League.

National Welfare Rights Organization.

United Auto Workers.

Thelma C. Adair, Coordination of Education Strategy, United Presbyterian Board of National Missions.

Mary Jane Patterson, United Presbyterian Church of the U.S.A., Washington Office.

Women's International League for Peace and Freedom.

Washington Research Project Action Council.

COMPREHENSIVE CHILD CARE

SEC. 15. (a) Title V of the Economic Opportunity Act of 1964 is amended to read as follows:

"TITLE V—CHILD CARE CENTERS AND SERVICES

"STATEMENT OF FINDINGS AND PURPOSE

'SEC. 501. (a) The Congress finds that—

"(1) child care programs must build upon the role of the family as the primary and most fundamental influence on the development of children and must be provided only to children whose parents or legal guardians request them;

"(2) many of the over three million children of preschool age living in poverty do not receive adequate health care, nutrition, and educational opportunities;

"(3) there are over five million preschool children and twenty million school-age children whose mothers are working full or part time but there are fewer than seven hundred thousand openings in licensed day care facilities to serve them:

"(4) comprehensive family-oriented child care programs, including a full range of health, education, and social services, can enhance the opportunity for children to attain their full potential;

"(5) children with special needs must receive full and special consideration in planning any child care programs with priority to preschool children with the greatest economic and social need;

"(6) while no mother should be forced to work outside the home as a condition for using child care programs, such programs are essential to many parents who undertake or continue full- or part-time employment, training, or education;

"(7) comprehensive child care programs not only provide a means of delivering a full range of essential services to children, but can also furnish meaningful employment opportunities for many individuals including older persons, parents, young persons, and volunteers from the community; and

"(8) it is essential that the planning and operation of such programs be undertaken as a partnership of parents, community, and State and local government with appropriate assistance from the Federal Government.

"(b) It is the purpose of this title (1) to provide child care centers and services of high quality to children whose parents request them, with priority for those children who need them most, (2) to recognize and build upon the experience and success gained through the Headstart program and other child care programs, (3) to provide quality child care services, with emphasis on programs for children of preschool age regardless of economic, social, and family background and full day care services for children of working mothers and single parent families, (4) to provide that decisions on the nature and funding of such programs be made at the local level with the full involvement of parents and other individuals and organizations interested in child care, and (5) to establish the legislative framework for comprehensive child care services.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 502. (a) For the purpose of carrying out this title, there is authorized to be appropriated $1,500,000,000 for the fiscal year ending June 30, 1974. Any amounts appropriated for such fiscal year which are not obligated at the end of such fiscal year may be obligated in the succeeding fiscal year.

"(b) For the purpose of providing training, technical assistance, planning, and such other activities as the Secretary deems necessary and appropriate to prepare for the implementation of this title, there is authorized to be appropriated $100,000,000 for the fiscal year ending June 30, 1973.

"ALLOCATION OF FUNDS

"SEC. 503. (a) The amounts appropriated for carrying out this title for any fiscal year after June 30, 1973, shall be made available in the following manner:

"(1) $500,000,000 shall first be used for the purpose of providing assistance under parts A, B, and E of this title for child care programs focused upon young children from low-income families, giving priority to continued financial assistance for Headstart projects;

"(2) not to exceed 10 per centum of the remaining amounts so appropriated shall be used for the purpose of carrying out parts B, C, D, and E of this title, as the Secretary deems appropriate; and

"(3) the remainder of such amounts shall be used for the purpose of carrying out part A of this title.

"(b)(1) From the amounts available for carrying out comprehensive child care programs under part A of this title, the Secretary shall reserve the following:

"(A) not less than that proportion of the total amount available for carrying out such part A as is equivalent to that proportion which the total number of children of migrant agricultural workers bears to the total number of economically disadvantaged children in the United States, which shall be apportioned among programs serving children of migrant agricultural workers on an equitable basis, and to the extent practicable in proportion to the relative numbers of children served in each such program;

"(B) not less than that proportion of the total amount available for carrying out such part A as is equivalent to that proportion which the total number of children in Indian tribal organizations bears to the total number of economically disadvantaged children in the United States, which shall be apportioned among programs serving children in Indian tribal organizations on an equitable basis, and to the extent practicable in proportion to the relative numbers of children in each such program;

"(C) not less than 10 per centum of the total amount available for carrying out such part A, which shall be made available for the purposes of section 512(2)(H) of such part (relating to special activities for handicapped children);

"(D) not to exceed 5 per centum of the total amount available for carrying out such part A, which shall be made available under section 514(f)(3) of such part (relating to model programs).

"(2) The Secretary shall allocate the remainder of the amounts available for part A of this title (except for funds made available under pargaraphs (1) and (3) of this subsection) among the States, and within the States among local areas, so as to provide, to the extent practicable, for the geographical distribution of such remainder in such a manner that—

"(A) 50 per centum thereof shall be apportioned among the States, and within each such State among local areas, in proportion to the relative numbers of children through age five in each such State and local area, respectively; and

"(B) 50 per centum thereof shall be apportioned among the States, and within each such State among local areas, in proportion to the relative numbers of economically disadvantaged children of working mothers and single parents in each such State and local area, respectively.

For the purposes of clauses (A) and (B) of this pargaraph, there shall be excluded those children who are counted under clauses (A) and (B) of subsection (b)(1) of this section.

"(3) Not to exceed 5 per centum of the total funds allotted for use within a State pursuant to paragraph (2) shall be made available to enable States to carry out the provisions of section 513(a) of this title.

"(c) Any portion of any apportionment under subsection (b) for a fiscal year which the Secretary determines will not be required, for the period for which such apportionment is available, for carrying out programs under this part shall be available for reapportionment from time to time, on such dates during such period as the Secretary shall fix, to other States or local areas on an equitable basis, taking into account the original apportionments to the States and local areas. Any amount reapportioned to a State or local area under this subsection during a year shall be deemed part of its apportionment under subsection (b) for such year.

"(d) In determining the numbers of children for purposes of allocating and apportioning funds under this section, the Secretary shall use the most recent satisfactory data available to him.

"(e) As soon as practicable after funds are appropriated to carry out this title for any fiscal year, the Secretary shall publish in the Federal Register the allocations and apportionments required by this section.

"PART A—COMPREHENSIVE CHILD CARE PROGRAMS

"PROGRAMS ASSISTED

"SEC. 511. The Secretary of Health, Education, and Welfare shall provide financial assistance to prime sponsors and to other public and private agencies and ogranizations pursuant to plans and applications approved in accordance with the provisions of this part for the purpose of carrying out child care programs for children whose parents or legal guardians request them, including—

"(1) preschool programs providing full-day services and activities for children when there is no parent at home to provide care;

"(2) preschool programs providing part-day services and activities designed to prepare children for school in the years before they enter the elementary school grades;

"(3) in-home services and consultation to assist families with children of preschool age in providing for the healthy growth and development of each child's full potential;

"(4) day care programs providing services and activities (including recreation and tutoring programs) for school-age children at times when school is not in session and there is no parent at home to provide care, including after-school and, where necessary, before-school hours and during summer and other vacation periods;

"(5) parent and child centers, special programs for children with identified needs (including but not limited to handicapped children), and follow-through and other supplementary services and activities, involving the participation of parents.

"USES OF FUNDS

"SEC. 512. Funds available for this part may be used (in accordance with approved applications) for programs including the following services and activities:

"(1) planning and developing child care programs, including the operation of pilot programs to test the effectiveness of new concepts, programs, and delivery systems;

"(2) establishing, maintaining, and operating child care programs, which may include—

"(A) comprehensive health, nutritional, education, social, and other services to assist children in attaining their full potential and to prepare children for school;

"(B) full-day and part-day child care services (including after-school and summer programs), with appropriate health, nutritional, education, social, and other services;

"(C) food and nutritional services;

"(D) rental, lease or lease-purchase, mortgage amortization payments, remodeling, renovation, alteration, construction, or acquisition of facilities, including mobile facilities, and the acquisition of necessary equipment and supplies;

"(E) programs designed (i) to meet the special needs of minority group, Indian, and migrant children with particular emphasis on the needs of children from bilingual families for the development of skills in English and the other language spoken in the home, and (ii) to meet the needs of all children to understand the history and cultural backgrounds of minority groups which belong to their communities;

"(F) medical, dental, psychological, educational, and other appropriate diagnosis, identification, and treatment of visual, hearing, speech, nutritional, and other physical, mental, and emotional problems;

"(G) prenatal and other medical services to expectant mothers who cannot afford such services, designed to help reduce malnutrition, infant and maternal mortality, and the incidence of mental retardation and other handicapping conditions, and postpartum and other medical services (including family planning information) to such recent mothers;

"(H) incorporation within child care programs of special activities designed to identify and ameliorate physical, mental, and emotional handicaps and special learning disabilities and, where necessary because of the severity of such handicaps, establishing, maintaining, and operating separate child care programs designed primarily to meet the needs of handicapped children including emotionally disturbed children;

"(I) preservice and inservice education and other training designed to prepare professional and paraprofessional personnel and parents and other family members to provide child care and related services;

"(J) dissemination of information in the functional language of those to be served to assure that parents are well informed of child care programs available to them and may become directly involved in such programs;

"(K) sevices, including in-home services, and training in the fundamentals of child care, for parents, older family members, and others functioning in the capacity of parents, youth, and prospective parents;

"(L) programs designed to extend comprehensive prekindergarten early childhood education techniques and gains (particularly parent participation) into kindergarten and early primary grades (one through three), in cooperation with local educational agencies;

"(M) such other services and activities as the Secretary deems appropriate in furtherance of the purposes of this part; and

"(3) staff and other administrative expenses of Child Care Councils established and operated in accordance with this part.

"STATE PLAN

"SEC. 513. (a) The Secretary shall approve a plan submitted by any State which sets forth satisfactory provisions for establishing and maintaining a State Child Care Council which meets the requirements of section 515 and which sets forth provisions for carrying out activities under the supervision of such Council for the purposes of—

"(1) identifying child care goals and needs within the State;

"(2) assisting prime sponsors other than the State in the establishment of Child Care Councils and strengthening the capability of such Councils to effectively plan, supervise, coordinate, monitor, and evaluate child care programs;

"(3) providing for the cooperation and participation of State agencies providing child care and related services, including health, family planning, mental health, education, nutrition, and family, social, and rehabilitative services, in the development and implementation of the comprehensive child care plan of the State and where requested by any local prime sponsor;

"(4) encouraging the full utilization of resources and facilities for child care programs within the State;

"(5) disseminating the results of research on child care programs;

"(6) conducting programs for the exchange of personnel involved in child care programs within the State;

"(7) assisting public and private agencies and organizations in the acquisition or improvement of facilities for child care programs;

"(8) monitoring and evaluating federally-assisted child care programs and projects within the State;

"(9) assessing State and local licensing codes as they relate to child care programs within the State; and

"(10) developing information useful in reviewing prime sponsorship plans under section 514(g) and comprehensive child care plans under section 516(b)(3).

"(b) A State applying for designation as prime sponsor for geographical areas within the State which are not otherwise served by a local prime sponsor shall, in addition to the provisions required to be included in its prime sponsorship plan in accordance with section 514, set forth in its State plan adequate provisions—

"(1) for designating local program areas each of which shall serve a geographical area covered by (A) a unit of general local government, or (B) units of general local government serving a total population of not more than fifty thousand persons;

"(2) for establishing and maintaining with respect to each local program area a local policy council composed so that (A) not less than half of the members of each such council shall be parent members who shall be chosen initially by the parent member of Headstart policy committees where they exist, and at the earliest practicable time by the parent members of project policy committees established pursuant to section 517(a)(2) of this part, and (B) the remainder shall be public members appointed by the chief executive officers or the governing bodies, as appropriate, of the units of general local government within the local program area;

"(3) to assure that project applications shall be approved by the Child Care Council only if previously approved by the local policy council for the appropriate local program area;

"(4) to assure that contracts for the operation of programs through public or private agencies or organizations shall be entered into only if previously approved by the local policy council for the appropriate local program area; and

"(5) for the development and preparation with full participation and approval of the appropriate local policy council of that portion of the comprehensive child development plan to be submitted by the State which affects each local program area.

"PRIME SPONSORS OF CHILD CARE PROGRAMS

"SEC. 514. (a) In accordance with the provisions of this section, a State, unit or combination of units of general local government, Indian tribal organization, or public or private nonprofit agency or organization, meeting the requirements of this part may be designated by the Secretary as a prime sponsor for the purpose of entering into arrangements to carry out child care programs under this part, if the Secretary determines that any such applicant for prime sponsorship designation has the capability of effectively carrying out child care programs under this part and has submitted a satisfactory prime sponsorship plan which—

"(1) describes the prime sponsorship area to be served;

"(2) sets forth satisfactory provision for establishing and maintaining a Child Care Council which meets the requirements of section 515;

"(3) provides that such Council will be responsible for developing and preparing a comprehensive child care plan for each fiscal year and any modifications thereof;

"(4) sets forth arrangements under which such Council will be responsible for planning, supervising, conducting, coordinating, monitoring and evaluating child care programs in the prime sponsorship area;

"(5) in the case of an applicant which is a State or a unit or combination of units of general local government, provides for the operation of programs under this part through contracts with public or private agencies or organizations, including but not limited to community action agencies, single-purpose Headstart agencies, local public and private educational agencies and institutions, community development corporations, parent cooperatives, organizations of Indians, and employer and employee organizations, which will serve children in a community or neighborhood or other area possessing a commonality of interest; and

"(6) sets forth satisfactory provisions for coordination with educational agencies and providers of educational services;

"(7) provides assurances that such Council will, by contract or other arrangement with State, local, or other public or private nonprofit agencies or organizations, provide, where available—

"(A) child-related family, social, and rehabilitative services;

"(B) health (including family planning) and mental health services;

"(C) nutrition services; and

"(D) training of professional and paraprofessional personnel.

"(b) The Secretary shall approve a prime sponsorship plan submitted by a State if he determines that the plan so submitted meets the requirements of subsection (a) of this section and sets forth adequate arrangements for serving all geographical areas under its jurisdiction except for areas with respect to which local prime sponsors are designated under this section.

"(c)(1) The Secretary shall approve a prime sponsorship plan submitted by a unit of general local government which is (A) a city having a population of twenty-five thousand or more persons, or (B) a county or other unit of general local government having a population of twenty-five thousand or more persons (excluding the number of such persons included within the population of any city which is designated as a prime sponsor under clause (A) of this paragraph), if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in the area covered by such unit of general local government.

"(2) In the event that the area under the jurisdiction of a unit of general local government described in clause (A) or (B) of paragraph (1) of this subsection includes any common geographical area with that covered by another such unit of general local government, the Secretary shall designate to serve such area the unit of general local government which he determines has the capability of more effectively carrying out the purposes of this part with respect to such area and which has submitted a plan which meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in such area.

"(d) The Secretary shall approve a prime sponsorship plan submitted by a combination of units of general local government having a total population of twenty-five thousand or more persons (excluding the number of such persons included within the population of any city which is designated as a prime sponsor under clause (A) of subsection (c)(1)), if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in the area covered by the combination of such units of general local government.

"(e) The Secretary shall approve a prime sponsorship plan submitted by an Indian tribal organization if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes adequate provisions for carrying out comprehensive child care programs in the area to be served.

"(f) The Secretary may approve a prime sponsorship plan submitted by a unit or combination of units of general local governments regardless of population size or by a public or private nonprofit agency, including but not limited to a community action agency, single-purpose Headstart agency, public or private educational agency or institution, community development corporation, parent cooperative, organization of migrant agricultural workers, organization of Indians, employer organization, labor union, or employee or labor-management organization, if he determines that the plan so submitted meets the requirements of subsection (a) of this section and includes provisions setting forth—

"(1) arrangements for serving children in a community or neighborhood or other urban or rural area possessing a commonality of interest in any area (A) with respect to which there is no prime sponsorship designation in effect, or (B) with respect to any portion of an area where a designated prime sponsor is found not to be satisfactorily implementing child care programs which adequately to meet the purposes of this part, or (C) for making available special services, in accordance with criteria established by the Secretary, designed to meet the needs of economically disadvantaged or preschool children or children of working mothers or single parents; or

"(2) arrangements for providing comprehensive child care programs on a year-round basis to children of migrant agricultural workers and their families; or

"(3) arrangements for carrying out model programs especially designed to be responsive to the needs of economically disadvantaged, minority group, bilingual, or preschool children.

"(g) The Governor shall be given not less than thirty nor more than sixty days to review applications for prime sponsorship designation submitted by any applicant other than the State, to offer recommendations to the applicant, and to submit comments to the Secretary.

"(h) A prime sponsorship plan submitted under this section may be disapproved or a prior designation of a prime sponsor may be withdrawn only if the Secretary, in accordance with regulations which he shall prescribe, has provided (1) written notice of intention to disapprove such plan, including a statement of the reasons therefor, (2) a reasonable time in which to submit corrective amendments to such plan or undertake other necessary corrective action, and (3) an opportunity for a public hearing upon which basis an appeal to the Secretary may be taken as of right.

"(i)(1) If any party is dissatisfied with the Secretary's final action under subsection (h) with respect to the disapproval of its plan submitted under this section or the withdrawal of its prime sponsorship designation, such party may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such party is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence. The Secretary may make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

"(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(j) When any unit or combination of units of general government or other prime sponsor is maintaining a pattern and practice of discrimination against minority group persons, the Secretary shall approve the application for prime sponsorship of an alternative unit of government or public or private nonprofit agency or organization in the area which will equitably serve minority and economically disadvantaged persons.

"(k) In the event that a State, a unit or combination of units of general local government, or an Indian tribal organization has not submitted a comprehensive child care plan under section 516 or the Secretary has not approved a plan so submitted, or where the Secretary has not designated or has withdrawn designation of prime sponsorship under this section, or where the needs of migrants, preschool-age children, or the children of working mothers or single parents, minority groups, or the economically disadvantaged are not being served, the Secretary may directly fund projects, including those in rural areas without regard to population, that he deems necessary in order to serve the children of the particular area.

"CHILD CARE COUNCILS

"SEC. 515. (a) Every State and other prime sponsor designated under section 514 shall establish and maintain a Child Care Council composed of not less than 10 members as follows—

"(1) not less than half of the members of such Council shall be parents of children served in child care programs under this part; and

"(2) the remaining members shall be appointed by the prime sponsor to represent the public, but (A) not less than half of such members shall be persons who are broadly representative of the general public, including government agencies, public and private agencies and organizations in such fields as economic opportunity, health, education, welfare, employment and training, business or financial organizations or institutions, labor unions, and employers, and (B) the remaining members, the number of which shall be either equal to or one less than the number of members appointed under clause (A), shall be persons who are particularly skilled by virtue of training or experience in child development, child health, child welfare, or other child care services, except that the Secretary may waive or reduce the requirement of this clause (B) to the extent that he determines, in accordance with regulations which he shall prescribe that such persons are not available to the area to be served.

At least one-third of the total membership of the Child Care Council shall be parents who are economically disadvantaged. Each Council shall select its own chairman.

"(b) In accordance with procedures which the Secretary shall establish pursuant to regulations, every State and other prime sponsor designated under section 514 shall provide, with respect to its Child Care Council—

"(1) in the case of the Child Care Council of a State, (A) that the parent members described in paragraph (1) of subsection (a) of this section shall be chosen by the parent members of local policy councils established pursuant to section 513 of this part, and (B) that the public members described in paragraph (2) of subsection (a) of this section shall be appointed by the Governor of the State;

"(2) in the case of the Child Care Council of a prime sponsor other than a State, (A) that the parent members described in paragraph (1) of subsection (a) of this section shall be chosen initially by the parent members of Headstart policy committees where they exist, and at the earliest practicable time by the parent members of project policy committees established pursuant to section 517(a)(2) of this part, and (B) that the public members described in paragraph (2) of subsection (a) of this section shall be appointed by the chief executive officer or the governing body, whichever is appropriate, of the prime sponsor;

"(3) for such terms of office and other policies and procedures of an organizational nature, including nomination and election

procedures, as are appropriate in accordance with the purposes of this part;

"(4) that such Council shall have responsibility for approving basic goals, policies, actions, and procedures for the prime sponsor, and for planning, general supervision and oversight, overall coordination, personnel, budgeting, funding of projects, and monitoring and evaluation of projects each year according to criteria established by the Secretary; and

"(5) that such Council shall, upon its own initiative or upon request of a project applicant or any other party in interest, conduct public hearings before acting upon applications for financial assistance submitted by project applicants under this part.

"COMPREHENSIVE CHILD CARE PLANS

"SEC. 516. (a) Financial assistance under this part may be provided by the Secretary for any fiscal year to a State or other prime sponsor designated under section 514 only pursuant to a comprehensive child care plan which is submitted by such prime sponsor and approved by the Secretary in accordance with the provisions of this part. Any such plan shall set forth a comprehensive program for providing child care services in the prime sponsorship area which—

"(1) provides that programs or services under this title shall be provided only for children whose parents or legal guardiance request them;

"(2) identifies child care needs and goals within the area and describes the purposes for which the financial assistance will be used;

"(3) meets the needs of children in the prime sponsorship area, to the extent that available funds can be reasonably expected to have an effective impact, with priority to children who have not attained six years of age;

"(4) (A) provides that funds received under section 503(a)(1) will be used for child care programs and services focused upon young children from low-income families, giving priority to continued financial assistance for Headstart projects by reserving for such projects from such funds in any fiscal year an amount at least equal to the aggregate amount received by public or private agencies and organizations within the prime sponsorship area for programs during the fiscal year ending June 30, 1973, under section 222(a)(1) of the Economic Opportunity Act of 1964, and (B) provides that programs receiving funds under section 503(d) will give priority to providing services for economically disadvantaged children by reserving not less than 65 per centum of the cost of programs receiving such funds for the purpose of serving children of families having an annual income below the lower living standard budget as determined under paragraph (5) of section 571;

"(5) gives priority thereafter to providing child care programs and services to children of working mothers and single parents not covered under paragraph (4);

"(6) provides procedures for the approval of project applications submitted in accordance with section 517;

"(7) provides, in the case of a prime sponsor located within or adjacent to a metropolitan area, for coordination with other prime sponsors located within such metropolitan area, and arrangements for cooperative funding where appropriate, and particularly for such coordination where appropriate to meet the needs for child care services of children of parents working or participating in training or otherwise occupied during the day within a prime sponsorship area other than that in which they reside;

"(8) provides that, to the extent feasible, each program within the prime sponsorship area will include children from a range of socioeconomic backgrounds;

"(9) provides comprehensive services (A) to meet the special needs of minority group children and children of migrant agricultural workers with particular emphasis on the needs of children from bilingual families for development of skills in English and in the other language spoken in the home, and (B) to meet the needs of all children to understand the history and cultural background of minority groups which belong to the communities;

"(10) provides equitably for the child care needs of children from each minority group and significant segment of the economically disadvantaged residing within the area served;

"(11) provides, insofar as possible, for coordination of child care programs with other social programs (including but not limited to those relating to employment and manpower) so as to keep family units intact or in close proximity during the day;

"(12) provides for direct parent participation in the conduct, overall direction, and evaluation of programs;

"(13) includes to the extent feasible a career development plan for paraprofessional and professional training, education, and advancement on a career ladder;

"(14) provides that, insofar as possible, persons residing in communities being served by such projects will receive jobs, including in-home and part-time jobs and opportunities for training in programs under part B of this title, with special consideration for career opportunities for low-income persons;

"(15) provides for the regular and frequent dissemination of information in the functional language of those to be served, to assure that parents and interested persons in the community are fully informed of the activities of the Child Care Council and of delegate agencies;

"(16) assures that procedures and mechanisms for coordination have been developed in cooperation with agencies and organizations carrying out preschool programs and administrators of local educational agencies and nonpublic schools, at the local level, to provide continuity between programs for preschool and elementary school children and to coordinate programs conducted under this part and programs conducted pursuant to section 222(a)(2) of the Economic Opportunity Act of 1964 and the Elementary and Secondary Education Act of 1965;

"(17) establishes arrangements in the area served for the coordination of programs conducted under the auspices of or with the support of business or financial institutions or organizations, industry, labor, employee and labor-management organizations, and other community groups;

"(18) sets forth provisions describing any arrangements for the delegation, under the supervision of the Child Care Council, to public or private agencies, institutions, or organizations, of responsibilities for the delivery of programs, services, and activities for which financial assistance is provided under this part or for planning or evaluation services to be made available with respect to programs under this part;

"(19) contains plans for regularly conducting surveys and analyses of needs for child care programs in the prime sponsorship area and for submitting to the Secretary a comprehensive annual report and evaluation in such form and containing such information as the Secretary shall require by regulation;

"(20) provides that services for handicapped children, at both the State and local levels, will be used wherever available in programs approved under the plan;

"(21) provides assurances satisfactory to the Secretary that the non-Federal share requirements will be met;

"(22) provides for such fiscal control and funding accounting procedures as the Secretary may prescribe to assure proper disbursement of and accounting for Federal funds paid to the prime sponsor;

"(23) provides that special consideration will be given to project applications submitted by public and private nonprofit agencies and organizations with on-going programs; and

"(24) provides assurance that in developing plans for any facilities due consideration will be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"(b) No comprehensive child care plan or modification thereof submitted by a prime sponsor under this section shall be approved by the Secretary unless he determines, in accordance with regulations which the Secretary shall prescribe, that—

"(1) each community action agency or single-purpose Headstart agency in the area to be served previously responsible for the administration of programs under this part or under section 222(a)(1) of the Economic Opportunity Act of 1964 has had an opportunity to submit comments to the prime sponsor and to the Secretary;

"(2) the local educational agency for the area to be served and other appropriate educational and training agencies and institutions have had an opportunity to submit comments to the prime sponsor and to the Secretary; and

"(3) in the case of a plan submitted by a prime sponsor other than the State, the State Child Care Council has had an opportunity to submit comments to the prime sponsor and to the Secretary.

"(c) A comprehensive child care plan submitted under this section may be disapproved or a prior approval withdrawn only if the Secretary, in accordance with regulations which he shall prescribe, has provided (1) written notice of intention to disapprove such plan, including a statement of the reasons therefor, (2) a reasonable time to submit corrective amendments to such plan or undertake other necessary corrective action, and (3) an opportunity for a public hearing upon which basis an appeal to the Secretary may be taken as of right.

"(d) In order to contribute to the effective administration of this title, the Secretary shall establish appropriate procedures to permit prime sponsors to submit jointly a single comprehensive child care plan for the areas served by such prime sponsors.

"PROJECT APPLICATIONS

"SEC. 517. (a) Financial assistance under this part may be provided to a project applicant for any fiscal year only pursuant to a project application which is submitted by a public or private agency and which provides—

"(1) that funds will be provided for carrying out any child care program under this part only to a qualified public or private agency or organization, including but not limited to a community action agency, single-purpose Headstart agency, public or private educational agency or institution, community development corporation, parent cooperative, organization of migrant agricultural workers, organization of Indians, private organization interested in child development, employer or business organization, labor union, or employee or labor-management organization;

"(2) for establishing and maintaining project policy committees composed of not less than 10 members as follows—

"(A) not less than half of the members of each such committee shall be parents of children served by such project, and

"(B) the remaining members of each such committee shall consist of (i) persons who are representative of the community and who are approved by the parent members, and (ii) one person who is particularly

skilled by virtue of training or experience in child development, child health, child welfare, or other child care services, except that the Secretary may waive the requirement of this clause (ii) where he determines, in accordance with regulations which he shall prescribe, that such person is not available to the area to be served;

"(3) for direct participation of such project policy committees in the development and preparation of project applications under this part;

"(4) that adequate provision will be made for training and other administrative expenses of such project policy committees (including necessary expenses to enable low-income members to participate in council or committee meetings);

"(5) that project policy committees shall have responsibility for approving basic goals, policies, actions, and procedures for the project applicant, and for planning, overall conduct, personnel, budgeting, location of centers and facilities, and direction and evaluation of projects;

"(6) that programs assisted under this part will provide for such comprehensive health, nutritional, education, social, and other services, as are necessary for the full development of each participating child;

"(7) that adequate provision will be made for the regular and frequent dissemination of information in the functional language of those to be served, to assure that parents and interested persons are fully informed of project activities;

"(8) that with respect to child care services provided by programs assisted under this part—

"(A) no charge will be made with respect to any child who is a member of any family with an annual income equal to or less than $4,320 with appropriate adjustments in the case of families having more than two children, except to the extent that payment will be made by a third party (including a public agency); and

"(B) such charges as the Secretary may provide will be made with respect to any child of any other family, in accordance with an appropriate fee schedule established by him, based upon the ability of the family to pay, which payment may be made in whole or in part by a third party in behalf of such family, except that any such charges with respect to any family with an income of less than the lower living standard budget (as determined in accordance with paragraph (5) of section 571) shall not exceed the sum of (i) an amount equal to 10 per centum of any family income which exceeds the highest income level at which no charges would be made with respect to children of such family under subparagraph (A) but does not exceed 85 per centum of such lower living standard budget, and (ii) an amount equal to 15 per centum of any family income which exceeds 85 per centum of such lower living standard budget but does not exceed 100 per centum of such lower living standard budget, and if more than two children from the same family are participating, additional charges may be made not to exceed the sum of the amounts calculated in accordance with clauses (i) and (ii) with respect to each such additional child;

"(9) that children will in no case be excluded from the programs operated pursuant to this part because of their participation in nonpublic preschool or school programs or because of the intention of their parents to enroll them in nonpublic schools when they attain school age;

"(10) that programs will, to the extent appropriate, employ paraprofessional aides and volunteers, especially parents, older children, students, older persons, and persons preparing for careers in child care programs;

"(11) that no person will be denied employment in any program solely on the ground that he fails to meet State or local teacher certification standards;

"(12) that programs assisted under this part will provide for the utilization of personnel, including paraprofessional and volunteer personnel, adequate to meet the needs of each participating child;

"(13) that there are assurances satisfactory to the Secretary that the non-Federal share requirements will be met; and

"(14) that provision will be made for such fiscal control and fund accounting procedures as the Secretary shall prescribe to assure proper disbursement of and accounting for Federal funds.

"(b) A project application may be approved by a prime sponsor upon its determination that such application meets the requirements of this section and that the programs provided for therein will otherwise further the objectives and satisfy the appropriate provisions of the prime sponsor's comprehensive child care plan as approved pursuant to section 516.

"(c) A project application from a public or private nonprofit agency which is also a prime sponsor under section 513(f) shall be submitted directly to the Secretary, together with the comprehensive child care plan.

"(d) A prime sponsor may disapprove a project application only if it provides to the project applicant a written statement of the reasons therefor. Such project applicant may submit an appeal to the Secetary requesting the direct approval of such application or modification thereof. Any such appeal shall include such comments, including the project applicant's response to the prime sponsor's statement of reasons for disapproval, as the project applicant may deem appropriate or as the Secretary may require.

"(e) A project application submitted directly to the Secretary may be approved by the Secretary upon his determination that it meets the requirements of subsection (a) of this section.

"ADDITIONAL CONDITIONS FOR PROGRAMS INCLUDING CONSTRUCTION

"SEC. 518. (a) Applications for financial assistance for projects including construction may be approved only if the Secretary determines that construction of such facilities is essential to the provision of adequate child care services, and that rental, lease or lease-purchase, remodeling, or renovation of adequate facilities is not practicable.

"(b) If any facility assisted under this part shall cease to be used for the purposes for which it was constructed, the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds unless the Secretary determines in accordance with regulations that there is good cause for releasing the applicant or other owner from the obligation to do so. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

"(c) All laborers and mechanics employed by contractors or subcontractors on all construction, remodeling, renovation, or alteration projects assisted under this part 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 the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"(d) In the case of loans for construction, the Secretary shall prescribe the interest rate and the period within which such loan shall be repaid, but such interest rates shall not be less than 3 per centum per annum and the period within which such loan is to be repaid shall not be more than twenty-five years.

"(e) The Federal assistance for construction may be in the form of grants or loans, provided that total Federal funds to be paid to other than public or private nonprofit agencies and organizations will not exceed 50 per centum of the construction cost, and will be in the form of loans. Repayment of loans shall, to the extent required by the Secretary, be returned to the prime sponsor from whose financial assistance the loan was made, or used for additional loans or grants under this title. Not more than 15 per centum of the total financial assistance provided to a prime sponsor under this part shall be used for construction of facilities with no more than 7½ per centum of such assistance usable for grants for construction.

"(f) In the case of a project for the construction of facilities and in the development of plans for such facilities due consideration shall be given to excellence of architecture and design and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"USE OF PUBLIC FACILITIES FOR CHILD DEVELOPMENT PROGRAMS

"SEC. 519. (a) The Secretary, after consultation with other appropriate officials of the Federal Government, shall within eighteen months after enactment of this title report to the Congress with respect to the extent to which facilities owned or leased by Federal departments, agencies, and independent authorities could be made available to public and private nonprofit agencies and organizations, through appropriate arrangements, for use as facilities for child care programs under this title during times and periods when not utilized fully for their usual purposes, together with his recommendations (including recommendations for changes in legislation) or proposed actions for such use.

"(b) The Secretary may require, as a condition to the receipt of assistance under this part, that any prime sponsor under this part agree to conduct a review and provide the Secretary with a report as to the extent to which facilities owned or leased by such prime sponsor, or by other agencies in the prime sponsorship area, could be made available, through appropriate arrangements, for use as facilities for child care programs under this title during times and periods when not utilized fully for their usual purposes, together with the prime sponsor's proposed actions for such use.

"PAYMENTS

"SEC. 520. (a) In accordance with this section, the Secretary shall pay from the applicable allocation or apportionment under section 503 the Federal share of the costs of programs, services, and activities, in accordance with plans or applications which have been approved as provided in this part. In making such payment to any prime sponsor, the Secretary shall include in such costs an amount for staff and other administrative expenses for the Child Care Council not to exceed an amount which is reasonable when compared with such costs for other prime sponsors.

"(b)(1) Except as provided in paragraphs (2) and (3) of this subsection, the Secretary shall pay an amount not in excess of 90 per centum of the cost of carrying out programs, services, and activities under this part. The Secretary may, in accordance with such regulations as he shall prescribe, approve assistance in excess of such percentage if he determines that such action is required to provide adequately for the child care needs of economically disadvantaged children.

"(2) The Secretary shall pay an amount equal to 100 per centum of the costs of providing child care programs for children of migrant agricultural workers and their families under this part.

"(3) The Secretary shall pay an amount equal to 100 per centum of the costs of providing child care programs for children in Indian tribal organizations under this part.

"(c) The non-Federal share of the costs of programs assisted under this part may be provided through public or private funds and may be in the form of cash, goods, services, or facilities (or portions thereof that are used for program purposes), reasonably evaluated, or union or employer contributions. Fees collected for services provided pursuant to section 517(a)(8) shall not be used to make up the non-Federal share, but shall be used by the project applicant for the same purposes as payments under this section, except that, in the case of projects assisted under a comprehensive child care plan, such fees shall be turned over to the appropriate prime sponsor for distribution in the same manner as the prime sponsor's allocation under section 516(a)(4).

"(d) If, with respect to any fiscal year, a prime sponsor or project applicant provides non-Federal contributions for any program, service, or activity exceeding its requirements, such excess may be applied toward meeting the requirements for such contributions for the subsequent fiscal year under this part.

"(e) No State or unit of local government shall reduce its expenditures for child care programs by reason of assistance under this part.

"PART B—TRAINING, TECHNICAL ASSISTANCE, PLANNING, AND EVALUATION

"PRESERVICE AND INSERVICE TRAINING

"SEC. 531. The Secretary is authorized to make payments to provide financial assistance to enable individuals employed or preparing for employment in child care programs assisted under this title, including volunteers, to participate in programs of preservice or inservice training for professional and nonprofessional personnel, to be conducted by any agency carrying out a child care program, or any institution of higher education, including a community college, or by any combination thereof.

"TECHNICAL ASSISTANCE AND PLANNING

"SEC. 532. The Secretary shall, directly or through grant or contract, make technical assistance available to prime sponsors and to project applicants participating or seeking to participate in programs assisted under this title on a continuing basis to assist them in planning, developing, and carrying out child care programs.

"EVALUATION

"SEC. 533. (a) The Secretary shall, through the Office of Child Development unless the Secretary determines otherwise, make an evaluation of Federal involvement in child care activities and services, which shall include—

"(1) enumeration and description of all Federal activities which affect child care;

"(2) analysis of expenditures of Federal funds for such activities and services;

"(3) determination of the effectiveness of such activities and services;

"(4) the extent to which preschool, minority group, and economically disadvantaged children and their parents have participated in programs under this title; and

"(5) such recommendations to the Congress as the Secretary may deem appropriate.

"(b) The results of the evaluation required by subsection (a) of this section shall be reported to the Congress not later than eighteen months after the date of enactment of this title.

"(c) The Secretary shall establish such procedures as may be necessary to conduct an annual evaluation of Federal involvement in child care programs, and shall report the results of each such evaluation to Congress.

"(d) Prime sponsors and projects applicants assisted under this title and departments and agencies of the Federal Government shall, upon request by the Secretary, make available, consistent with other provisions of law, such information as the Secretary determines is necessary for purposes of making the evaluation required under subsection (c) of this section.

"(e) The Secretary may enter into contracts with public or private agencies, organizations, or individuals to carry out the provisions of this section.

"(f) The Secretary shall reserve for the purposes of this section not less than 1 per centum, and may reserve for such purposes not more than 2 per centum, of the amounts available under paragraphs (2) and (3) of section 503(a) of this title for any fiscal year.

"FEDERAL STANDARDS FOR CHILD CARE SERVICES

"SEC. 534. (a) Within six months after the enactment of the Economic Opportunity Amendments of 1971, the Secretary shall, after consultation with other Federal agencies and with the Committee established pursuant to subsection (c) of this section, promulgate a common set of program standards which shall be applicable to all programs providing child care services with Federal assistance under this title, to be known as the Federal Standards for Child Care Services. If the Secretary disapproves the Committee's recommendations, he shall state the reasons therefor.

"(b) The Federal Interagency Day Care Requirements, as approved by the Department of Health, Education, and Welfare, the Office of Economic Opportunity, and the Department of Labor on September 23, 1968, shall be applicable to all programs providing child care services with Federal assistance under this title.

"(c) The Secretary shall, within sixty days after enactment of this title, appoint a Special Committee on Federal Standards for Child Care Services, which shall include parents of children enrolled in child care programs, representatives of public and private agencies and organizations administering child care programs, and specialists and others interested in the care and development of children. Not less than one-half of the membership of the Committee shall consist of parents of children participating in programs conducted under section 222(a)(1) of this Act and title IV of the Social Security Act and part A of this title. Such Committee shall participate in the development of Federal Standards for Child Care Services and modifications thereof as provided in subsection (a).

"DEVELOPMENT OF UNIFORM MINIMUM CODE FOR FACILITIES

"SEC. 535. (a) The Secretary shall, within sixty days after enactment of the Economic Opportunity Amendments of 1971, appoint a special committee to develop a uniform minimum code for facilities, to be used in licensing child development facilities. Such standards shall deal principally with those matters essential to the health, safety, and physical comfort of the children and the relationship of such matters to the Federal Standards for Child Care Services under section 534.

"(b) The special committee appointed under this section shall include parents of children participating in child care programs and representatives of State and local licensing agencies, public health officials, fire prevention officials, the construction industry and unions, public and private agencies or organizations administering child care programs, and national agencies or organizations interested in the care and development of children. Not less than one-half of the membership of the committee shall consist of parents of children enrolled in programs conducted under section 222(a)(1) of this Act and title IV of the Social Security Act and part A of this title.

"(c) Within one year after its appointment, the special committee shall complete a proposed uniform minimum code for facilities and shall hold public hearings on the proposed code prior to submitting its final recommendation to the Secretary for his approval.

"(d) After considering the recommendations submitted by the special committee in accordance with subsection (c), the Secretary shall promulgate standards which shall be applicable to all facilities receiving Federal financial assistance under this title or in which programs receiving Federal financial assistance under this title are operated. If the Secretary disapproves the committee's recommendations, he shall state the reasons therefor. The Secretary shall also distribute such standards and urge their adoption by States and local governments. The Secretary may from time to time modify the uniform code for facilities in accordance with procedures set forth in this section.

"PART C—FACILITIES FOR CHILD CARE PROGRAMS

"MORTGAGE INSURANCE FOR CHILD CARE FACILITIES

"SEC. 541. (a) It is the purpose of this part to assist and encourage the provision of urgently needed facilities for child care programs.

"(b) For the purpose of this part—

"(1) The term 'child care facility' means a facility of a public or private profit or nonprofit agency or organization, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the provision of child care programs.

"(2) The terms 'mortgage', 'mortgagor', 'mortgagee', 'maturity date', and 'State' shall have the meanings respectively set forth in section 207 of the National Housing Act.

"(c) The Secretary of Health, Education, and Welfare is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon.

"(d) In order to carry out the purpose of this section, the Secretary of Health, Education, and Welfare is authorized to insure any mortgage which covers a new child care facility, including equipment to be used in its operation, subject to the following conditions:

"(1) The mortgage shall be executed by a mortgagor, approved by the Secretary of Health, Education, and Welfare, who demonstrate ability succesfully to operate one or more child care programs. The Secretary of Health, Education, and Welfare may in his discretion require any such mortgagor to be regulated or restricted as to minimum charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary of Health, Education, and Welfare may make such contracts with and acquire for not to exceed $100 such stock or interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the Child Care Facility Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary of Health, Education, and Welfare under the insurance.

"(2) The mortgage shall involve a principal obligation in an amount not to exceed $250,000 and not to exceed 90 per centum of the estimated replacement cost of the property or project, including equipment to be used in the operation of the child care facil-

ity, when the proposed improvements are completed and the equipment is installed.

"(3) The mortgage shall—

"(A) provide for complete amortization by periodic payments within such term as the Secretary of Health, Education, and Welfare shall prescribe, and

"(B) bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum on the principal obligation outstanding at any time as the Secretary of Health, Education, and Welfare finds necessary to meet the mortgage market.

"(4) The Secretary of Health, Education, and Welfare shall not insure any mortgage under this section unless he has determined that the child care facility to be covered by the mortgage will be in compliance with the Uniform Minimum Code for Facilities approved by the Secretary pursuant to section 535.

"(5) The Secretary of Health, Education, and Welfare shall not insure any mortgage under this section unless he has also received from the prime sponsor designated under part A of this title comments concerning the consistency of the facility with the prime sponsor's comprehensive child care plan.

"(6) In the plans for such child care facility, due consideration shall be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"(e) The Secretary of Health, Education, and Welfare shall fix and collect premium charges for the insurance of mortgages under this section which shall be payable annually in advance by the mortgagee, either in cash or in debentures of the Child Care Facility Insurance Fund (established by subsection (h)) issued at par plus accrued interest. In the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any one time, without taking into account delinquent payments or prepayments. In addition to the premium charge herein provided for, the Secretary of Health, Education, and Welfare is authorized to charge and collect such amounts as he may deem reasonable for the appraisal of a property or project during construction; but such charges for appraisal and inspection shall not aggregate more than 1 per centum of the original principal face amount of the mortgage.

"(f) The Secretary of Health, Education, and Welfare may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

"(g)(1) The Secretary of Health, Education, and Welfare shall have the same functions, powers, and duties (insofar as applicable) with respect to the insurance of mortgages under this section as the Secretary of Housing and Urban Development has with respect to the insurance of mortgages under title II of the National Housing Act.

"(2) The provisions of subsections (e), (g), (h), (j), (k), (l), and (n) of section 207 of the National Housing Act shall apply to mortgages insured under this section; except that, for the purposes of their application with respect to such mortgages, all references in such provisions to the General Insurance Fund shall be deemed to refer to the Child Care Facility Insurance Fund, and all references in such provisions to 'Secretary' shall be deemed to refer to the Secretary of Health, Education, and Welfare.

"(h)(1) There is hereby created a Child Care Facility Insurance Fund which shall be used by the Secretary of Health, Education, and Welfare as a revolving fund for carrying out all the insurance provisions of this section. All mortgages insured under this section shall be insured under and be the obligation of the Child Care Facility Insurance Fund.

"(2) The general expenses of the operations of the Department of Health, Education, and Welfare relating to mortgages insured under this section may be charged to the Child Care Facility Insurance Fund.

"(3) Moneys in the Child Care Facility Insurance Fund not needed for the current operations of the Department of Health, Education, and Welfare with respect to mortgages insured under this section shall be deposited with the Treasurer of the United States to the credit of such Fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States. The Secretary of Health, Education, and Welfare may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the Child Care Facility Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

"(4) Premium charges, adjusted premium charges, and appraisal and other fees received on account of the insurance of any mortgage under this section, the receipts derived from property covered by such mortgages and from any claims, debts, contracts, property, and security assigned to the Secretary of Health, Education, and Welfare in connection therewith, and all earnings on the assets of the Fund, shall be credited to the Child Care Facility Insurance Fund. The principal of, and interest paid and to be paid on, debentures which are the obligation of such Fund, cash insurance payments and adjustments, and expenses incurred in the handling, management, renovation, and disposal of properties acquired, in connection with mortgages insured under this section, shall be charged to such Fund.

"(5) In order to provide initial capital for the Child Care Facility Insurance Fund and to assure the soundness of such Fund thereafter, there are authorized to be appropriated such sums as may be necessary, in addition to any amounts which may be made available by the Secretary pursuant to section 503(a)(2) of this title.

"PART D—FEDERAL GOVERNMENT CHILD CARE PROGRAMS

"PROGRAM AUTHORIZED

"SEC. 546. (a) The Secretary is authorized to provide financial assistance for the purpose of establishing and operating child care programs (including the lease, rental, or construction of necessary facilities and the acquisition of necessary equipment and supplies) for the children of employees of the Federal Government.

"(b) Employees of any Federal agency or group of such agencies employing eighty or more working parents of young children who desire to participate in a program under this part shall—

"(1) designate or create for the purpose an agency child care committee, the membership of which shall be broadly representative of the working parents employed by the agency or agencies; and

"(2) submit to the Secretary a plan approved by the official in charge of such agency or agencies, which—

"(A) provides that the child care program shall be administered under the direction of the agency child care committee;

"(B) provides that the program will meet the Federal Standards for Child Care Services promulgated under section 534 of this title;

"(C) provides a means of determining priority of eligibility among parents wishing to use the services of the program;

"(D) provides for a scale of fees based upon the parents' financial status; and

"(E) provides for competent management, staffing, and facilities for such program.

"(c) The Secretary shall not make payments under this section unless he has received approval of the plan from the official in charge of the agency whose employees will be served by the child care program.

"PAYMENTS

"SEC. 547. (a) Not more than 80 per centum of the total cost of child care programs under this part shall be paid from Federal funds available under this title.

"(B) The share of the total cost not available under paragraph (a) may be provided through public or private funds and may be in the form of cash, goods, services, or facilities (or portions thereof that are used for program purposes), reasonably evaluated, fees collected from parents, or union or employer contributions.

"(c) If, in any fiscal year, a program under this part provides non-Federal contributions exceeding its requirements under this section, such excess may be used to meet the requirements for such contributions for the succeeding fiscal year.

"(d) In providing financial assistance under this part, the Secretary shall, insofar as feasible, distribute funds among the States according to the same ratio as the number of Federal employees in that State bears to the total number of Federal employees in the United States.

"PART E—RESEARCH AND DEMONSTRATION

"DECLARATION OF PURPOSES

"SEC. 551. The purposes of this part are to focus national research efforts to attain a fuller understanding of the processes of child development and the effect of organized programs upon these processes; to develop effective programs for research into child development; and to assure that the result of research and development efforts are reflected in the conduct of programs affecting children through the improvement and expansion of child care and related programs.

"RESEARCH AND DEMONSTRATION PROJECTS

"SEC. 552. (a) In order to further the purposes of this part, the Secretary shall carry out a program of research and demonstration projects, which shall include but not be limited to—

"(1) research to determine the nature of child development processes and the impact of various influences upon them, to develop techniques to measure and evaluate child development, to develop standards to evaluate professional and paraprofessional child care personnel, and to determine how child care and related programs conducted in either home or institutional settings affect child development processes;

"(2) research to test alternative methods of providing child care and related services, and to develop and test innovative approaches to achieve maximum development of children;

"(3) evaluation of research findings and the development of these findings and the effective application thereof;

"(4) dissemination and application of research and development efforts and demonstration projects to child care and related programs and early childhood education, using regional demonstration centers and advisory services where feasible;

"(5) production of informational systems and other resources necessary to support the activities authorized by this part; and

"(6) integration of national child development research efforts into a focused national research program, including the coordination of research and development conducted

by other agencies, organizations, and individuals.

"(b) In order to carry out the program provided for in subsection (a), the Secretary is authorized to make grants to or enter into contracts or other arrangements with public or private nonprofit agencies (including other Government agencies), organizations, and institutions, and to enter into contracts with private agencies, organizations, institutions, and individuals.

"COORDINATION OF RESEARCH

"SEC. 533. (a) Funds available to any Federal department or agency for the purposes stated in section 551 or the activities stated in section 552(a) shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Secretary for such use as is consistent with the purposes for which such funds were provided, and the funds so transferred shall be expendable by the Secretary for the purposes for which the transfer was made.

"(b) The Secretary shall coordinate, through the Office of Child Development established under section 572 of this title, all child development research, training, and development efforts conducted within the Department of Health, Education, and Welfare and, to the extent feasible, by other agencies, organizations, and individuals.

"(c) A Child Care and Development Research Council, consisting of a representative of the Office of Child Development established under section 572 of this title (who shall serve as chairman), and representatives from the Federal agencies administering the Social Security Act and the Elementary and Secondary Education Act of 1965 and from the National Institute of Mental Health, the National Institute of Child Health and Human Development, the Office of Economic Opportunity, the Department of Labor, and other appropriate agencies, shall meet at least annually and at such more frequent times as they may deem necessary, in order to assure coordination of child care and development and related activities under their respective jurisdictions and to carry out the provisions of this part so as to assure—

"(1) maximum utilization of available resources through the prevention of duplication of activities;

"(2) a division of labor, insofar as is compatible with the purposes of each of the agencies or authorities specified in this paragraph, to assure maximum progress toward the achievement of the purposes of this part; and

"(3) recommendation of priorities for federally funded research and development activities related to the purposes of this part and those stated in section 501.

"ANNUAL REPORT

"SEC. 554. The Secretary shall make an annual report to Congress summarizing his activities and accomplishments during the preceding year under this part; the grants, contracts, or other arrangements entered into during the preceding year under this part, and making such recommendations as he may deem appropriate.

"PART F—GENERAL PROVISIONS

"DEFINITIONS

"SEC. 571. As used in this title, the term—

"(1) 'Secretary' means the Secretary of Health, Education, and Welfare;

"(2) 'State' means the several States and the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"(3) 'child care programs' means programs provided on a full-day or part-day basis which provide the educational, nutritional, social, medical, psychological, and physical services needed for children to attain their full potential;

"(4) 'children' means individuals who have not attained the age of fifteen;

"(5) 'economically disadvantaged children' means any children of a family having an annual income below the lower living standard budget (adjusted for regional and metropolitan, urban, and rural differences, and family size), as determined annually by the Bureau of Labor Statistics of the Department of Labor;

"(6) 'handicapped children' includes mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services;

"(7) 'program' includes, but is not limited to, any program, service, or activity, which is conducted full or part time, in child care facilities, in schools, in neighborhood centers, or in homes, and includes child care services for children whose parents are working or receiving education or training;

"(8) 'parent' means any person who has day-to-day parental responsibility for any child;

"(9) 'single parent' means any person who has sole day-to-day responsibility for any child;

"(10) 'working mother' means any mother who requires child care services in order to undertake or continue full- or part-time work, training, or education, outside her home;

"(11) 'minority group' includes, but is not limited to, persons who are Negro, American Indian, Spanish-surnamed American, Portuguese, or Oriental, and, as determined by the Secretary, children who are from environments in which a dominant language is other than English and who, as a result of language barriers, do not have an equal educational opportunity, and, for the purpose of this paragraph, Spanish-surnamed Americans include persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry;

"(12) 'bilingual' includes, but is not limited to, persons who are Spanish surnamed, American Indian, Oriental, Portuguese, or others who have learned during childhood to speak the language of the minority group of which they are members and who, as a result of language barriers, do not have an equal educational opportunity;

"(13) 'local educational agency' means any such agency as defined in section 801(f) of the Elementary and Secondary Education Act of 1965;

"(14) 'institution of higher education' means any such institution as defined in section 1201(a) of the Higher Education Act of 1965.

"OFFICE OF CHILD DEVELOPMENT

"SEC. 572. The Secretary shall take all necessary action to coordinate child care programs under his jurisdiction. To this end, he shall establish within the Department of Health, Education, and Welfare an Office of Child Development, administered by a Director, which shall be the principal agency of the Department for the administration of this title and for the coordination of programs and other activities relating to child care.

"NUTRITION SERVICES

"SEC. 573. In accordance with the purposes of this title, the Secretary of Health, Education, and Welfare shall establish procedures to assure that adequate nutrition services will be provided in child care programs under this title. Such services shall make use of the Special Food Service Program for children as defined under section 13 of the National School Lunch Act of 1946 and the Child Nutrition Act of 1966, to the fullest extent appropriate and consistent with the provisions of such Acts.

"SPECIAL PROVISIONS

"SEC. 574. (a) The Secretary may make such grants, contracts, or agreements, establish such procedures, policies, rules, and regulations, and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this title, as he may deem necessary to carry out the provisions of this title, including necessary adjustments in payments on account of overpayments or underpayments. Subject to the provisions of section 575, the Secretary may also withhold funds otherwise payable under this title in order to recover any amounts expended in the current or immediately prior fiscal year in violation of any provision of this title or any term or condition of assistance under this title.

"(b) The Secretary shall prescribe regulations to assure that programs under this title have adequate internal administrative controls, accounting requirements, personnel standards, evaluation procedures, and other policies as may be necessary to promote the effective use of funds.

"(c) The Secretary shall not provide financial assistance for any program, service, or activity under this title unless he determines that persons employed thereunder, other than persons who serve without compensation, shall be paid wages which shall not be lower than whichever is the highest of (A) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 206), if section 6(a)(1) of such Act applied to the participant and if he were not exempt under section 13 thereof, (B) the State or local minimum wage for the most nearly comparable covered employment, or (C) the prevailing rates of pay for persons employed in similar occupations by the same employer.

"(d) The Secretary shall not provide financial assistance for any program under this title which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be engaged, in any way or to any extent, in the conduct of political activities in contravention of section 603 of this Act.

"(e) The Secretary shall not provide financial assistance for any program under this title unless he determines that no funds will be used for and no person will be employed under the program on the construction of so much of any facility as is for use for sectarian instruction or as a place for religious worship or on the operation or maintenance of any facility other than in connection with the use of such facility for child care programs.

"(f) A child participating in a program assisted under this title shall not be required to undergo medical or psychological examination (except to the extent related to learning ability), immunization (except to the extent necessary to protect the public from epidemics of contagious diseases), or treatment, if his parent or guardian objects thereto in writing on religious grounds.

"WITHHOLDING OF GRANTS

"SEC. 575. Whenever the Secretary, after reasonable notice and opportunity for a hearing for any prime sponsor or project applicant, finds—

"(1) that there has been a failure to comply substantially with any requirement set forth in the plan of any such prime sponsor approved under section 516; or

"(2) that there has been a failure to comply substantially with any requirement set forth in the application of any such project applicant approved pursuant to section 517; or

"(3) that in the operation of any program or project carried out by any such prime sponsor or project applicant under this title there is a failure to comply substantially

with any applicable provision of this title or regulation promulgated thereunder;

the Secretary shall notify such prime sponsor or project applicant of his findings and that no further payments may be made to such sponsor or applicant under this title (or in his discretion that any such prime sponsor shall not make further payments under this title to specified project applicants affected by the failure) until he is satisfied that there is no longer any such failure to comply, or the noncompliance will be promptly corrected. The Secretary may authorize the continuation of payments with respect to any project assisted under this title which is being carried out pursuant to such plan or application and which is not involved in the non-compliance.

"ADVANCE FUNDING

"SEC. 576. (a) For the purpose of affording adequate notice of funding available under this title, such funding for grants, contracts, or other payments under this title is authorized to be included in the appropriations Act for the fiscal year preceding the fiscal year for which they are available for obligation.

"(b) In order to effect a transition to the advance funding method of timing appropriation action, subsection (a) shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the current fiscal year and one for the succeeding fiscal year.

"PUBLIC INFORMATION

"SEC. 577. Applications for designation as prime sponsors, comprehensive child care plans, project applications, and all written material pertaining thereto shall be made readily available without charge to the public by the prime sponsor, the applicant, and the Secretary.

"FEDERAL CONTROL NOT AUTHORIZED

"SEC. 578. No department, agency, officer, or employee of the United States shall, under authority of this title, exercise any direction, supervision, or control over, or impose any requirements or conditions with respect to, the personnel, curriculum, methods of instruction, or administration of any educational institution.

"NONDISCRIMINATION PROVISIONS

"SEC. 579. (a) The Secretary shall not provide financial assistance for any program under this title unless the grant, contract, or agreement with respect to such program specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

"(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with, any program or activity receiving assistance under this title. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if on the ground of sex that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program or activity receiving assistance under this title.

"LIMITATION ON RESEARCH AND EXPERIMENTATION

"SEC. 580. The Secretary is directed to establish appropriate procedures to ensure that no child shall be the subject of any research or experimentation under this title other than routine testing and normal program evaluation unless the parent or guardian of such child is informed of such research or experimentation and is given an opportunity as of right to except such child therefrom.

"PARENTAL RESPONSIBILITY

"SEC. 581. Nothing in this title shall be construed or applied in such a manner as to infringe upon or usurp the moral and legal rights and responsibilities of parents or guardians with respect to the moral, mental, emotional, or physical development of their children. Nor shall any section of this title be construed or applied in such a manner as to permit any invasion of privacy otherwise protected by law, or to abridge any legal remedies for any such invasion which are otherwise provided by law."

(b) In order to achieve, to the greatest degree feasible, the consolidation and coordination of programs providing child care services, while assuring continuity of existing programs during transition to the programs authorized under this title, the Economic Opportunity Act of 1964 is amended, effective July 1, 1974, as follows:

(1) Section 222(a)(1) of such Act is repealed.

(2) Section 162(b) of such Act is amended by inserting after "day care for children" the following: "(wherever feasible, through child care programs under title V of this Act)".

(3) Section 123(a)(6) of such Act is amended by inserting after "day care for children" the following: "(wherever feasible, through child care programs under title V of this Act)".

(4) Section 312(b)(1) of such Act is amended by inserting after "day care for children" the following: "(wherever feasible, through child care programs under title V of this Act)".

(c) The Director of the Office of Economic Opportunity and the Secretary of Health, Education, and Welfare shall take all necessary steps to coordinate programs under their jurisdictions which provide day care, with a view to establishing, insofar as possible, a common set of program standards and regulations, and mechanisms for coordination at the State and local levels.

(d)(1) Section 203(j)(1) of the Federal Property and Administrative Services Act of 1949 is amended by striking out "or civil defense" and inserting in lieu thereof "civil defense, or the operation of child care facilities".

(2) Section 203(j)(3) of such Act is amended—

(A) by striking out, in the first sentence, "or public health" and inserting in lieu thereof "public health, or the operation of child care facilities",

(B) by inserting after "handicapped," in clause (A) and clause (B) of the first sentence the following: "child care facilities,", and

(C) by inserting after "public health purposes" in the second sentence the following: ", or for the operation of child care facilities,".

(3) Section 203(j) of such Act is amended by adding at the end thereof the following new paragraph:

"(8) The term 'child care facility' means any such facility as defined in 541(b)(1) of the Economic Opportunity Act of 1964."

By Mr. MONDALE (for himself, Mr. KENNEDY, Mr. BEALL, Mr. CRANSTON, Mr. HUGHES, Mr. JAVITS, Mr. MAGNUSON, Mr. NELSON, Mr. PACKWOOD, Mr. PELL, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENSON, Mr. WEICKER, Mr. WILLIAMS, and Mr. EAGLETON):

S.J. Res. 206. A joint resolution relating to sudden infant death syndrome. Referred to the Committee on Labor and Public Welfare.

Mr. MONDALE. Mr. President, I am pleased to introduce today with Mr. KENNEDY, Mr. BEALL, Mr. CRANSTON, Mr. HUGHES, Mr. JAVITS, Mr. MAGNUSON, Mr. NELSON, Mr. PACKWOOD, Mr. PELL, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENSON, Mr. WEICKER, and Mr. WILLIAMS a resolution which I hope will stimulate a major initiative to solve one of the most tragic and perplexing problems that threaten American families—crib death or sudden infant death syndrome.

Crib death takes the lives of an estimated 10,000 infants in this country each year. It is the leading cause of death of infants between 1 month and 1 year old, striking three out of every 1,000 children born in this country.

The families of the innocent children who die of SIDS suffer not only the heartbreak associated with the death of any loved one; but also the anguish of accepting a death with no known cause and explaining it to their relatives, friends and the public officials who question them about it.

On January 25th, the Subcommittee on Children and Youth, which I have the privilege to chair, held a hearing on SIDS. I was shocked and ashamed to learn that the Federal Government's concern about this major killer of infants is so low that experts cannot even agree on its incidence.

I listened to the stories of parents who had lost children to SIDS; who could not at first help blaming themselves for the death of their child; and who were even accused by public officials of negligence or criminal behavior. And then I was told by official of HEW that currently only one medical research grant—in the amount of $46,258—is directed specifically to discovering the cause of SIDS.

The testimony at the hearing convinced me that we must marshal all the available resources of medical technology and expertise to seek the cause and cure of SIDS. We must actively encourage researchers to work in this field, and train qualified researchers if an adequate number is not available.

But medical research can be a slow and painstaking process, and meanwhile we know that thousands of families who have already lost children or who will lose children to SIDS will continue to suffer.

We also have an obligation to relieve their suffering by making available information about SIDS; by educating professionals who come in contact with SIDS cases about the needs of stricken families. Until the day when we can offer families the consolation of an explanation of why their child died, we must make a special effort to humanize the procedures surrounding the death.

Mr. BEALL. Mr. President, I am pleased today to join the Senator from Minnesota (Senator MONDALE) and oth-

er Senators in the introduction of legislation to concentrate our Nation's resources into medical research on sudden infant death syndrome.

Death is indeed tragic for any family, however when the death occurs to a robust, healthy and obviously well cared for infant, put to bed only a few hours earlier, it is particularly tragic. This mysterious killer, sudden infant death syndrome—SIDS—more commonly called crib or cot death is especially tragic because of the psychological effects on the parents, faced by a sudden, unexpected death, tormented by guilt feelings.

The hearings held by our Subcommittee on Children and Youth on Tuesday, January 25 revealed that research has begun, theories have been advanced, however, very little is still known. It is for that reason that I rise in support of this legislation, not only to bring a focus to this disease, but also to encourage a concerted effort into research and education of the public on sudden infant death syndrome.

Mr. PACKWOOD. Mr. President, I rise today with my distinguished colleague from Minnesota (Mr. MONDALE) as a cosponsor of Senate Joint Resolution 206 to express the sense of the Congress that high priority attention be given to the tragic and unexplained sudden infant death syndrome, frequently referred to as crib death.

My personal interest in this mysterious killer began years ago when close friends lost a dearly loved infant to sudden infant death syndrome—SIDS. At that time, I became aware of the lack of information and research about SIDS, and the need for counseling services and community understanding of this unique tragedy. I sponsored the first legislation to provide earmarked funds for SIDS research at the University of Oregon Medical School. This in spite of the fact that even then SIDS was causing hundreds of deaths per year in Oregon.

The Senate took a large and important step forward on January 25 when the Children and Youth Subcommittee, chaired by my distinguished colleague from Minnesota, and on which I am honored to serve, held a hearing on sudden infant death syndrome. Too few realize that SIDS is the single largest killer of infants after the first week of life, and is second only to accidents as the cause of death in children up to age 15. As I indicated on January 25, the heavy burden of sudden infant death is one which has for too long been carried by the parents alone, with little or no understanding from friends or doctors, and frequently with actual suspicion from the community. The burden of losing a child to unknown causes has been a particularly lonely and tragic experience.

This terrible killer of children, whatever it is—virus, environmental factor, respiratory reaction to cold, or some other physiological factor—has apparently been with us since antiquity but we have failed to recognize the real extent of its danger. One of the major difficulties in coping with SIDS is its mysterious nature. In fact, the deaths of children from this syndrome are so mysterious that many physicians and medico-legal personnel fail to recognize the syndrome at all and this ignorance adds immeasurably to the tragedy of the deaths.

Typically, a child is left asleep in a warm, comfortable crib and when the parents return, either during the night to check on the child as all parents do or on arising in the morning to begin the days activities, the child is discovered dead in its crib. Usually no outcry is heard, no whimper or calls to signal distress of any kind or to alert the parents to a difficulty. The child dies mysteriously and swiftly. The misplaced remorse and self-generated guilt which too frequently occur in the parents of these children often are a severe and persistent aftermath of the death.

The attempts to study this disease have followed a pattern with which we are becoming all too familiar. In the absence of public—and professional—recognition of the extent of these sudden infant deaths and the resulting failure to develop widespread interest in the problem, research has been limited to the efforts of a small but devoted group of men and women. Two symposia have been held to exchange ideas on SIDS. However, one can hardly refer to these symposia as major events since so few research workers are aware that they were held and what is even more dismaying—the symposia were held 5 years apart. Progress has been so slow that it has not even been possible for research workers to join together to exchange new information any more frequently than twice in the last 8 years. Let me hasten to add that it is not to the discredit of the researchers involved that so little progress was made or that the vitally needed exchange of information was limited to these distantly separated instances. The problem has been one of an inadequate allocation of resources and resource manpower to a real and continuing problem.

It is always difficult to try and reduce our concern with public health problems to an impersonal evaluation of priorities but we almost invariably find ourselves led to this type of consideration. In this instance, we should be aware that SIDS causes the death of more than 10,000 apparently normal and healthy infants each year. Some estimates place the total much higher, but our information is so poor in terms of the actual identification of the incidence of the disease that 10,000 deaths has been offered as a conservative estimate. When we consider that SIDS causes a total number of deaths greater than one-sixth of all infant mortalities each year we begin to realize the enormity of this toll. It is apparently because of the mysterious and unexpected nature of these infant deaths that we have failed to appreciate the real significance of the problem.

The death of a small child or infant is always an extremely traumatic experience for the parents. Many of us have some familiarity with or can imagine this type of sad experience from events in our own circle of relatives or from our associations with friends and neighbors. In the case of SIDS, however, it is a particularly shocking fact to learn that, in many instances, the parents who lose a child to SIDS also may be subjected to proceedings normally associated with suspected criminal behavior. We have learned only recently, during hearings before our Subcommittee on Children and Youth, that it is not at all uncommon for parents who have lost a child to SIDS to be subjected to police investigation and the harrowing experience of a coroner's jury. Too often, the reaction of law enforcement personnel, and even physicians, is one which adds to the burden of guilt confronting the parent. Social scientists tell us that when a child dies under unexpected and mysterious circumstances a natural reaction of the parents is to blame themselves. When no satisfactory explanation for the death is available, and a police investigation is involved, many parents frequently find it very difficult to absolve themselves of guilt. This feeling of guilt when added to the emotional burden produced by the loss of an infant is often unbearable and leads to a need for kind and intelligent counseling. Tragically, guidance and comfort, and a careful explanation of the sequence of events associated with SIDS, are frequently not available in any form.

It is apparent to me that we are faced with a serious and unexplained disease of environmental factor which is producing an unusually large number of infant deaths. Associated with these deaths is the psychiatric toll which the parents of these children suffer. It is also obvious that information about these deaths is not being made available to the public to the extent required to alleviate the social problems associated with the deaths.

The resolution which I am cosponsoring today with my distinguished colleague from Minnesota (Mr. MONDALE) would support the commitment of our medical research establishment to the definite and immediate objective of finding the cause of SIDS and a method of preventing these deaths. This commitment would be given a high priority and the resources to procure a truly meaningful effort. Additionally, the resolution would provide for the wide dissemination of information concerning SIDS so that all medical, emergency service, law enforcement, and medico-legal personnel would become familiar with the disease and thus be able to provide the needed support to families subjected to the loss. And finally, we need to acknowledge the needs of families and provide help in the form of social services for guidance and counseling as necessary to help them adjust to their loss. Although there is no way of preventing the infant deaths at the moment, it is known that social counseling can alleviate and often prevent many of the emotional problems which frequently affect the parents as well as other members of the family and the surrounding community.

Mr. President, this joint resolution is

intended to focus attention upon and provide for the solution of SIDS, and I truly hope it will be given immediate and unanimous support by the Senate.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2345

At the request of Mr. HATFIELD, the Senator from California (Mr. TUNNEY) was added as a cosponsor of S. 2345, a bill to amend the Internal Revenue Code of 1954 to allow an income tax deduction for donations of blood.

S. 1819

At the request of Mr. BROCK, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 1819, to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

S. 2956

At the request of Mr. JAVITS, the Senator from Maryland (Mr. MATHIAS) and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 2956, the War Powers Act.

S. 3127

At the request of Mr. MONDALE, the Senator from Oklahoma (Mr. HARRIS), the Senator from California (Mr. CRANSTON), the Senator from Maine (Mr. MUSKIE), the Senator from California (Mr. TUNNEY), the Senator from Illinois (Mr. PERCY), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Rhode Island (Mr. PASTORE), were added as cosponsors of S. 3127, a bill to amend title XVIII of the Social Security Act to eliminate the monthly premium requirements for individuals covered under the supplementary medical insurance program established by part B of such title.

SENATE JOINT RESOLUTION 8

At the request of Mr. BAYH, the Senator from Delaware (Mr. ROTH) was added as a cosponsor of Senate Joint Resolution 8, proposing an amendment to the Constitution providing for equal rights for men and women.

SENATE JOINT RESOLUTION 171

At the request of Mr. MATHIAS, the Senator from Pennsylvania (Mr. SCOTT), the Senator from Texas (Mr. TOWER), the Senator from Idaho (Mr. CHURCH), the Senator from New Jersey (Mr. CASE), and the Senator from California (Mr. CRANSTON) were added as cosponsors of Senate Joint Resolution 171, designating March 1972 as "Exceptional Children's Month."

SOCIAL SECURITY AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 895

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

Mr. PEARSON. Mr. President, on behalf of the Senator from Missouri (Mr. EAGLETON) and myself, I offer today an amendment to H.R. 1, providing persons 65 or older a phased annual tax credit of up to $300 for property taxes or rent paid on their residence.

Mr. President, the 3,500 delegates who participated in the recently concluded White House Conference on Aging have placed the ball in our court. Congress must now consider the many thoughtful and well-defined proposals which the Conference offered in behalf of the Nation's 20 million senior citizens.

Among these recommendations are those which could provide older Americans assistance in lessening tax burdens, including a specific provision for property tax relief. Such a proposal is highly desirable, for one of the most acute problems facing many older Americans upon retirement is whether they will be allowed to keep and properly maintain their homes. Statistics have shown that approximately two-thirds of all citizens over 65 own their homes and pay property taxes to the State in which they reside, including over 80 percent of the elderly in my own State of Kansas. Further statistics reveal that the costs of homeownership amount to well over 30 percent of a retired couple's budget, making many senior citizens "house poor."

Yet, Mr. President, statistics can never fully describe the tragedy and the heartbreak which can result when retired homeowners of moderate or low income, who have labored for years to purchase and pay for their property, are forced to use their savings or go into debt to meet rising property taxes. Nor can any amount of statistics convince the elderly of the equity in a tax system so demanding that the only alternative to rising property taxes and other household expenses may be a quick sale of a home to those better able to afford it.

Congress should act to correct this matter of great concern to senior citizens. This amendment can help end this problem, and I urge its favorable consideration.

Our amendment is similar to a bill I offered earlier in the 92d Congress. It is identical to an amendment which Senator EAGLETON, myself, and others offered to the Revenue Act of 1971. The Senate approved this proposal by a convincing margin, but it was later deleted in conference due to a technicality. If adopted, this measure would provide the homeowner over 65 up to $300 tax credit for property taxes paid on his residence. Additionally, renters would be allowed to apply for a credit of up to 25 percent of the rent they pay each year. Full eligibility for the credit would be limited to homeowners earning less than an annual gross income of $6,500 per year, or $3,250 per year for an individual filing a separate return. Eligibility beyond the limitation would be reduced by an amount equal to earnings in excess of the limitation, thereby excluding an elderly couple making over $6,800 per year from the provisions of this amendment.

Mr. President, older Americans deserve the privilege of living their retirement years in the peace and security of their own homes. Yet there is no more ominous threat to their future as homeowners than the ever rising, inequitable, and increasingly unjustifiable property tax. I hope that Congress can approve this amendment to H.R. 1 as a step toward easing this crushing burden on the backs of this Nation's older Americans.

Mr. EAGLETON. Mr. President, on May 6, 1971, I introduced a bill (S. 1960) to provide a property tax credit for the elderly.

On November 20, the Senate, by a vote of 65 to 19, adopted my proposal as an amendment to H.R. 10947, the Revenue Act of 1971. My amendment was cosponsored by 15 Senators, including the Senator from Kansas (Mr. PEARSON).

Despite statements of concern about the property tax burden on older Americans, the administration did not support my amendment, and it was dropped from the bill by the conference committee.

I am pleased today to join with the Senator from Kansas in submitting this property tax credit proposal as an amendment to H.R. 1, the Social Security Amendments of 1971.

Obviously, this proposal is not a total answer to the property tax burden. But those ultimate answers—new methods of financing public education and reform of property tax systems—will not be realized tomorrow or the day after tomorrow. And, while we work toward those basic reforms, the elderly will continue to receive their property tax bills.

The Pearson-Eagleton amendment would provide approximately $225 million next year to ease the property tax burden on those elderly persons of moderate means who pay a Federal income tax.

This would be accomplished by means of a tax credit of up to $300 against property taxes paid on an owner-occupied residence or against 25 percent of rent paid on a personal residence. The tax credit would be available to those 65 or over who have adjusted gross incomes of $6,500 or less.

The people who would benefit from this tax credit have been paying taxes—Federal, State, and local—for more than 40 years. I believe the Federal Government can afford to give them this measure of relief from the burden of taxation on their homes during their later years.

Mr. President, I join with the Senator from Kansas in urging that the Senate again evidence its commitment to property tax relief for the elderly by the adoption of this amendment.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 896 THROUGH 902

(Ordered to be printed and to lie on the table.)

Mr. WILLIAMS (for himself and Mr. JAVITS) submitted seven amendments intended to be proposed by them jointly to the bill (S. 2515) to further promote equal employment opportunities for American workers.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENTS NOS. 800 AND 801

At the request of Mr. EAGLETON, the Senator from California (Mr. CRANSTON) was added as a cosponsor of Amendments Nos. 800 and 801 intended to be proposed to the bill (H.R. 1), the Social Security Amendments of 1971.

AMENDMENT NO. 874

At the request of Mr. BAYH, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Oklahoma (Mr. HARRIS), and the Senator from Maine (Mr. MUSKIE) were added as cosponsors of Amendment No. 874 intended to be proposed to S. 659, the Education Amendments of 1971.

ADDITIONAL COSPONSORS OF RESOLUTIONS

SENATE RESOLUTION 180

At the request of Mr. RIBICOFF, the Senator from Indiana (Mr. HARTKE) was added as a cosponsor of Senate Resolution 180, calling for an end to the violence and bloodshed in Northern Ireland.

SENATE RESOLUTION 202

At the request of Mr. MATHIAS, the Senator from Tennessee (Mr. BAKER) was added as a cosponsor of Senate Resolution 202 relating to NATO.

SENATE RESOLUTION 232

At the request of Mr. CHILES, the Senator from South Carolina (Mr. THURMOND) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of Senate Resolution 232, expressing the sense of the Senate that the remainder of the amount appropriated for the rural electrification program for fiscal 1972 be released immediately by the Office of Management and Budget.

NOTICE OF HEARINGS ON CONTINUATION OF AUTHORITY FOR REGULATION OF EXPORTS

Mr. MONDALE. Mr. President, I wish to announce that the Subcommittee on International Finance of the Committee on Banking, Housing and Urban Affairs will hold hearings on S. 1487, a bill to provide for continuation of authority for regulation of exports.

Hearings will be held on Monday and Tuesday, March 13 and 14, 1972, and will commence at 10 a.m. each day in room 5302, New Senate Office Building.

Persons wishing to testify or to submit written statements for the record on this legislation should contact Mr. Paul A. London, room 5300, New Senate Office Building, Washington, D.C. 20510; telephone 225-7391.

ADDITIONAL STATEMENTS

COMMITTEE ON PUBLIC WORKS HAD A PRODUCTIVE YEAR IN 1971

Mr. RANDOLPH. Mr. President, over the years the legislative and oversight responsibilities of the Committee on Public Works have grown considerably in both scope and magnitude. At one time our responsibilities, important as they were, were relatively limited. The development of the American society and the changes in its character, however, have contributed to the growing workload of this and all other congressional committees.

As a result, the Committee on Public Works is today active in a number of diverse fields, all of which have a direct bearing on the lives of our citizens.

During 1971, the committee experienced one of its busiest and most productive legislative years. We developed major legislation relating to economic development, water resource development, and disaster relief, all of which have become law. In addition, the committee developed important new legislation to combat water pollution, which was passed by the Senate and is now pending in the House of Representatives. Preliminary work was carried forward in preparation of new legislative proposals to be considered in 1972.

In the course of its activities last year, the Committee on Public Works conducted 72 days of hearings, both in Washington, D.C. and in various other locations throughout the United States. Throughout all of our work, I was gratified by the diligence and seriousness of purpose by members of the committee. I am particularly gratified by the interest and involvement of Senators who first joined the Committee on Public Works in 1971. They and our more experienced members all contributed significantly to the committee's accomplishments during the first session of the 92d Congress.

The support provided by the committee staff was of high quality and enabled members to carry out their duties in an effective manner.

Mr. President, I now discuss in detail the work of the Committee on Public Works during 1971, by subcommittee and by other committee activities:

SUBCOMMITTEE ON FLOOD CONTROL—RIVERS AND HARBORS

The major legislative activities of the Subcommittee on Flood Control—Rivers and Harbors was the development of a river basin monetary authorizations and miscellaneous civil works bill. This bill, S. 2887, became law on December 23—Public Law 92-222.

This act authorized the appropriation of $628 million for the initiation and continuation of construction of previously approved water resource projects and programs. It also approved a number of modifications and additions to existing river and harbor law and procedures, and authorized construction of the Whiteoak Creek, Ohio, flood control project, a unit in the recommended plan for development of the water resources of Appalachia, at an estimated Federal cost of $40 million.

In other action during 1971, the subcommittee approved for construction by the Corps of Engineers, under the provisions of section 201 of the 1965 Flood Control Act, nine water resource projects having a total estimated Federal cost of $25 million.

Thirteen watershed projects having a total estimated Federal cost of $32 million were approved for construction by the Soil Conservation Service under the provisions of Public Law 83-566.

The subcommittee adopted 39 resolutions directing the Chief of Engineers to investigate various flood control, navigation, and beach erosion problems, brought to the committee's attention by Members of the Senate, and to report back to the committee with recommendations concerning the advisability of authorizing works of improvement.

On July 27, the subcommittee held a hearing on the effect of channelization on the environment. Testimony was received from the Federal agencies engaged in the improvement of streams and waterways in the interest of flood control and allied purposes, as well as from environmental groups. The effects of dredging and stream modification on man's environment were discussed. The information developed and the material included in the public record on this important and timely subject will be helpful, not only to the committee, but to other interested groups and individuals as well.

SUBCOMMITTEE ON AIR AND WATER POLLUTION

A major responsibility of the Committee on Public Works concerns air, water, and land pollution. The committee is increasingly involved in legislative efforts to clean up pollution and to protect air, water, and land resources from further damage.

During 1971, the committee continued to press for legislation to control existing sources of pollution and to develop a broader policy for use of air, water, and land. In these efforts, initial responsibility rested with the Subcommittee on Air and Water Pollution.

The most urgent problem facing the subcommittee as the Congress convened was the Federal water pollution control program. Authority under the Clean Water Restoration Act of 1966 was to expire on June 30, 1971.

In addition, the Federal program authority and personnel had been transferred by reorganization plan No. 3 from the Department of the Interior to the newly created Environmental Protection Agency on December 2, 1970.

Consequently, the subcommittee began its work in early February with 3 days of oversight hearings into the status of the Federal program. The occasion marked the first appearance before the subcommittee of William D. Ruckelshaus as the EPA Administrator.

On March 15, the subcommittee opened a series of public hearings in Washington, D.C., on 18 Senate bills concerning water pollution control. These hearings extended from March 15 through March 19 and continued on March 22 and March 23.

During April, May, and June of 1970, the subcommittee has devoted 14 days of public hearings to 12 Senate water pollution bills. A busy schedule for clean air and solid waste legislation had prevented development of a water pollution bill for Senate action.

The subcommittee next held field hearings March 26 at Rehoboth Beach, Del., on problems of ocean dumping; April 2 at Kansas City, Mo., on problems of agricultural runoff, and April 5 at New

Orleans, La., on problems of petrochemical wastes and deepwell disposal.

The study of particular problems in water pollution control was continued on May 13 and 14 when the subcommittee's panel on science and technology held public hearings in Washington, D.C., on the technology of waste water treatment and related issues.

The subcommittee concluded its 1971 series of water pollution control hearings on June 16 in Washington, D.C. Dr. Jacques Piccard, the Swiss oceanographer, was the sole witness at a special hearing on problems of ocean dumping.

The results of nearly 18 months of study and public hearings began to take shape during the summer months. On August 5, the subcommittee reported to the Committee on Public Works a clean bill proposing major changes in the controls and funding of the Federal program.

The subcommittee's bill was amended and improved by the committee, then ordered reported to the Senate floor on October 19, 1971. The Senate approved S. 2770, the Federal Water Pollution Control Act Amendments of 1971 by a vote of 86 to 0 on November 2, 1971.

The Senate bill, now pending in the House Committee on Public Works, was based upon 33 days of hearings, the testimony of 171 witnesses, 470 written statements, 6,400 pages of testimony, and 45 executive sessions of the subcommittee and committee.

In other action during 1971, the subcommittee took up two other problems associated with air, water, and land pollution. The first of these is the lack of adequate research and data on environmental pollution. The other is the possibility of economic dislocation resulting from environmental control orders.

On March 4, 1971, several members of the committee introduced S. 1113, the National Environmental Laboratory Act of 1971. The bill was designed to establish a national system of environmental laboratories which would provide the needed research and data on environmental pollution. In all, 34 Senators sponsored the bill.

Public Hearings were held in Washington, D.C., on April 28 and 29 and on May 3 through May 6. The bill, retitled the National Environmental Centers Act of 1971, was passed by the Senate on December 7, 1971, and is pending in the House Committee on Science and Astronautics.

The possibility of economic dislocation resulting from environmental control orders was first brought to the subcommittee's attention in mid-January 1971. The subcommittee held a series of preliminary public hearings on May 17 and 18 and June 28. No legislation on this topic is pending in the committee.

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT

The subcommittee developed legislation during 1971 to continue two existing programs, the Appalachian regional development program and the activities conducted under the Public Works and Economic Development Act. It also held extensive hearings and carried out preliminary work in preparation for the introduction of legislation to establish a national economic development program.

A bill, (S. 575) to extend the Appalachian program was introduced on February 3, and reported to the Senate on March 9. It was passed by the Senate after the adoption of amendments to extend the Public Works and Economic Development Act of 1965, as amended, for 1 year.

During consideration by the House of Representatives, an additional title was included to reactivate the Public Works Acceleration Act of 1962 by authorizing $2 billion to carry out its provisions. This program was intended to alleviate persistent unemployment by providing funds for needed public works projects that could be started in a relatively short time.

The new title was accepted by the Senate conferees and concurred in by the full Senate. It was, however, the basis of a Presidential veto of S. 575, which the Senate sustained by a narrow margin. The legislation was subsequently passed by the Congress as S. 2317 without the public works acceleration provisions.

This measure was signed by the President on August 5—Public Law 92–65. The act, as passed, provides: Additional authorization for the Economic Development Administration to use on public works projects to reduce unemployment; continuation of the non-transportation portions of the Appalachian program for 4 years, through fiscal year 1975, with a total new authorization of $571 million; extension of the Appalachian development highway program for 5 years, through fiscal year 1978, with an additional authorization of $925 million, raising the total highway authorization to $2,090 million. The legislation also authorizes a special $40 million program to improve the safety of airports in the Appalachian region.

Activities under the Public Works and Economic Development Act, including the title V Regional Commissions, were continued for 2 years, through fiscal year 1973, and spending was authorized at the level of $800 million for each of these years for public works grants and $305 million for the title V commissions for 2 years.

Based on 6 years of experience with the Appalachian and Economic Development Administration program, the subcommittee concluded that similar programs are needed in sections of the United States not eligible for participation in existing programs. It was felt that a permanent, long range program was necessary to ease violent economic fluctuations and to promote orderly community, State, and regional development.

Hearings were conducted in Washington, D.C.; Raleigh, N.C.; Memphis, Tenn.; Topeka, Kans.; Los Angeles, Calif.; Santa Fe and Albuquerque, N. Mex.; Seattle, Wash.; Anchorage, Fairbanks, Bethel and Nome, Alaska. Substantial information was obtained on the needs of communities, and a number of recommendations were made on how best to foster sustained healthy development.

Prior to conference with the House on S. 575, the committee conducted a hearing on a proposed alternative to the accelerated public works program included in the bill by the House. It was at this hearing that the concept of economic disaster areas was first enunciated and explored in depth. This proposal was offered during the conference, but was not included in the conference report on S. 575.

During the hearings, the subcommittee became acutely aware of the need for interim assistance by individuals and communities that have been the victims of sudden and substantial increases in unemployment.

Subsequently, the Economic Disaster Area Relief Act of 1972 was introduced to provide the type of relief needed under these circumstances. The bill (S. 2393) was passed on August 5 and is now pending in the House of Representatives.

SUBCOMMITTEE ON ROADS

The Federal-Aid highway program generally is authorized on a 2-year basis. The last such authorization was in 1970, and the subcommittee will consider major new highway legislation in 1972.

During 1971 the Subcommittee on Roads was primarily concerned with carrying out its oversight function to determine how existing statutes are implemented and their effectiveness in meeting current needs. The subcommittee also began consideration of legislation relative to the width of buses permitted to operate on the interstate highway system.

Oversight hearings on the highway safety program were held on May 10–14. Testimony was received from more than 50 witnesses representing Federal, State and local government as well as private associations and organizations. Statements and material were submitted for the record by another 25 persons. Among the items considered by the Subcommittee in its examination of the program were the recommendations of the President's Task Force on Highway Safety, the operation of uniform highway safety standards, implementation of highway safety sections of the Federal-Aid Highways Act of 1970, the sufficiency of Federal financial assistance to help combat traffic accidents, the role of alcohol in highway accidents and the value of spot improvement and Traffic Operations Program to Improve Capacity and Safety—TOPICS—programs.

On December 13 and 14 the subcommittee held hearings on H.R. 4354, as passed by the House of Representatives. This proposal would authorize States to permit buses not more than 102 inches wide to operate on segments of the Interstate System within their borders. Such operation is now legal in nine States under a grandfather clause in the Federal-Aid Highway Act of 1956. Other States have adopted similar legislation which would become effective if H.R. 4354 becomes law.

Eleven witnesses, both favoring and opposing the bill, were heard at the December hearings. On February 14, representatives of the Department of Transportation, Federal Highway Administration, National Transportation Safety Board, National Highway Traffic Safety

Administration, and several State agencies will testify.

Preparation for development of the Federal-Aid Highway Act of 1972 was begun during the year with a series of meetings with the House Committee on Public Works and officials of concerned agencies and groups.

During the summer, staff members concerned with roads legislation participated in a series of briefings with officials of the Federal Highway Administration.

SUBCOMMITTEE ON BUILDINGS AND GROUNDS

During calendar year 1971, the Subcommittee on Buildings and Grounds of the Public Works Committee held 7 days of hearings as follows:

One day on the bombing of the U.S. Capitol;

One day on the demolition of the old Post Office Building, and other landmark buildings in the District of Columbia;

One day on the need for off-street parking for Senate employees;

Two days on the Consolidated Federal Law Enforcement Training Center at Beltsville, Md.;

One day on S. 1736 and S. 2479, bills to amend the Public Buildings Act of 1959, as amended; and

One day on S. 2900, a bill to amend the John F. Kennedy Center Act to authorize funds for operation and maintenance of the nonperforming arts function of that center.

During the first session the Public Works Committee ordered reported the following bills which were subsequently passed by the Senate and are now pending in the House of Representatives:

S. 861, a bill to designate the Federal office building and U.S. courthouse to be constructed in Atlanta, Ga., as the "Richard B. Russell Federal Building";

S. 2687, a bill to authorize the acquisition of certain real property in square 724 in the District of Columbia; and

S. 1736, a bill to amend the Public Buildings Act of 1959, as amended, to provide for financing, acquisition, construction, alteration, maintenance, operation and protection of public buildings, and for other purposes.

The committee, also during the first session of the 92d Congress, considered and approved 34 public buildings projects with a total estimated construction cost of $231,139,500.

DISASTER RELIEF

The Special Subcommittee on Disaster Relief functioned during the 91st Congress and developed major legislation to provide a proper Federal response to conditions resulting from natural disasters.

This special subcommittee was not continued for the 92d Congress. Its chairman, however, presided over hearings of the full committee called to review the Federal response to the earthquake that occurred in February 1971 in the area of Los Angeles, Calif. Hearings were held on June 10 to 12 in San Fernando, Calif.

As a result of information developed at these hearings, legislation was introduced (S. 1237) to amend the Disaster Relief Act of 1970 so that Federal grants could be authorized for the repair, reconstruction, or replacement of damaged or destroyed nonprofit medical facilities. This measure became law—Public Law 92-209—on December 18.

In addition to the hearings, there were frequent consultations and on-site visits to evaluate the effectiveness of Federal, State, and local agencies in dealing with the aftermath of natural disasters.

COMMITTEE FILM PROGRAM

For several years the committee has made films on air and water pollution available, free of charge, for showing by schools, civic organizations, and similar groups. The committee now has 15 films on water pollution entitled "Troubled Waters" and 11 films on air pollution entitled "Ill Winds on a Sunny Day."

During the past year—1971—the two films were shown a total of 1,606 times and were seen by 58,613 people. Because of the limited number of films, 855 requests could not be filled.

THE STRAUSS ALTERNATIVE TO THE BRANDT TREATIES

Mr. THURMOND. Mr. President, Americans are watching closely the debate now in progress in West Germany concerning Chancellor Willy Brandt's proposed treaties with the Soviet Union and Poland. Mr. Brandt's Eastern policy is not a matter which concerns West Germany alone; the interests of the United States, and indeed, of the whole Western world will be significantly shaped by the outcome. The four-power agreement on Berlin has been explicitly tied to the outcome of the Brandt treaties, and the future viability of the NATO alliance is almost certainly at stake.

In my judgment, the treaties provide a shaky foundation for the future relationship between east and west, and set a precedent that makes it very difficult for the United States to maintain the proper safeguards in its own negotiations with Moscow. As Mr. Brandt's opposition, led by Dr. Rainer Barzel and Dr. Franz Josef Strauss, have been pointing out, the Soviets have not by any means renounced the right to intervene in West Germany with military force. This creates a constant threat to West Germany—indeed, a form of implicit blackmail.

In such a situation, it is plain that the treaties will have a demoralizing effect upon West Germany, and a destabilizing influence upon the Western Alliance in Europe. It is a blatantly one-sided agreement which is going to create significant problems for the Western Alliance if it is ratified in its present form by West Germany.

Fortunately, there is a good chance that it will not be ratified. The upper house of the West German Parliament, the Bundesrat, has already rejected the treaties in a preliminary vote. The lower house, the Bundestag, may also uphold this rejection; however, it is hoped its members, including those in the ruling coalition, will consider the impact of the treaties in the broader and long-range international situation.

It is true that the U.S. Government has given some lipservice to the Brandt negotiations. But in an international community of free nations, is there anything else that the President of the United States can do? When dealing on the formal diplomatic level, the President has to be coldly correct in allowing our allies to make their own initiatives in foreign policy. It is not up to the President of the United States to dictate policy to a friendly nation.

Fortunately, in debate in the U.S. Senate, we are not bound by formal diplomatic conventions. We are free to discuss the policies of other countries insofar as they affect the common interests of free nations. When West Germany proposes to make unilateral concessions that will undermine the common Western interest, we are free to point it out.

Actually, it is not surprising that the Brandt negotiations resulted in such a lopsided agreement. West Germany is a powerful nation; but standing alone against the Soviet Union and its bloc, it is not one of the superpowers and can hardly withstand the negotiative steamroller tactics of the Soviets. Without the complete and constant support and backing of the United States, West Germany is no match for the Soviet Union. The Brandt negotiations were carried on with only the sketchiest consultations with the U.S. Government and other allies. Indeed, the Chancellor's celebrated summit meeting with Soviet General Secretary Brezhnev in the Crimea was apparently 5 months in the making, yet we were notified only days before the event took place.

Contrast this with the summit statesmanship of President Nixon. He arranged full, personal and public consultations with our major allies several months before his summit meetings. Chancellor Brandt was invited for consultations with the President. The press noted that there was a marked coolness between the two leaders. Many observers interpreted the President's earlier remarks stressing the importance of free allies having consultations before important initiatives in foreign policy as an implied rebuke to the West German Chancellor.

Fortunately, there is a sensible alternative to the treaties which has already been laid before the German people. Dr. Franz Josef Strauss, the distinguished Chairman of the CSU, has proposed a draft treaty which, carrying on the earlier work of the CDU/CSU for peace, outlines a program which would really bring stability to Europe. As Dr. Strauss said at a press conference introducing the draft treaty:

> We feel that peace in Europe can only be maintained in the principles of international law, of equality of rights, of the rights of nations to self-determination, of the non-intervention in the internal affairs of other states, as well as the respect of human rights and fundamental freedoms, especially the right to free movement of persons and ideas are respected by all European States.

To get the Soviet Union to agree to such principles would require tough negotiating of the sort which the Brandt government has apparently renounced.

But it is not an impossible task, if it is done in coordination with the Western Allies. The Strauss draft treaty may never be the subject of negotiation as long as Brandt is in power, but by its positive and unambiguous statements it makes a clean contrast pointing up the deficiencies of the Moscow and Warsaw agreements under consideration.

Mr. President, I ask unanimous consent that the alternative proposal presented by Dr. Strauss, including both his remarks at the news conference and the draft text, be printed in the RECORD.

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

ALTERNATIVE PROPOSAL TO THE GERMAN-SOVIET TREATY PRESENTED BY THE CHAIRMAN OF THE CHRISTIAN SOCIAL UNION, FRANZ JOSEF STRAUSS

On Monday, January 31, 1972, the Bureau of the Christian Social Union has adopted unanimously the alternative proposal put forward by the CSU—and presented by the Chairman of the CSU Franz Josef Strauss and the Chairman of the CSU-Landesgruppe (Parliamentarians) in the German Bundestag Richard Stücklen—to the German-Soviet Treaty of August 12, 1970. The text of the draft treaty, which you will find enclosed, has been explained by the CSU-Chairman at a press conference. He said:

1. Konrad Adenauer had laid the basis of a policy of durable peace and freedom in security. He had accomplished the approach to the West and initiated the normalization of the relations between the Federal Republic and the Soviet Union without renouncing thereby fundamental German rights and positions.

Ludwig Erhard had continued this policy by his peace-note of May 1966 and the establishment of trade missions in Eastern European countries.

Kurt Georg Kiesinger had made this the basis of his policy and had offered Moscow and the other members of the Warsaw Pact negotiations on a comprehensive renunciation of the use of force and negotiations on a modus vivendi in order to solve urgent technical questions as regards the particular German problems and to facilitate human relations without renouncing fundamental rights. The Soviet Union was willing to take up these negotiations because she could not but be interested in settling the problems in connection with the Western border of her sphere of influence.

Both the American change of attitude towards the People's Republic of China and the Soviet preparedness to enter into peace negotiations with Japan prove this and moreover confirm the opinion of the CDU/CSU that the German Ostpolitik should have been put in the global context of world evolution and that its promoters should not have acted alone. Then the Soviet Union had waited for the outcome of the elections to the Bundestag in 1969, but before she had invited politicians of the SPD and the FDP in order to explore whether it would be possible to reach a settlement more favourable to her with another Federal Government. The new Federal Government formed by the SPD and the FDP had already declared before coming to power, that it would start from the existence of two German States. It thus has offered by unilateral advanced concessions the Soviet Union the desired result without receiving any counter-performances deteriorating thereby the course of the German Ostpolitik in a fatal way.

2. Both the CSU and the CDU have always been pursuing a policy of peace for Europe. Moreover, the present Federal Government continues stressing the fact, that this policy of peace of the CDU/CSU is the indispensable basis of any conceivable policy of understanding with the East. We have laid down what a non-aggression treaty with the Soviet Union worth its name should look like in our opinion.

3. The CDU/CSU has always been a partisan of a policy of the renunciation of the use of force. In 1954 the Federal Government headed by Konrad Adenauer had by acceding to the Treaties of Paris undertaken to pursue a policy of non-aggression—also and especially with regard to the East—in accordance with the principles laid down in the UN-Charta and with the objectives embodied in the Statutes of the Council of Europe. However, as the German-Soviet Treaty of the Brandt/Scheel Government—contrary to the original objectives of the present Federal Government—may not even be called any longer a "treaty on the renunciation of the use of force" as the Soviet Union does not renounce therein her right of intervention, we feel, that German policy should make any effort to reach a true treaty on the renunciation of the use of force.

We have laid down in our draft treaty the ideas to be represented by a German Foreign policy built on the continuity of Konrad Adenauer's peace policy. The Brandt/Scheel Government has left this line of continuity.

4. In accordance with the NATO-Communiqué of December 1971 we want to reach détente by "Removing the causes of tension" (Art. 1 (1) Draft Treaty).

5. We want to develop peaceful relations between the European States by speeding up cooperation in the economic, scientific and cultural fields as well as by opening all frontiers to an unimpeded traffic.

6. Our draft treaty notes that a politically united and independent Europe shall contribute to peaceful cooperation with all the other nations of the world.

7. We feel, that peace in Europe can only be maintained if the Principles of international law, of equality of rights, of the rights of nations to self-determination, of the non-intervention in the internal affairs of other states, as well as the respect of the human rights and fundamental freedoms, especially the right to free movement of persons and ideas are respected by all European States.

8. A definitive settlement of the German Question including the German boundaries should be reserved for a peace treaty with Germany as a whole. Moreover, this continues to be valid German treaty law.

9. We do not expect the Federal Government to approve this draft treaty, because its own intentions to conclude a true non-aggression treaty were denounced by its renunciation of German interests when negotiating in Moscow. There is no more significant sign of that fact, that the Brandt/Scheel Government does no longer stick to the tradition of German peace policy.

10. Nor do we expect the Soviet Union to immediately accept such a draft. Tough negotiations will be necessary to achieve this. But it must be of interest to the Soviet Union to pursue a policy of understanding, cooperation, peace, and non-aggression with regard to her Western neighbours. We do know, that only a wearisome process can lead to this objective.

An example of this is the tough wrestling of the Austrian Federal Government under Raab/Figl. It was only after wearisome negotiations that the Soviet Union approved in 1955 the re-establishment of the Austrian unity in freedom.

Recently we have seen another proof of the fact, that a policy of patience and the indispensable representation of national interests can lead to success. For 27 years Japan has been waiting for a peace treaty to be concluded with the Soviet Union. Having already concluded the peace treaty of San Francisco with the Western Powers in 1951, Moscow up to now has constantly refused to enter into peace negotiations with Tokyo. But Japan continues to require the restitution of the Southern Kuriles to Japan, which the Soviet Union had occupied in 1945 after her surprise attack on Japan. As Japan is beginning to normalize her relations with the People's Republic of China, the Soviet Foreign Minister Gromyko has visited Japan and has declared himself willing to take up peace negotiations with Japan still within the course of this year.

11. The CSU continues to pursue in the future as well as in the past a policy of securing peace and freedom but also of maintaining the pre-conditions of German unity. In the official German-Soviet Treaty concluded by the Federal Government the CSU does not see any progress which facilitates détente and makes peace more secure, but the source of new antagonisms, the support of the Soviet power politics and the compromise of European unity. In its 20 years of government, the CDU/CSU has succeeded in securing peace and freedom as equal objectives. It will try by all means to avoid a policy which in the last resort is bound to compromise freedom, to make peace less secure and to enable the Soviet party to the treaty to make the world believe in the renunciation by the Germans of their right to self-determination despite all contrary affirmations by the Federal Government. By these treaties the Federal Government has made more difficult any true Ostpolitik. But the CSU leaves no doubt, that it pursues the conclusion of a treaty with the Soviet Union and the other Warsaw Pact States, which is to settle the renunciation of the use of force and the willingness to cooperate. The present draft treaty contains the opinion of the CDU and of the CSU which will both secure the continuity of the German Ostpolitik and represent its further development in contractual terms and not impose any unreasonable demands on either party.

[Draft proposed by the Christian Social Union in Bavaria—Unofficial translation from the German text]

TREATY ON THE RENUNCIATION OF THE USE OF FORCE BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE UNIONS OF SOVIET SOCIALIST REPUBLICS

The High Contracting Parties—

Anxious to contribute to strengthening peace and security in Europe and the world,

Convinced that peaceful cooperation in all of Europe complies with the ardent desire of nations and the general interests of international peace,

Appreciating the fact, that the measures agreed previously, in particular the conclusion of the agreement of September 13, 1955 on the Establishment of Diplomatic Relations, have created a basis for further developing and strengthening their mutual relations;

Noting, that the declared exclusion of the use of force contributes to creating a political climate favourable for an ulterior settlement of contentious questions and questions interpreted in a different way and leads to the realization of the right to self-determination of the divided German nation,

Desiring to lend expression in the form of a treaty to their determination to improve and extend cooperation between them,

have agreed as follows:

ARTICLE 1

1) The Federal Republic of Germany and the Union of Soviet Socialist Republics consider it an important objective of their policies to maintain international peace and achieve détente by removing the causes of tension;

2) they undertake to settle all contentious questions including those affecting frontiers and demarcation lines, only by peaceful means and to refrain in their relations from the threat of the use of force;

3) they affirm their endeavour to further the development of peaceful relations between the European States by speeding up the cooperation in the economic, scientific, and cultural fields as well as by opening all frontiers to an unimpeded traffic.

ARTICLE 2

1) The Federal Republic of Germany and the Union of Soviet Socialist Republics shall in their mutual relations as well as in matters of ensuring European and international security be guided by the purposes and principles embodied in the Charter of the United Nations.

2) The Union of Soviet Socialist Republics declares not to claim any unilateral right of intervention with regard to the Federal Republic of Germany pursuant to Art. 107 and 53 of the Charta of the United Nations.

3) The Federal Republic of Germany declares—

That its policy of creating a politically united Europe is not directed against anybody. A politically united and independent Europe shall serve the peaceful cooperation with all other nations of the world.

That by the conclusion of the present treaty it has not undertaken any obligation to renounce or to restrict in future the right it represents and exercises to pursue by peaceful means the self-determination and unity of the German nation as an objective of its policy.

ARTICLE 3

The Federal Republic of Germany and the Union of Soviet Socialist Republics share the realization that peace in Europe can only be maintained if the Principles of International Law, of the Equality of Rights, of the Rights of Nations to self-determination, of the Non-Intervention as well as the respect of Human Rights and Fundamental Freedoms, in particular the Right to Free Movement of persons and ideas are respected everywhere.

ARTICLE 4

A definitive settlement of the German Question including the German frontiers is reserved to a peace treaty with Germany as a whole.

ARTICLE 5

The present treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics shall not encroach the validity of any bilateral or multilateral treaties or arrangements previously concluded by them.

ARTICLE 6

The present Treaty is subject to ratification and shall enter into force on the date of exchange of the instruments of ratification which shall take place in ———.

Done at ——— on ——— in two originals, each in German and Russian languages, both texts being equally authentic.

ROLE OF CONGRESS IN FUTURE POLICYMAKING

Mr. MANSFIELD. Mr. President, on February 3, the distinguished Senator from Idaho (Mr. CHURCH) delivered a most thoughtful address as a part of the Christian Herter lecture series of Johns Hopkins University. In it he discussed the role of Congress in the future of foreign policymaking. As Senator CHURCH has set forth so clearly with this address, the role of Congress must be reasserted and restored if this branch of Government—and particularly the institution of the Senate—is to act responsibly and indeed if it is to perform at all its constitutional function.

I commend the address by Senator CHURCH to the entire membership. In my judgment, no individual is more qualified to address himself to this particular subject—one which concerns me just as deeply, I must say, as it does the Senator from Idaho.

I ask unanimous consent that Senator CHURCH's address at Johns Hopkins University, entitled "American Foreign Policy in Transition: Who Will Shape It?" be printed in the RECORD.

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

AMERICAN FOREIGN POLICY IN TRANSITION: WHO WILL SHAPE IT? THE ROLE OF CONGRESS

(An Address by Senator FRANK CHURCH)

As this is a time of transition in American Foreign policy, so is it a time of transition in the role of Congress in shaping that policy. We are passing through a tidal change of both substance and procedure. Congress is becoming more self-assertive, more mindful of its constitutional rights and prerogatives, more independent of the Executive Branch. This is the way the Founding Fathers intended it.

The process began with the emergence in Congress, especially in the Senate, of a serious dissent against the Johnson Administration's war policy in Vietnam, but it has long since moved far beyond that single question and has become a struggle to shift significant constitutional powers back from the Executive to the Legislative Branch of the Government.

This has predictably set up two sets of tensions between Congress and the Executive Branch. There is, first, the basic question over what foreign policy goals should be. The Administration has shown few signs of recognizing how deep this argument runs. It has little to do with particular policies, but relates instead to the nature of our national interests abroad and our role in the world generally. Then there is, second, the disagreement over how foreign policy should be made. This, too, is more profound than it might appear from superficial examination. It is certainly more than a petty power fight within the government; it stems, rather, from fundamental interpretations of the Constitution.

These two sets of tensions exist principally between Congress and the Executive Branch, but the disagreements which give rise to them exist also within Congress—which, to put it mildly, is far from a monolithic body. There are important elements in Congress, especially in the House, which condone the most extreme and exclusive use of Presidential power in the conduct of our Foreign Relations. Yet I think the trend is toward Congressional insistence on playing a larger role and on exercising anew powers which long since have fallen into disuse or slipped away to the Executive Branch.

The fact that these powers shifted to the Executive Branch in the first place may have less to do with usurpation by a succession of Presidents than to abandonment by a succession of Congresses. This abandonment has come about in two ways: (1) the failure to use powers vested in Congress by the Constitution, and (2) the use of power in such a routine fashion that Congressional acquiescence has come to be taken for granted. In both cases, the explanation for such Congressional behavior is usually to be found in Congressional agreement with the President's policy or the course of action proposed by the Executive Branch. Most members of Congress approved of the extra-legal actions which President Roosevelt took to help the British prior to Pearl Harbor. Most members of Congress agreed with President Truman's decision to intervene in Korea. In neither case did Congress insist on its right to participate in the decisions. In consequence, both cases were added to a long line of precedents strengthening Executive power at the expense of Congressional power.

Routine Congressional assent can be as erosive a force as outright Congressional abdication. This is clearly seen in an examination of the record relating to the use of the two foreign policy powers explicitly vested in the Senate by the Constitution—the power to confirm nominations and to advise and consent to the ratification of treaties.

A search of the Senate's Executive Journal by the Congressional Research Service of the Library of Congress reveals that the last time the Senate formally rejected a Presidential nomination in the field of foreign affairs was April 8, 1914, when, by a vote of 24 to 26, it turned thumbs down on President Wilson's nomination of one James C. McNally to be consul in Nuremberg. The last time the Senate rejected a treaty was May 26, 1960, when, by a vote of 49 yeas to 30 nays, it refused to give its advice and consent to ratification of a protocol on compulsory settlement of certain law-of-the-sea disputes. According to a compilation by the Office of the Legal Adviser of the Department of State, out of 1,479 treaties submitted to the Senate from 1789 through 1971, only 16 were rejected.

In all truth, it must be admitted that the Senate rubber stamps most nominations and gives only the most perfunctory consideration to most treaties. A very strong presumption has grown in favor of confirming nominations—much stronger, even, than the presumption in favor of approving treaties without changes which would require renegotiation.

The Constitution itself carefully distinguishes between the Senate's power with respect to appointments and its power with respect to treaties. The pertinent provision (Article II, Section 2, paragraph 2) says:

"He (the President) shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law . . ."

Thus, the President and the Senate share the power to make treaties. They share the power to make appointments. But only the President has the power to nominate. The practical effect of this is that the Senate has a much stronger claim to prior consultation in the treaty-making process than in making appointments. This is the way it has worked.

A startling example of how the Senate has allowed its power over nominations to wither away is seen in the fact that the last nomination it rejected was to the position of consul. Consuls are one of four specific groups of public officers mentioned in the Constitution whose appointments require the advice and consent of the Senate. Yet not in recent times has a President sought the advice and consent of the Senate with respect to a consular appointment. Rather, the practice has been that the Senate confirms and individual (almost invariably a career officer) to act as a consual and leaves his specific assignment up to the President or, as a practical matter, the Department of State. Yet sometimes a consular officer—for example, the Consul General in Hong Kong—has more important responsibilities than a good many Ambassadors.

Further, if it is constitutional for the Senate to confirm an individual in the rank and function of consul, why would it not be equally constitutional for the Senate to confirm an individual in the rank and function of Ambassador, and then leave it to the President to decide whether he should be assigned to Great Britain or Paraguay? The

fear that we may be approaching such a state of affairs is one of the things behind the recent reluctance of the Senate Foreign Relations Committee to confirm nominations to the ranks of Career Ambassador and Career Minister in the Foreign Service.

However routinely the Senate may approve nominations and most treaties, the bare record I have cited tends to understate the Senate's role. The Senate can produce the same effect as rejection simply by not acting at all, and this is a much more frequent occurrence. Once a treaty is sent to the Senate, it remains technically pending until it is either acted upon or returned to the President. Of the 19 treaties currently before the Senate, three have been there since 1949. A nomination, however, lapses when the Senate adjourns for more than 30 days. This fate befell a number of nominations when the Senate adjourned in December, 1971. In some cases, the inaction was due to the fact that the nominations were submitted too late in the session. In other cases, the inaction was deliberate. The most notable of these, perhaps, were the nominations of General Earle G. Wheeler, former chairman of the Joint Chiefs of Staff, and of John A. McCone, former director of the Central Intelligence Agency, to be members of the General Advisory Committee of the Arms Control and Disarmament Agency. The feeling in the Foreign Relations Committee was that these individuals were too committed to large arms expenditures by the United States to give useful advice with respect to arms control and disarmament.

Sometimes, also, opposition to a nomination in the Senate or in the Foreign Relations Committee leads the President to withdraw the nomination rather than risk rejection, and sometimes senatorial opinion leads a President to modify a treaty during the process of negotiation.

It is very rare that the Senate holds up a foreign affairs nomination on purely personal grounds. The presumption that the President is entitled to have appointees of his own choosing, becomes stronger the more directly the position is in the presidential chain of command and the more intimate is its relationship to the White House. (It is significant that the only two nominations rejected by the 91st Congress—out of the staggering grand total of 134,464 submitted—were not in the Executive Branch at all, but to the Supreme Court.)

Indeed, the most influential foreign policy maker in the government, except for the President himself, is not subject to Senate confirmation at all, refuses to appear before congressional committees, and is quite inaccessible to Congress except rarely and informally at times and places of his own choosing. I refer, of course, to the President's Assistant for National Security Affairs, a post currently held by Dr. Henry Kissinger.

Other officials in positions of great foreign policy importance also escape Senate scrutiny. The various heads of the U.S. delegation at the seemingly interminable Paris negotiations on Vietnam have all been given the rank of Ambassador, by presidential designation, but have not been subject to Senate confirmation. It is a measure of how far we have come from the original intent of the Constitution when we recall that not only did the early Presidents seek Senate confirmation of envoys to negotiate treaties but also asked the advice and consent of the Senate with respect to their instructions.

The greater role of the Senate in the treaty-making process, including the requirement of a two-thirds vote, means that ordinarily it behooves the Executive Branch to be reasonably sure of its ground before sending a treaty to the Senate. It means also that foreign powers must be more heedful of senatorial opinion than would otherwise be the case. During the long negotiations which culminated in 1963 in the Nuclear Test Ban Treaty, one of the more difficult sticking points had to do with the number of on-site inspections which would be provided for should the treaty take the form of a comprehensive test ban.

The question arose of whether two thirds of the Senate could be persuaded to approve a treaty without more on-site inspections than the Russians were willing to allow. I recall, during this period, that the Soviet Ambassador met informally with some members of the Foreign Relations Committee. Although, at first, he seemed skeptical of the Senate's powers, I have often wondered if these meetings did not contribute to the switch in the Soviet position from insisting on a comprehensive test ban with a very small number of on-site inspections to accepting a limited test ban in which it was possible to avoid the problem.

Although in certain instances, including a number of the first importance, the treaty-making process has continued to work as the Founding Fathers contemplated, its integrity has been seriously and increasingly threatened, especially since World War II, by the growing use of executive agreements as a device to bypass the Senate.

There is, of course, a place for executive agreements; indeed, one can scarcely imagine the conduct of our foreign relations without them. I would even venture to say that most of the thousands of executive agreements to which the United States is a party raise no serious question of constitutional propriety. These are the agreements which are made in pursuance of programs which have been duly authorized and those which deal with essentially routine day-to-day operations. Examples of the first class would be trade agreements made pursuant to authority contained in the Reciprocal Trade Act, or agreements implementing the Food for Peace program or the foreign assistance program. Examples of the second class would be agreements relating to such matters as visas, status of diplomatic personnel, cooperation overflight privileges, certain aspects of the in customs matters, etc.

I do not suppose it will ever be possible to draw a universally acceptable line between treaties and executive agreements. An effort to do so would be likely to deteriorate into an exercise in legal quibbling and hair-splitting. It would be like arguing over twilight when all but the blind can tell the difference between night and day. My point is that the Executive Branch has steadily broadened the area which it deems appropriate for executive agreements and has thereby steadily encroached on the area reserved for treaties.

It is easier this way. There is no need to go through the inconvenience and delay of a Senate debate with the attendant risk of rejection. The Senate, it must be admitted, has acquiesced in the process entirely too often and in some cases has even invited it through overly broad delegations of authority and discretion to the President in such laws as those pertaining to foreign assistance and foreign military sales.

The legal ingenuity available in the Executive Branch has used this authority, plus the President's constitutional power as Commander-in-Chief, plus the dubious doctrine of "inherent powers," to stretch the President's reach far beyond anything which would be recognizable by the Founding Fathers.

Two current examples come readily to mind—the recently negotiated base rights agreements for the Azores and Bahrain. The first of these involves more than $400 million in loans from the Export-Import Bank and other assistance, as well as a political identification with Portugal and the consequent alienation of black Africa.

The President has apparently decided that United States policy should "tilt"—as Dr. Kissinger put it in another context—toward Portugal. Given our unerring ability to ally ourselves with the past against the future, this comes as no surprise, though it is a little startling to see it come without so much as a nod to the Senate—and this from a President who in other circumstances loses no opportunity to proclaim his devotion to a strict construction of the Constitution.

The Bahrain agreement is similar in all fundamental respects. The immediate cost is not yet a matter of public record, and we can only speculate as to what the ultimate cost will be. Through this agreement, we acquire, in essence, the rights to a base which the British are abandoning and which we have long used, through arrangement with the British, to support our flotilla in the area of the Persian Gulf. Naturally, what was adequate for anybody else will not be adequate for Americans; so we feel called upon to expand the shore facilities and to enlarge the fleet which uses them. All of this, no doubt, is to replace the British presence in the Persian Gulf; otherwise, the argument runs, the British withdrawal would leave a vacuum which might be filled by the Russians. This insures that it will be we, and not the Russians, who will create friction with the countries of the area. And all of it, again, is presented to Congress as a fait accompli.

One does not have to accept my skeptical view of the policy involved, either with respect to Portugal or the Persian Gulf, to be disturbed over the procedure. The trouble with the procedure—as it has been also in the cases of the Spanish bases, the secret contingency plan with Thailand, the secret commitment to Korea, and others—is that it involves the United States in new and potentially dangerous commitments which are not exposed to public scrutiny until it is far too late to change them easily. It may be—though I doubt it—that upon examination the Azores and Bahrain agreements will be seen to further the national interests of the United States. But let this be determined in the Senate.

A salutary first step toward correcting this situation is the bill sponsored by Senator Case of New Jersey to require all executive agreements, secret or not, to be reported to Congress. This would at least enable the Congress, and to a degree the public, to know what we are getting ourselves into. The bill has been approved by the Foreign Relations Committee and is pending on the Senate calendar where I hope it will receive early and favorable attention.

II

So far, I have been talking about areas in which the foreign policy powers of the President and the Senate are shared. The erosion of the Senate's role has occurred because succeeding Presidents have by-passed the Senate through the appointment of important officials not subject to confirmation and through the use of executive agreements. In all of this, I repeat, Congress has acquiesced at least tacitly by providing implementing legislation and/or funds.

We come now to even more difficult questions which fall within the traditional concept, not of shared power, but of the separation of power. I want to deal particularly with two of these—first, the conflict between the President's power as Comamnder-in-Chief and Congress' power to declare war, and second, the use of appropriations to affect foreign policy.

In no area has the President's power been more augmented at the expense of Congress, than in respect to his function as Commander-in-Chief. It is sadly instructive to read the message to Congress of December 8, 1801, by President Jefferson on the capture of an American frigate by the Barbary pirates:

". . . Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel, being dis-

abled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense also, they will place our force on an equal footing with that of its adversaries."

Now hear the testimony of Under Secretary of State Nicholas de B. Katzenbach before the Senate Foreign Relations Committee, on August 17, 1967:

"A declaration of war would not, I think, correctly reflect the very limited objectives of the United States with respect to Vietnam. It would not correctly reflect our efforts there, what we are trying to do, the reasons why we are there, to use an outmoded phraseology, to declare war."

At this point, Chairman Fulbright interjected to ask, "You think it is outmoded to declare war?" Mr. Katzenbach replied:

"In this kind of context I think the expression of declaring war is one that has become outmoded in the international arena."

And he was talking about a conflict which has cost 50,000 American lives!

The distance between Jefferson and the second Johnson was traversed, like the journeys of the Chinese, a step at a time, slowly during the 19th Century and then with dizzying acceleration in the 20th, beginning with the first Roosevelt's big stick. There thus accumulated a body of precedents for the President to send the Armed Forces outside the United States during peace-time and even to involve them in foreign hostilities. The State Department professed to find 125 such instances as long ago as 1951, and I have not had the heart to count the later ones. Presidents have gotten by with this because the Armed Forces, being well-disciplined, will carry out the President's orders, regardless of their illegality, and because, until recently, no challenge has been heard in Congress.

That challenge has now been sounded on two fronts—the so-called war powers bill, of which Senator Javits of New York is the principal sponsor, and a series of amendments, in which I have had a part along with Senator Cooper of Kentucky and others, to limit the amount of funds available and the purposes for which they can be used.

The war powers bill, which was approved by the Foreign Relations Committee in December by a vote of 13–0, is a landmark piece of legislation. Significantly, it is cosponsored by Senator Stennis of Mississippi, the Chairman of the Armed Services Committee. It represents the first effort, so far as I know, to spell out the respective powers of the President and Congress over the use of the Armed Forces in hostilities or in situations where, in the language of the bill, "imminent involvement in hostilities is clearly indicated by the circumstances."

In general, the bill provides that this may be done, in the absence of a declaration of war by Congress, only to respond to armed attacks, to evacuate American citizens whose lives are in danger, or pursuant to specific statutory authorization. In any case, the President is to report his action promptly to Congress. The use of the Armed Forces for the purposes indicated cannot be sustained longer than 30 days without specific Congressional authorization, and Congress can, if it so desires, terminate the action in less than 30 days. The bill would not apply to current hostilities.

Congressional efforts to shape foreign policy through limitations on appropriations have taken a variety of forms, and we may be sure that new ones will be invented, for we are dealing here with the ultimate Congressional power—the power of the purse. About the only thing Congress cannot do in the exercise of this power is to cut the salary of th President during his term of office. This is a very potent weapon indeed—so potent that Congress, like a doctor experimenting with a new wonder drug, has been reluctant to use it in large doses. However, this reluctance is diminishing with experience, especially as that experience proves the difficulty of legislating foreign policy without resort to the power of the purse.

Two examples of this difficulty are to be found in the Mansfield amendment to fix a date for withdrawal from Vietnam and in repeated attempts over a number of years to write foreign policy into the Foreign Assistance Act. The Mansfield Amendment, in modified form, was finally enacted into law last year. But even as President Nixon signed the bill to which the amendment was affixed, he dismissed the amendment as having no binding effect. Lacking built-in sanctions, limiting the use of funds, the President felt free to disregard it.

Senator Cooper and I tried to provide the sanctions in an amendment of our own to the unlamented foreign aid bill last year. It would have limited the use of funds by U.S. forces in Indochina to the purpose of withdrawal, except for actions necessary to protect the troops against imminent danger as they withdrew. This amendment failed in the Senate by a single vote. You may be sure that it, or something like it, will be revived. Congress has, however, enacted into law other Cooper-Church amendments prohibiting the use of *any* money to finance the introduction of United States ground combat troops into Cambodia, Laos, or Thailand, or in providing United States advisers to or for Cambodian military forces in Cambodia. Since they invoke the use of the purse-strings, these amendments have been observed.

One can see the same pattern in connection with the foreign aid program. For years, for example, the Senate Foreign Relations Committee urged the Administration to put more emphasis on multilateral aid programs and less on bilateral. For years, successive foreign assistance acts provided authority to transfer bilateral aid funds to multilateral agencies, but this authority has always been negated through prohibitions subsequently inserted in appropriation acts—an instance of Congress being deeply divided within itself. Gradually, however, it dawned on the proponents of multi-lateralism that the only way to accomplish this shift was to cut bilateral aid so much that there would be no viable alternative. (I am not suggesting that this motivated all those who voted to cut bilateral aid last year. I am suggesting that it is of more than passing significance that, the week before the Senate defeated the original bilateral aid bill, it approved three multilateral bills, authorizing upwards of $2 billion.)

One sees the effort to use funding restrictions to shape policy also in Congressional action with respect to military assistance. Given the huge deficit in the Federal budget and the mounting pressures for domestic expenditures, there is a powerful argument to be made against costly military assistance on budgetary grounds. But Congressional funding cuts have usually been made on policy grounds, in an effort to give some direction to the program for political rather than budgetary reasons. Thus, Congress has not only cut back the funds for military assistance in general, but has put specific geographic ceilings on the grant programs for Latin America and Africa. It has decreed personnel cuts in the Military Assistance Advisory Groups abroad, more to lower our profile than our expenditures. It has even limited our foreign military sales, where perhaps a budgetary reason could be found for expanding them.

I expect—and hope—that this trend will continue, not only with respect to limitations on funds but also with respect to limitations on the number of countries receiving aid. One can also anticipate—and I welcome it—tighter limitations with respect to specified countries.

It is over issues such as this that we shall see played out the debate which will eventually clarify and set the limits on the Nixon Doctrine. This Doctrine, in its simplest terms, postulates the substitution of American aid for American troops. It is an attractive concept when aid is viewed as an alternative for troops, and the pressures which have already been generated to make this switch are tremendous. But the Nixon Doctrine does not squarely face the question of whether the United States national interest requires either aid or troops, nor has the question been fully answered of how much aid the Doctrine implies.

III

There is one further aspect of Congressional participation in foreign policy-making which deserves our attention and this is its relationship to public opinion. A viable foreign policy has to have broad public support which can come, over the long term, only as the result of informed public debate. One of the important functions of Congress is not only to reflect public opinion, but to take the lead, along with the President and other opinion-molders, in forming it. This role used to be played mainly through debate, especially in the Senate. In recent years, for a variety of reasons, the level of debate has declined, and the function of committee hearings has become more important.

In many respects, committee hearings provide a more desirable forum for the discussion of public issues. They provide a means for questioning officials of the Executive Branch (assuming those officials are willing to appear), and they also make it possible to draw upon the expertise and insights of private citizens. They are open to coverage by television and radio and are therefore subject to wider dissemination. Finally, they can concern themselves with questions of broad policy which may not be readily susceptible to legislative solutions.

The hearings which the Foreign Relations Committee held on Vietnam beginning in 1966 had, I think, a profound impact on public opinion. The hearings which the Committee held on China policy in the summer of 1971 contributed, I think, to improving the climate for the President's forthcoming trip to Peking.

IV

If the Congress is to play a constructive role in foreign policy, it needs to equip itself properly for the job. Time does not permit a detailed discussion of Congressional organization and procedures, but I would like to discuss one point which seems to me the most important of all. This is information. One does not need to know everything about a subject to make an intelligent judgment on it (indeed, the effort to learn everything may well impede the process of arriving at an intelligent judgment), but Congress does, I think, need to organize its own sources of information more systematically, and it must have access to more of the information available to the Executive Branch. There are several aspects of the problem.

First, there is the matter of Congress' own sources. If Congress is to behave as an independent arm of the government, as the Constitution clearly intends, it must have independent sources of information. These may range all the way from the daily press and other publications through hearings with nongovernmental witnesses to the use of Congressional staff abroad. In recent years, the Senate Foreign Relations Committee has made increasing use of its staff to conduct on-the-scene investigations abroad. These have provided the Committee with a useful check on what its members are reading in the press and being told by the Executive

Branch. They have also, at times, provided the basis for subsequent detailed hearings and discussions with Executive Branch officials.

Aside from acquiring information through staff travel and reports, Congress needs better methods for assimilating the information it already has. Congressional committee files have not been exempt from the data explosion which threatens to bury us all in paper. Yet Congress has been hesitant in developing for its own use the new techniques, including computers, for information systems and for data storage and retrieval.

Although it is frequently amazing how much one can learn about a situation without reference to the Executive Branch, certain kinds of information are available only from the Executive Departments. This is information which has to do with the activities of the Executive Branch itself. I must say, in all candor, that the record of the Executive Branch in supplying this information has been inexcusably bad in recent years. In the argument that has ensued, a great deal of confusion has been scattered about concerning classified information and the doctrine of Executive privilege.

In the first place, there is a great deal of classified information which ought to be public. But this is a separable issue from the question of Congressional access to information which is properly classified. To say a document is Top Secret is no excuse for withholding it from an authorized Congressional committee whose staff has been properly cleared and whose members have been elected by the American people to protect their interests. The Foreign Relations Committee first learned of the existence of the U.S. secret agreement with Korea concerning the Vietnam war *from a Korean*, and then spent months trying to persuade the State Department to let us look at it. Nor is it any excuse to say that Congress cannot keep secrets. The record of Congress on this score, over the long terms, is certainly no worse than that of the Executive Branch and, in the last year, has been a good deal better.

This question is also separable from that of Executive privilege. I know of no one in Congress who quarrels with the doctrine of Executive privilege, narrowly construed, but one of the alarming trends I see in the Executive Branch is a tendency to broaden this doctrine, or the circumstances in which it might be applied, beyond all reason. Let me elaborate.

The doctrine of Executive privilege is based on the sound proposition that the President is entitled to have the private counsel of his advisers. The memoranda which his advisers prepare for this purpose and the records of their discussions are, so far as I am concerned, inviolate; and I would no more dream of asking for them than I would dream of acceding to a Presidential request for the records of the private meetings of the Foreign Relations Committee, or of the Committee's internal memoranda from its staff.

This definition of Executive privilege, which most Presidents, including President Nixon, have implicitly accepted at one time or another, is quite limited and contemplates that it will be applied to only a few people. After all, there are not many officials of the Executive Branch who have this kind of intimate relationship with the President.

What has happened in recent years, which worries me, is the proliferation of functionaries who are arbitrarily *said* to have this relationship to the Preisdent when in fact no such relationship exists. This has come about mainly through the growth of the National Security Council staff which, because of its location in the Executive Office of the President, is argued to be beyond Congressional scrutiny. Accompanying this growth, I detect a trend to vest in the NSC staff more and more of the studies and policy papers which used to be lodged in the Department of State or elsewhere.

In practice, Congressional access to all of these documents has not been cut off, but the option now rests, not with Congress, but with the Executive. And on the occasions when Congress has been given access, it has been like pulling eye teeth. A single example will suffice, and it is worth relating in some detail.

During hearings last May before the Subcommittee on Western Hemisphere Affairs of the Foreign Relations Committee, I asked for a copy of a study on Brazil made for the National Security Council. On June 28, Assistant Secretary of State David Abshire wrote to me that the study was "an internal working paper" and that "we would prefer to refer you to the equally full factual information on Brazil, provided to the Subcommittee both heretofore and in the course of these hearings."

On June 30, I wrote to Mr. Abshire that his letter was not responsive and asked that he either "transmit the NSC study or assert a claim of Executive privilege."

On July 21, Mr. Abshire wrote that my request "requires review at higher levels in the Executive branch." He added that he would write again as soon as the review was completed.

On September 20, I wrote to Mr. Abshire noting the lapse of time and expressing the hope that the review might be expedited.

On November 10, not having heard from Mr. Abshire in the interim, I wrote again, saying that I would very much appreciate a determination.

On December 10, still without an answer, I sent a further letter, pointing out that "this protracted delay has the effect of denying information to the Congress without formally refusing the Congressional request," and that "this is totally unacceptable and displays contempt for Congress in the literal, if not legal, sense of the term."

On December 14, Mr. William E. Timmons, Assistant to the President, wrote to me that he was "unable to provide" the document, but that "we should be pleased to provide a full briefing on the findings of the study . . . at your convenience."

On December 28, a member of the staff of the Subcommittee was given access to the document in the Executive Offices in a manner which wholly met the requirements of the Subcommittee.

Other, similar examples could be cited. Instances of this kind neither protect the prerogatives of the Executive Branch nor respond to the needs of Congress. They have the effect only of making the work of Congress more difficult and of exasperating the people who are trying to do that work. It is a matter which I am happy to say is being looked at by Senator Ervin's Subcommittee of the Judiciary Committee with a view to writing some ground rules for the exercise of the doctrine of Executive privilege.

V

This discussion has unavoidably mixed both the substance of policy and the procedure of policy-making. It could not be otherwise. If Members of Congress agree with the substance of a policy proposed by the President, they are under an almost irresistible temptation to acquiesce in the procedure followed by the President, even though this procedure is derogatory of their own proper constitutional prerogatives. This is the fundamental reason for the near atrophy of Congressional foreign policy powers in the period 1940–65. And disagreement with policies followed by the President is the fundamental reason for the renaissance of Congressional powers since 1965.

None of this is to say that the full performance of the Congressional role would be a guarantee against mistakes. Congress is no more a source of ultimate wisdom than is the Presidency. But the two of them, acting together, are less likely to be mistaken at the same time on the same question than either acting alone. When the Constitution functions as it was intended, if they do not act together, neither can act separately. We might as well face the fact that this requirement sometimes leads to stalemate. Indeed, the theory of the system of checks and balances is that mistakes of the theory of the system of checks and balances is that mistakes of omission are likely to be less serious than mistakes of commission.

Since the development of long-range delivery systems for nuclear weapons, a pernicious doctrine has grown up that this theory is outmoded. This is nonsense. Nobody has ever argued that the President cannot respond instantly to an attack, or an obvious and imminent threat of attack, on the United States. On the other hand, I can think of many instances in recent years when we would have been better off if we had followed that wise old adage, "Don't just do something, for Heaven's sake; stand there!"

We still have a long way to go to restore what I would regard as a proper balance between the Executive Branch and Congress. As Dean Wilcox has well pointed out in his perceptive book, "Congress, the Executive, and Foreign Policy"—

"The American system of government is such that executive-legislative relationships tend to be negative and often of an adversary nature. Either branch can frustrate the other, but it is very difficult for either to control the other."

No one intends that Congress should conduct foreign policy; it obviously could not do so in any event. However, there is an important distinction, often lost sight of, between *conducting* foreign policy and *making* it. It is with respect to the latter function that Congress does have an important role to play, not only as a check on arbitrary presidential action, but also in formulating policies that command the broad public support without which no policy, no matter how brilliantly conceived, can long endure. This Congressional role is clearly intended by the Constitution; but even if it were not in the Constitution, it would still have to be performed as the only barrier on the road which otherwise leads to caesardom.

BILL RIORDAN, "MR. TENNIS," SALISBURY, MD.

Mr. BEALL. Mr. President, the greatest assets that our country has are the people who are motivating forces behind creative activities.

Bill Riordan of Salisbury, Md., is such a man. Through his efforts he has placed Salisbury on the international sports map, and has upgraded American tennis before the world.

Not a native Marylander, Bill settled in Salisbury in 1954 after a successful merchandising career in New York City.

In 1962 he started to organize tennis tournaments at Salisbury's newly constructed civic center, and in 2 years time U.S. Lawn Tennis Association awarded Salisbury and Bill Riordan the National Indoor Championship.

Since then Salisbury has been the home of this national sports event. Bill Riordan is a valuable asset to the community of Salisbury as well as to American tennis.

Mr. President, I ask unanimous consent that the profile "Meet Bill Riordan: Mr. Tennis," written by Bill Tanton,

and published in the magazine supplement of the Baltimore Sunday Sun be printed in full.

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

[From the Sun magazine, Feb. 13, 1972]

MEET BILL RIORDAN: MR. TENNIS

(By Bill Tanton)

It is high noon on a bright sunny winter day in Salisbury and Bill Riordan strides briskly up to the front door of the handsome offices of Dresser Industries on the bank of the Wicomico River, about a mile downstream from the Riordan home, which is also on the bank of the winding Wicomico.

"I'm calling on Mr. Byrd," Riordan tells the receptionist. She recognizes Riordan. Everybody in Salisbury recognizes Riordan. In a very real sense, Riordan has made that Eastern Shore city of 20,000 known all over the world.

Riordan is taking Dan Byrd out to lunch. He is always taking people like Dan Byrd out to lunch. Dan Byrd is the handsome and personable young president of Dresser Industries and Riordan is a promoter and fund raiser. Company presidents and board chairmen are his meat.

Dan Byrd comes out of his office and greets Riordan. Would the visitor, Dan Byrd wants to know, like to go downstairs first to view the company's exhibit of ultra-modern gas pumps in a dozen spiffy colors, the printing on their faces in a half dozen languages, and with self service gadgets abounding, for that—self service—is the wave of the future in gas pumps the world over?

Of course, Mr. Riordan would love to see Mr. Byrd's gas pumps. What handsome colors! Marvelous! And you mean that this one is connected electronically to a cashier at a check-out gate, something like the supermarket? Fascinating! How interesting that 70 per cent of the gas stations in Sweden are already automated.

Dan Byrd is happy. Riordan likes his gas pumps.

Now they jump in Riordan's Pontiac and drive off to Woolston's seafood house for a luncheon of fried clams, washed down with a beer by Dan Byrd and a Coke by Riordan, who does not drink. Before their meeting is over Dan Byrd is almost sure to commit Dresser Industries as a sponsor or contributor to one of the tennis tournaments Riordan runs.

William F. Riordan, 51, is the chairman of the United States National Indoor Open Tennis Championships, which he stole away from New York and brought to Salisbury nine years ago. The tournament opens today in the Wicomico Youth and Civic Center and continues through next Sunday.

Like most things Bill Riordan touches, the tournament has become an immense success. It was sold out every year, and the demand for tickets is greater than ever this year. It's carried live on TV coast to coast by 209 public broadcasting stations.

Riordan is the director of the 14-city U.S. Indoor Circuit, which is not really a U.S. circuit any more since London has been added this year. The circuit opened last month in Baltimore at Towson State College and the three-day event grossed nearly $50,000, a record for an eight-man draw.

"They offered me the chairmanship of the whole thing, indoor and outdoor, a couple months ago," Riordan says in a rather offhanded way, "but I turned it down. I didn't like the way it was set up."

By now most people know of the job Riordan has done in Salisbury. He has put that city on the international sports map. Tennis players from Australia to Romania know about Salisbury and play in the tournament there. Many of them have played on Riordan's private court in his backyard.

"That's the one extravagance I have allowed myself—that tennis court," Riordan says. "I paid too much money for it, but what are you going to do when people like Chuck McKinley and Rod Laver come to your home and play? You can't ask them to play on some cracked old thing with weeds growing through it."

What people generally do not know is that the Salisbury tournament is only one of Riordan's many successes.

He entered World War II as an Army private and came out a major. Stationed at the Pentagon, where he was chief of medical supply, he met and was fascinated with a Trinity College sophomore named Terry Anderson. Bill and Terry recently celebrated their 25th wedding anniversary. They have a 23-year-old daughter, Mary, who is a graduate student in journalism at Boston University, and a son, Billy, 18, who is a student at Georgetown Prep and hopes to enroll in September at the University of Utah, which is known for its tennis teams.

Bill Riordan grew up in Forest Hills, N.Y., which accounts for his interest in tennis. He played the game in high school and when he was a student at Georgetown, but he was never a champion or nationally ranked.

Making money has never been a problem for Riordan. After he married Terry he went to work for Stern Brothers department store in New York and promptly became a vice president.

"When I was 31 years old," he recalls, "I was making $55,000 a year—and I had to borrow money to pay my income tax every year. I was entertaining customers so much that I became jaded. Out every night in expensive restaurants. So one night I came home and said to Terry, 'What in the world are we doing? I'm making all this money and we can't even enjoy it. This is a rat race we're in, Let's get out of it.' "

He was flying back to New York in 1954 on a business trip when his plane was grounded by bad weather in Washington. While there he heard about a dress shop that was for sale in a place called Salisbury. He got a map to find out where it was, and then rented a car and drove there. He liked the city and he bought the store.

When he left Stern Brothers 300 people attended a going away party for him at the Stork Club. They didn't think he'd be going away for long. They couldn't believe this dynamo could be fulfilled in a little town on Maryland's Eastern Shore.

"You'll be back in two years," they said. But he's been in Salisbury for 18 and he's never been tempted to return to New York, where he goes often anyway on tennis matters.

"Bill's never in Salisbury for too long," Terry says. "He's on the go so much—or wherever the tennis meetings and tournaments are—that he doesn't have a chance to become bored with living in a small city."

It was not always thus. In his first few years in Salisbury, he worked hard to build up his fashion shop business. By 1962 he was getting restless and he organized a small tournament. After all, Salisbury had just built a nice, new, 3,000 seat Civic Center at a cost of $600,000. Why not hold a tennis tournament?

His tournament that year and the one the year after were so well done that the U.S. Lawn Tennis Association awarded Riordan and Salisbury the national indoor championships in 1964. They have become a fixture.

"When I first started promoting tennis," he says, "I experienced a strange sensation. I had been working in the store for years and when I went out to call on the president of a corporation in Wilmington, trying to sell him on the idea of becoming one of our sponsors, I suddenly became nervous. I was perspiring and my vocal chords tightened up. I'd been out of circulation for too long. Talking to big shots used to be duck soup for me when I was working in New York, but I had lost my touch."

He quickly regained it, though, as the record shows.

Nowadays Riordan spends almost no time in his store. He works out of his home, night and day, seven days a week, but almost exclusively on tennis. His phone number is almost impossible to reach. You can depend on getting a busy signal. If you call a hotel operator when Riordan is on the road, you are likely to be told, "Mr. Riordan has a call and there are two others ahead of you waiting."

Bill is the player chairman for the USLTA, which means he is in charge of all the world's top players except for the 32 controlled by Lamar Hunt's World Championship Tennis. Hunt, the Texas multimillionaire who also owns the pro football Kansas City Chiefs, would not send his contract pros to Salisbury. It didn't bother Riordan.

"Our guys, the independent pros, are much more attractive to the fans than Hunt's group," Riordan says. "Watching a bunch of Australians who've been playing one another for 15 or 20 years is like having a warmed over dinner.

"We have new, exciting players from 20 different countries, players like Ilie Nastase, who won in Baltimore last month, and young Jimmy Connors, who lost to Nastase in the finals. The people would rather see them than Fred Stolle and Roy Emerson. Besides, our players have been beating Hunt's people. Nastase is driving them crazy. We've exploded the myth of the superiority of the contract pros."

It may seem a little incredible that Riordan, is, after all, only a small businessman, should be pitted head-to-head against Hunt and his vast fortune. It is no mismatch, though,

"For every player Hunt signs," Riordan says, "we've got 10 good kids coming up. My package is salable. Hunt's is too expensive.

"And something outsiders fail to realize is the USLTA has an army of volunteers like Frank Roberts and Ed Griepenkerl in Baltimore who will knock themselves out for us because the profits go either to charity or into junior development. These same people wouldn't lift a finger to make a dollar for Hunt."

Riordan loves tennis for the sport's sake and junior development is one of his passions. When he came to Salisbury the city had four rundown courts in the public park. Two years ago Riordan donated as a family gift to Salisbury the $100,000 Michael F. Riordan Memorial Tennis Center. The center, which has 10 courts, is in memory of Bill's younger brother, Mike, who was crushed to death in his home in a mudslide in Los Angeles in January, 1969. The tragedy was a blow to Bill, who was close to his brother and had been talking with him on the phone minutes before it happened. But it did not keep Bill from conducting another highly successful National Indoor Open the following month. Bill has another younger bother, a lawyer in South Pasadena, Calif., and four sisters living in Detroit, Akron, Orlando and Denver.

This year Riordan is involved in a new project that takes him to Washington at least two days each week. The last tournament on his 10-week, $375,000 indoor circuit will be played March 6-12 at Georgetown University. The proceeds will go to the Vincent T. Lombardi Cancer Research Center at the Georgetown University Medical Center.

"The response to this Lombardi thing has been fantastic," Bill was saying recently. "President Nixon has agreed to be our honorary director and we just sold our 13th $1,000 box. We ought to gross around $100,000 and turn over about $50,000 to the Lombardi Research Center.

Such is life for the man who left New York

to get out of the rat race. His frenetic lifestyle would be rat race to an ordinary person, but he is no ordinary person and tennis and charity work have provided a perfect outlet for his energy. Some say he'll wind up becoming the first commissioner of all tennis. One thing is sure, he's going to keep tackling new and bigger challenges. He's running faster now than he ever did in the rat race, but he loves it.

LITHUANIA REMEMBERED

Mr. PASTORE. Mr. President, with their land's recorded history of centuries—with a golden lore of literature, learning, poetry and song—the hearts of the sons and daughters of Lithuania everywhere are dwelling these February days on this half century, particularly on the 54th anniversary of Lithuania's declaration of independence as a republic.

But it behooves all lovers of freedom—whatever their race, or wherever they dwell—to pause at this time to ponder on Lithuania's tragedy of liberties lost—of independence trampled into earth—of a nationhood achieved in costly sacrifice and then sabotaged by a Red Russia in the fiction of Lithuania's adoption into the Soviets.

It is almost unbelievable history for us of America—the massacres—the starvation—the forced exile into slavery—of a brave people whom we measure by the Lithuanian Americans we treasure as neighbors in the State we call "home."

Yet the people of Lithuania have confidence in the conscience of mankind. These victims of violence believe that they can achieve peaceful liberation based on international law. They believe—and we believe—that peace through freedom is the premise and the promise of moral soundness and political realism—the keystone of security and sanity in a world grown too small for savagery or slavery.

If these millions of Europeans in these captive nations cannot have confidence in the triumph of justice through the tribunals of free nations, then how certain can any free nation be that it will continue to be free in this challenging nuclear age that could invite the extinction of civilization.

What insurance is there for any of us—yes, even for America—if nations cannot live together, labor together, and legislate together for a world of equity and tranquillity.

The institutions of mankind are on trial as we memorialize the misery of Lithuania.

May the night of darkness for that brave land soon vanish in the dawn of real freedom.

NORTHWESTERN UNIVERSITY PSYCHIATRIC INSTITUTE

Mr. PERCY. Mr. President, I invite the attention of Senators to a major program in the field of community mental health which is being initiated in Chicago.

On January 18, officials of Northwestern University announced plans for the construction of a $6.1 million psychiatric institute and community mental health center in the near North Side. The institute will provide clinical, ambulatory, and inpatient care, and serve as a medical school, teaching, and research center. It will be Northwestern's first medical school.

The institute will cooperate with approximately 35 community agencies and health providers to supply mental health services to adults and children in both the wealthy and poverty sections of the North Side. The target areas to be served are the Loop, the Gold Coast, Cabrini-Green public housing complex, Near North, West Lincoln Park, and East Lincoln Park.

Special programs will deal with the particular problem of alcoholism, drug abuse, and the aged. Many of the institute's services will be available at night and on an ambulatory basis so that patients can maintain their jobs and contacts with their families and community.

Northwestern University is the first medical school in Illinois to take on the responsibility for serving a community area for mental health. This is a commendable undertaking and one which may well serve as a national prototype. Dr. Roscoe Miller, Northwestern University chancellor; Dr. James Eckenhoff, dean of the NU-McGaw Medical Center; Ray E. Brown, executive vice president of McGaw; and Dr. Harold Visotsky, chairman of the psychiatry department, have created a progressive, dramatic approach to both psychiatric education and care. It will be a tremendous asset to the North Side community and to the city of Chicago.

Mr. President, I ask unanimous consent that an article detailing plans for the Northwestern University Psychiatric Institute, as published in the Chicago Sun-Times, be printed in the RECORD.

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

NU PSYCHIATRIC INSTITUTE FOR POOR, RICH

(By Patricia O'Brien Koval)

Northwestern University on Tuesday announced plans to build a $6.1-million psychiatric institute and community mental health center on the Near North Side.

Construction will begin in April with an initial $1.3-million grant from the U.S. Department of Health, Education and Welfare.

The Institute of Psychiatry will be built on a site next to Passavant Memorial Hospital in the 300 block of E. Huron. It is scheduled to be completed in two years.

Plans for the new facility were announced at a press conference by Dr. J. Roscoe Miller, NU chancellor; Dr. James E. Eckenhoff, dean of the NU McGaw Medical Center; Ray E. Brown, executive vice president of McGaw, and Dr. Harold M. Visotsky, chairman and professor of the university's psychiatry department. Visotsky will direct the new institute.

"The difference between this institute and any other is that we will try to provide a one-class system of health care for rich and poor in the community," Visotsky said.

The community programs will be run jointly by Northwestern and the Citizens Health Organization, a community group representing 35 agencies. It is directed by Obed Lopez, head of the Latin-American Defense Organization.

"The power to run them, (and) decisions on funding and hiring will be shared," Visotsky said.

The area to be served by the institute will encompass the Loop, the Gold Coast, Cabrini-Green public housing complex, the Near North and West and East Lincoln Park.

Other functions of the institute will include hospital care for up to 120 patients, clinical programs for drug abusers and alcoholics and programs for the aged.

In addition it will house the medical school's department of psychiatry, research facilities and doctors' offices. Medical students will be trained on the job, both at the hospital and in the community agencies.

The psychiatric units at Passavant and at nearby Wesley Memorial Hospital will be incorporated into the institute.

Initial funds of $1,309,000 for the project came from the HEW under the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. The total cost is estimated at $6,100,781.

Northwestern University will underwrite $3 million and the state will provide $700,000 in matching funds.

The rest of the cost will be raised from private sources such as individuals, corporations and associations, and from operating revenues, Miller said at the press conference in the university's Wieboldt Hall, 339 E. Chicago.

"The Institute of Psychiatry of Northwestern will be one of the few facilities in the nation in which teaching, research, patient care, and community programs will have been brought under one roof" Miller said.

The various institute services will be in partial operation immediately. using the facilities of the co-operating hospitals and agencies.

Visotsky said the need for mental health care in the area the institute will serve—bounded by Diversey on the north, Roosevelt on the south, the lake on the east and the river on the west—is greater than most persons realize.

It encompasses some of the richest and poorest people in Chicago, he said.

Of the 143,000 residents in the area, "each year between 800 and 1,000 . . . are admitted to state hospitals, usually Chicago State Hospital (at Irving Park and Narragansett)," Visotsky said.

"Drug problems are rampant in the area, yet there is no comprehensive network of drug abuse programs. The communities also lack a suicide prevention system or an effective 24-hour psychiatric emergency system."

Some 2,700 alcoholics live in the area, and more than 1,000 persons who have been in state mental hospitals are living in half-way houses there, he said.

WAR POWERS

Mr. TAFT. Mr. President, on June 15, 1970, the distinguished Senator from New York (Mr. JAVITS), introduced in the Senate the first war-powers bill. Since that time he has exerted strong leadership in this critically important endeavor to give definition to the respective powers of the President and of Congress in the war powers area. The fact that the Committee on Foreign Relations has now reported S. 2956 is in no small part due to the energy, the dedication, and the leadership which the Senator from New York has shown.

On February 14, 1972, the New York Times published an article entitled "The Balance in the War-Powers Bill," written by Senator JAVITS. I ask unanimous consent that the article be printed in the RECORD.

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

THE BALANCE IN THE WAR-POWERS BILL

(By JACOB K. JAVITS)

WASHINGTON.—A national debate has begun on "the War Powers Act."

The bill was the subject of intensive, year-long hearings before the Senate Foreign Relations Committee.

There has been criticism of the bill from Secretary Rogers, as well as from such former Kennedy and Johnson advisers as George Ball, Eugene Rostow and Arthur Schlesinger Jr., and from Senator Goldwater. These critics have largely presented their objections to the bill from the perspective of "President's men." But I do not believe that they have grasped the real reason for the bill, nor do they give sufficient weight to the constitutional and legislative imperatives arising from our national experience of the past several decades.

The United States emerged from World War II as the dominant world power—a role quite alien to all our previous national experience. The unique challenges arising from this new role were such that we slipped into a practice which ran counter to the genius of our Constitution and the underlying structure of our political institutions. This practice tended to concentrate the essential power of war and foreign policy in the institution of the Presidency and to leave to the Congress only an appropriations or confirmatory role. This practice has proved to be a most costly failure which has dangerously strained the fabric of our whole society.

The War Powers Act corrects the basic flaw of the postwar practice by restoring to the Congress and to the people a meaningful role on the question of war or peace.

Critics of the War Powers Act have alleged most frequently that the provisions of the bill are too rigid; that the bill does not and cannot foresee all the "unforseeable" contingencies which might face the nation at some future time. Such criticism is wide of the mark. The bill provides four categories of situations in which the President may take emergency military action in the absence of a declaration of war: first, to repel or forestall an attack—or imminent threat of an attack—upon the United States; second, to repel or forestall an attack upon the armed forces of the United States located outside of the country; third, to rescue endangered U.S. citizens abroad in defined circumstances, and fourth, "pursuant to specific statutory authorization."

This last category is designed specifically to enable the President and the Congress *together* to meet any contingency the nation might face.

Over the last twenty-five years the Congress on a number of occasions has passed so-called "area resolutions" at the President's request—most famous the ill-begotten Tonkin Gulf Resolution. The "fourth category" of the War Powers Act envisages replacement of the old, loosely-worded "area resolution" with precisely worded, new resolutions—as needed—which establish a national policy, jointly constructed by the President and Congress, respecting developing crises or threats which could involve use of the armed forces. A Congress and a nation so badly burned by Vietnam and the Tonkin Gulf Resolution can be expected to exercise more appropriate caution, prudence and precision.

The War Powers Act makes ample provision for emergency action by the President. Its unique feature is that, in doing so, it builds in a "trip-wire" necessitating affirmative Congressional action within thirty days. If the President takes emergency action putting the armed forces into hostilities, he must immediately make a full report of the circumstances, authority for, and expected scope and duration of, the military measures he has initiated. If the President is unable to obtain the concurrence of Congress to extend his authority, he must terminate his actions at the end of thirty days. The bill has strict provisions to prevent filibuster or other delays.

The War Powers Act cannot create national wisdom where there is none. But it can insure that the collective wisdom of the President and the Congress will be brought to bear on the life and death questions of war and peace. The Pentagon papers and the Anderson papers have shown us how dissenting and questioning viewpoints are screened out or excluded altogether from the present Presidential decision-making process. The real danger to our security today is not that the Congress might hamstring the President. The real danger is that Presidents can—and do—shoot from the hip. If the collective judgment of the President and Congress is required to go to war, it will call for responsible action by the Congress for which each member must answer individually and for restraint by both the Congress and the President.

CHILDREN STILL FINISH LAST

Mr. MONTOYA. Mr. President, in recent weeks I have held forth on the floor of this Chamber regarding the nonenforcement by the Food and Drug Administration of the Poison Prevention Packaging of 1970. In recent days there have been several developments which call for further comment.

First, however, it is worth noting that the law in question was placed on our statute books almost 14 months ago. It requires that childproof safety closures be placed on all products which are found to be potentially harmful to young children.

No such closures are being sold anywhere today in this country as a result of direct FDA enforcement of the act. No hazardous product that I am aware of is presently equipped with such closures as a result of FDA activity. As a result, in the past 14 months, hundreds of American children under age 5 have died. Hundreds have been crippled. Hundreds of thousands have been rushed to the emergency rooms of hospitals to have their stomachs pumped out.

This is not a new experience for the American public. The Food and Drug Administration has never fully lived up to its responsibilities under a variety of laws. The Safe Toy Act has not been vigorously enforced. Laws governing the cosmetic industry also come to mind. FDA's portion of the responsibility for enforcing the Flammable Fabrics Act is a dead letter. In recent weeks we have read horror stories about synthetic hormones, red dye, saccharin, hexachlorophene, feminine deoderant sprays, and lead tinsel for Christmas trees. For each tale of disaster mentioned, another one is left out.

In response to these accusations, FDA argues death statistics. If one critic says 500 children died because FDA has not enforced one law, FDA indignantly responds with a different death figure. In effect, they are saying that there are no grounds for criticism because only 250 children died by their count. In one case, the figures of their own director of poison-prevention control were the source of information on child deaths. His agency refuted his earlier claim. That is consistency for you, Mr. President. What emerges is a picture of a frightened agency, the captive of the interests it is charged with policing for the public good. In every case, public safety comes second to industry profits. Some FDA personnel are so blatant about this line of behavior as to raise even more serious questions.

The Poison Prevention Packaging Act of 1970 is a perfect example. Under growing public criticism and exposure, the agency decided to move 1 inch forward under the law.

Four times, previously, FDA announced preliminary childproofing regulations for products in four categories—aspirin, furniture polish, oil of wintergreen solutions exceeding 5 percent, and controlled drugs. Each time, a postponement has been granted for each category, and no final orders issued.

The testing protocol was finally placed in the Federal Register 11 months after the law was signed. A 60-day extension was earlier granted the four categories of products, contingent upon publication of the protocol. That extension expired January 19, 1972. On February 15, almost 1 extra month later, FDA finally held the aspirin manufacturers feet to the fire of compliance.

The 6-month clause of the law was brought into operation. By publication in the Register, these companies have 180 days to equip their products with childproof containers meeting requirements of the law and previous published rules. This means that unless the Secretary of Health, Education, and Welfare exercises his option of escalating the time of compliance, the closures will be available commercially by August 15 of this year, 19½ months after the President signed the measure into law.

Our friends in FDA have no reason either to claim any credit or to relax. I term this entire state of affairs degrading to the Government, insulting to Congress, and contemptuous of the consuming public. It is a public scandal as well as a confession of inability and unwillingness to perform on the public behalf by an agency strictly charged with public health and safety.

Proof is readily available. The state of the art, as far as childproof safety closures are concerned, has matured significantly. Some companies are prepared immediately to product closures in quantity exceeding any and all FDA regulations. I ask unanimous consent to have printed in the RECORD a story entitled "Food and Drug Packaging," published in a highly respected organ of the packaging industry on February 3, 1972. It indicates how far technology has advanced. Let us also assume that the companies competing with the featured concern are not exactly asleep on the job. I have blanked out the name of the company, its officers, and product name in order not to publicize it through the Senate and CONGRESSIONAL RECORD. Any Senator who wishes the actual names will be provided with the factual information.

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

REDESIGNS SAFETY CLOSURE TO EXCEED FDA STANDARDS

Kids will find tougher to open —— Corp's —— closure, as a result of a design change undertaken "to meet or exceed" the FDA's Poison Prevention Packaging Act standards.

The new design involved changing the tab and well of the original snap closure. Now, a downward force must be exerted at the indicated spot on the closure to release the pull tab. The tab is then pulled to remove the closure. The original model required only the lifting and pulling of the tab.

"The design change," notes —— president of —— Corp.," makes the closure more difficult for children to open because the flush construction of the tab does not permit prying open with teeth. In addition, testing has demonstrated that small children lack the skill and strength to drepress the tab sufficiently to release it."

The new closure has enabled —— to exceed the standards set forth in the FDA protocol. During testing, conducted by Associated Testing Laboratories, Inc., the —— was found to be 98.5% effective before a demonstration and 93.5% effective after. Based on matched pairs of 200 children as stipulated by the FDA, these percentages were well above federal standards set in the protocol (85% before; 80% after). Adults were able to open and replace the closure 95% of the time. And, after a single demonstration, they were 100% successful.

While more difficult to open as a result of the new design, the latest ——, —— points out, "is still an inexpensive, one-piece construction that has been featured in past designs of the closure." Size and application conditions for vial containers have remained the same he adds.

The design for this new —— closure had been on the design boards for several years when the protocol was first proposed. Since it requires that children be told they can use their teeth to open the closure, the decision was made to produce the more complicated closure. —— has, in the past five months, revamped both its 26 and 28 mm. production cap molds to comply with the protocol finalized by the FDA.

—— now has a production capacity of 60 million per year for both the 26 and 28 mm. vial closures. In addition, the company can produce 200 million 4, 7, 9, and 11-dram vials to complement the closures.

"Further production capabilities," —— explains, "are largely dependent on the emergence of a market for the closure. Within four months, the —— could reach a volume of 800–900 million per year."

Important in the design change was the choice of material for the closure. "The plastic," says ——, vice president of —— and designer of the new closure, "had to have good flexing and hinging abilities and had to be flexible enough to allow depression of the indicated spot to spring the tab up." For these reasons, he chose Tenite polyallomer grade 5B20A suppiled by Eastman Chemical Products, Inc., "This material" he says, "is amazingly adaptable for our design. Its ability to conform to irregularities in both glass and plastic containers as well as its good sealing and easy molding properties were crucial to our decision."

Polyallomer was also found to have better hinging qualities than either polyethylene, which would tear after a certain amount of wear or polypropylene, which was found to be a bit too rigid for the application.

—— has adapted its new design for use on aerosol cans and detergent-type paperboard cartons. The closure, —— Corp officials report, can be added to cartons and aerosol cans without extensive changes in existing high-speed packaging and wrapping machinery. Aerosol closures will be produced in 202 and 211 sizes.

"The original version of ——, adaptable for aerosol and carton closures, was inserted into an undercut installed in the top of the aerosol cap or carton," —— explains. "The design change was such that only the tab and well of the closure were changed so that caps still fit into cartons and aerosol caps existing before the alteration in design."

Currently being developed as an addition to the —— line of safety closures is a permanent-type liquid dispensing closure for squeeze bottles. The design for this closure incorporates the —— principle in that a designated area must be depressed to free the tab. Once the tab is released on this model, liquid can be spirted out. To seal the top cap, the tab need only be lowered to lock in place.

The company has in-house facilities geared toward design and manufacture of new closures. —— estimates the company can bring a product from design to prototype production within 30 days. —— is thus equipped to demonstrate, on a limited basis, the handling of closures from start to finish to provide packagers with the total idea as to costs and practical operation of switching to the —— safety package.

"Today we are concerned with approaching relatively small industries," reports Mr. ——. Large drug companies, he says, have already learned of the —— and several are now considering use of the safety closure. "We see —— on a variety of packages and containers from aerosol hairspray cans to safety caps for detergent boxes and aspirin bottles," Mr. —— says.

"Costs involved in producing —— have set competitive prices," according to Mr. ——. "This combined with the fact that the closure does not necessitate extensive tooling and production changes for manufacturers makes switching to the closure feasible for many industries," he adds. Closure prices for medicine vials range from $5.50 to $7 per thousand. The estimated price for aerosol can caps will be $17.50 per thousand. And, for detergent box closures, the cost is approximately $9.00 per thousand.

"Although providing safety closures on packages does involved increased costs for the manufacturer, it is essential to start the prevention of the large number of accidental poisonings that occur each year," says ——.

Mr. MONTOYA. Mr. President, this information shows that industry is ready to comply effectively with the law in question.

On another front, consumer protection groups are moving into court, seeking through class action suits to require enforcement of this child protection law. In the same issue of the magazine, front page coverage is devoted to just such an undertaking. I ask unanimous consent that the article be printed in the RECORD.

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

CLASS SUITS SEEK USE OF SAFETY CAPS

WASHINGTON.—Class action suits have been filed here and in Los Angeles seeking injunctions to prevent drug retailers from selling sleeping pills, barbiturates and tranquilizers not packed in containers topped with safety closures.

The suit filed here by Levine and Scanlon on behalf of residents in the area names as defendants Dart Drug Corp., Peoples Drug Store, Inc., Drug Fair, Inc. and all other Washington drug retailers.

The complaint states "that ingestion of any such (hazardous) drug in the quantity in which it is customarily packaged and dispensed or in any quantity exceeding the single dose prescribed by a physician, by any such class may cause death or serious illness, and frequently will cause permanent physical impairment to the child who swallows such drug."

The action charges the defendants with selling these drugs in containers with "dangerous caps"—defined as screw-top or lift-off caps, even though safety closures are available to them at a very small additional cost which is usually passed on to the consumer.

"Unless restrained by order of this Court, defendants and each of them will continue to package, sell and deliver to the public, including parents, pursuant to prescription, hazardous drugs packaged in dangerous containers," according to the complaint statement.

The complaint filed in Los Angeles by Butler, Jefferson & Fry against drug retailers in that area also seeks temporary and permanent injunctions to prevent the selling of sleeping pills and tranquilizer type drugs not packed in containers secured with safety closures.

Both Aaron Levine of Levine & Scanlon and Robert Fry of Butler, Jefferson & Fry cite the Food & Drug Administration's purported inaction in getting the Poison Prevention Packaging Act of 1970 enforced as the primary reason for the court actions.

"Faced with at least an eighteen month delay by many estimates, and three hundred kids a year dying and millions having their stomachs pumped, I think that it's time for drug retailers to use safety closures," Mr. Fry tells Food & Drug Packaging.

Reaction to the suits from the pharmacists have been mixed. According to a spokesman for the Pharmaceutical Manufacturers Assn., the suits are well meant but a bit premature.

"We are inclined to think that they (safety closures) should be used if there is a reasonable chance that they might have some effect. It's a question of whether, in fact, something suitable and of demonstrated usefullness is available," adds the PMA spokesman.

William Patton, secretary of Peoples Drug Store, Inc., one of the defendants in the suit in Washington, believes that the purpose behind the court action is meritorious but states that making safety closures mandatory is not the way.

NOTES OPPOSITION

"We voluntarily tried them on a mandatory basis but we received many, many customer complaints," says Mr. Patton. He adds that his company has been selling prescription drugs with safety closures to anybody who requests them for about three years.

"It's nothing but a nuisance," says John McHugh, director of professional services for Peoples Drug Store. He states that his company has even mounted an advertising campaign in newspapers and on TV urging parents to request safety closures and even showing how they are opened.

"Within a matter of a month or two, we will have to use them on all controlled drugs. It makes this totally incompatible with the suit," says Mr. McHugh adding that his firm would rather go along with what the FDA says on the use of safety closures. Presently, Peoples Drug Store sells prescription drugs capped with the Owens-Illinois Screw-Loc closure on request.

"We feel child-resistant prescription vials are the best method to prevent life-saving medicine from becoming potential poison," says Michael L. Barnd, registered pharmacist, director of professional services, for Walgreen Co. The company has offered Palm 'n Turne safety closures with all prescriptions except liquids since 1968. The closure is made by the Med-A-Safe div. of Hayes-Albion Corp.

"We feel that if these containers save the life of one child, they are more than worth it," says Mr. Barnd.

Mr. MONTOYA. Mr. President, the FDA official in charge of collecting sta-

tistics on child poisonings is Mr. Henry Verhulst. The March 1968, issue of the Journal of the American Medical Association contains an article written by him entitled "Childhood Poisoning Accidents." The co-author was John J. Crotty, M.D. I quote from the first paragraph of the article.

From 500,000 to two million American children accidentally ingest potentially toxic materials every year, and approximately 500 children under 5 years of age die as a result.

Four years ago this situation was recognized and spotlighted by the very people responsible for enforcement of this law today. Is this man and his coworkers actively promoting enforcement of the law? Where are the figures?

It is a fact that the FDA identified and listed dangerous products in the home for years before this law took effect. FDA's procedure for testing childproof containers was worked out long before. Tests at Madigan General Hospital speak for themselves. Certainly this same Mr. Verhulst knew about them when he advised industry to take advantage of their pioneer work. Is not the public entitled to the same courtesy? Or is it only for big business? If FDA knew of these tests, why did it take them 11 months to make public ground rules for testing closures?

Since the Poison Prevention Packaging Act of 1970 went on the books, FDA has four times announced in the Federal Register preliminary childproofing regulations for products in four categories. Now that aspirin has been given final orders, what does FDA propose to do about the other three categories? When will final orders be published in the Federal Register on them?

It is my understanding that such orders have been cleared out of the FDA's Bureau of Product Safety and are only awaiting Dr. Edwards' signature and final approval. Why does FDA not move forthwith? Where are these final orders?

And what of new childproofing regulations for the literally hundreds of other menaces now being peddled in a hundred thousand retail outlets around the country? What about pesticides? Caustic detergents? Liquid lye bowl cleaners? Silver polishes? Ad infinitum. Ad nauseum.

Technical advisory committees are not appointed for fun. Not any more, at least. Nor are they going to operate anonymously, behind closed doors and without scrutiny by Congress, consumer groups, and the media. The PPPA technical advisory committee has a vital responsibility and it must discharge it without delay. If not, then they bear a part of the responsibility for child deaths and injuries which will occur.

Certainly this grudging action by FDA has landed in industry ranks like a bombshell. We can safely state that it was totally unexpected. Why? Because in the past consumer protection legislation was treated as some joke. Congress could pass a law, but FDA was in charge of enforcement. And FDA could and did delay such enforcement until the law became a dead letter, as dead as the consumers it was designed to protect.

Industry's cozy relationship with FDA has been an ongoing semipermanent phenomenon. Industry executives and FDA people were at times interchangeable. A cursory glance at many top FDA executives today reveals significant numbers of former top industry figures. With such interchangeability, what chance did a good law have for enforcement? Little, if any. Let it be known to these companies that the good old days are gone. Sunlight is the best disinfectant, and many doors are going to be thrown open for good.

It is also bruited about that a lawsuit by several companies is being seriously considered against the aspirin final order. So be it. Let these diehards go to court to prevent America's youngsters from being protected by childproof safety closures. The public might find it enlightening, particularly when it is spread out for them to note on the floor of the Senate.

The old industry-FDA relationship will never be the same again. A precedent is going to be set of enforcement of a good, sound consumer and child protection measure. From now on, such relationships as I have described are going to be audited, with vigor, stubbornness, and determination. Up to now, politics came first and children finished last. Up to now, this agency has written a record of shame. Under-the-table deals with makers of lead tinsel speak for themselves. So do junkets to Boca Raton with industries the agency is supposed to regulate. Such activities are a stench in the nostrils of honest men and women, and they are most assuredly going to come to an end.

JOINT RESOLUTION NO. 3 OF LEGISLATURE OF STATE OF NEW YORK

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD, Joint Resolution No. 3 of the legislature of the State of New York memorializing Congress to meet its responsibilities with regard to the environment.

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

JOINT RESOLUTION NO. 3

(Joint Resolution of the Legislature of the State of New York memorializing Congress to meet its responsibility with regard to the environment and to provide the funds necessary to carry forth essential environmental programs and to adopt a resolution continuing the construction grants authority of the Clean Water Restoration Act of 1966 and providing for reimbursement to the State of New York and its municipalities of the amounts committed for prefinancing the federal share of the cost of construction of sewage treatment works and to request the Attorney General, if necessary, to take appropriate action to ascertain and protect the interests of the State of New York)

IN SENATE

By Messrs. Brydges, Zaretzki, B. C. Smith, Rolison, Anderson, Barclay, Caemmerer, Calandra, Conklin, Day, Donovan, Dunne, Flynn, Gioffre, Giuffreda, Goodman, Gordon, Hudson, Hughes, Knorr, Langley, Laverne, Levy, Lombardi, Marchi, Marino, McGowan, Murphy, Niles, Present, Schermerhorn, W. T. Smith, Stafford, Halperin, Griffin, Bloom, Meyerson, Lewis, Giordano, Bookson, Lentol, Santucci, Glinski, Bernstein, Powers, Ferraro and Gold.

IN ASSEMBLY

By Messrs. Duryea, Kingston, Steingut, Battista, Beckman, Bell, Berle, Bersani, Betros, Blumenthal, Brewer, R. A. Brown, Buckley, F. A. Carroll, V. S. Carroll, Chananau, D. W. Cook, Cooperman, Crawford, DelliBovi, DiCarlo, Droms, Emery, Farrell, Field, Finley, Flack, Gilman, Griffin, Harris, Hausbeck, Henderson, Herbst, Hogan, Jerebek, Jonas, Kinsella, Lane, Levy, Margiotta, Marshall, J. G. McCarthy, McFarland, H. M. Miller, Mitchell, H. A. Posner, Rosenberg, Russell, Sears, Tills, Walkley and Wertz.

Whereas, The Federal Government has recognized a basic responsibility regarding the environment and environmental standards have been set by the state and approved by the Federal Government which are considered realistic in the light of available technology and the funding that the Congress has heretofore indicated that it would appropriate for this purpose; and

Whereas, The Clean Water Restoration Act of nineteen hundred sixty-six provides financial assistance for construction of sewage treatment works through June, nineteen hundred seventy-one and further assured the state and its municipalities that if they prefinanced the Federal share that the Congress would make timely reimbursement; and

Whereas, The subsequent congressional resolutions have failed to provide assurance the Congress will reimburse in order to continue the program; and

Whereas, Since nineteen hundred sixty-six the state and its municipalities have prefinanced in excess of $1.3 billion of the Federal share of the cost of sewage treatment works without Federal reimbursement; and

Whereas, The Congress has not appropriated the promised funds to finance its share of anti-pollution programs that it has enimbursed; and

Whereas, In reliance the State of New York has advanced its funds to its localities which funds the Federal Government has not reimbused; and

Whereas, The State of New York has met all its responsibilities under the Clean Water Restoration Act of nineteen hundred sixty-six; and

Whereas, In reliance upon the previous representations of the Congress, New York State has entered into grant agreements with various municipalities of this State to accomplish the objectives of the Clean Water Restoration Act of nineteen hundred sixty-six, pursuant to which agreements millions of dollars have been expended by State and municipalities for planning and design and construction of sewage treatment facilities; and

Whereas, In most cases it is not financially possible to proceed further with these anti-pollution projects in the absence of federal funding of this program; and

Whereas, It is imperative to protect the health and welfare of the people of this State that these projects be implemented without delay; and

Whereas, The Congress must now meet its responsibility for the environment and reimburse the State for the prefinancial federal share expended subsequent to nineteen hundred sixty-six and by resolution continue the Clean Water Restoration Act; now, therefore, be it

Resolved, That the Legislature of the State of New York hereby memorialize Congress to adopt a resolution continuing the Clean Water Restoration Act of nineteen hundred sixty-six sewage treatment works grant program so as to provide full funding of federal sewage treatment works grants including insurance of reimbursement to a state or municipality if the state of municipality prefinances the federal share of the cost of such sewage treatment works and further that any amendments to the Clean Water

Restoration Act of nineteen hundred sixty-six should provide authorization for full reimbursement to the state or municipality for amounts prefinanced subsequent to nineteen hundred sixty-six; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States, the Secretary of the Senate, the Clerk of the House of Representatives, and to each member of Congress elected from the State of New York and that they be urged to devote their best efforts to the task of accomplishing the purpose of this resolution; and be it further

Resolved, That the Attorney General of the State of New York be and he hereby is requested to take appropriate action, if necessary, to ascertain and protect the interests of the State of New York with respect to having the United States of America fulfill its obligations to the State of New York under the aforementioned programs.

THE VALUE-ADDED TAX

Mr. MILLER. Mr. President, the October 1971, issue of Taxes—the Tax magazine, published by Commerce Clearing House, contains an excellent analysis of the value added tax, written by Mr. Eugene Bogan, of Washington, D.C., one of the country's foremost tax authorities.

Because of the current interest in the value added tax, I believe it would be helpful to Senators to read Mr. Bogan's carefully researched comments which bring to light a number of aspects of the VAT which are often overlooked.

I asked unanimous consent to have printed in the RECORD the article, without the footnotes, entitled: "A Federal Tax on Value Added—What's Wrong With It? Plenty."

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

A FEDERAL TAX ON VALUE ADDED—WHAT'S WRONG WITH IT? PLENTY!

(By Eugene F. Bogan)

The author demonstrates some of the basic objections to the consideration by this country of imposing a federal value added tax.

The general thrust of proponents of a value added tax is that it is a perfect substitute for a business income tax and also has a number of other plus factors when used as a major source of national revenues.

THE CASE FOR VAT PROPONENTS

The value added tax is said to have two principal advantages over income taxes on business. It is neutral in that it falls equally on labor-intensive and capital-intensive processes of production, on companies financed by debt and those financed by equity capital, and on efficient and inefficient producers. It is said to spread that part of the cost of government imposed on business over all business in proportion to their use of resources with no penalties or favors on the basis of the type of resources or the efficiency with which they are used.

Furthermore, VATs are regularly rebated on exports with equivalent countervailing charges imposed on imports. Existing international agreements not only permit border tax adjustments, but assume that the tax costs imposed by VATs will be rebated on exports to make them competitive in foreign markets, and imposed on imports to prevent foreign producers from having a tax advantage over domestic producers in the domestic market. Countries whose tax systems do not permit border tax adjustments of this sort are at an international disadvantage in both their export trade and the protection of their domestic markets from foreign producers who receive tax rebates on their exports.

The tax can produce a huge revenue yield—depending entirely on the tax rate. In spite of these apparent advantages, a VAT definitely has a number of undesirable attributes.

VAT DISADVANTAGES

A VAT is, as the name implies, based on the difference between net sales and purchases. This spread between purchases and sales represents the value added by any taxpayer. A tax on the sales price of an article taxes the value added to the article by the seller. Value added may be thought of, alternately, as the sum of wages, profits, interest, rents, and any other payments to factors of production other than to suppliers which are themselves subject to the VAT. Or a VAT may also be thought of as a turnover tax, with an allowance for taxes paid at previous stages of production to avoid any tax discrimination in favor of vertically integrated producers.

Administratively, the tax must be shown on sales invoices, as the tax is a percentage of the selling price. Each taxpayer making sales pays a tax equal to the sum of the taxes shown on its sales invoices less the taxes included on its purchase invoices. There is thus a self-policing process because each successive buyer wishes to have evidence of the tax paid by its suppliers to offset against the taxes due on his own sales.

Proponents of a VAT contend that the tax does not have to be shown on retail invoices—and that it is usually not so shown. This is inconceivable. The tax is a turnover tax on consumption and every person making a sale in the chain that begins with the first raw material stage (manufacturing, converting, jobbing, wholesaling, etc.) up to final sale to the consumer must account to the tax collector for this tax. Purchase invoices showing tax passed on to the particular seller in his purchases are necessary so the seller can secure credit for tax passed on to him against his own tax liability on his sale. Sales invoices showing tax billed to the seller's customer are necessary (a) to establish the seller's tax liability to the tax collector, and (b) so that the purchaser will know his own tax position.

To dismiss the need of showing the tax separately on the sales invoice is to dismiss two facts of life.

The first has just been mentioned—the seller's tax accounting problem with the tax collector. If the tax is 10 per cent and the sales price is $1.00, the invoice can show either "Price $1.00; VAT 10c" or it can show simply "$1.10." In the latter eventuality, the seller has invited the tax collector to claim a sales price of $1.10 and a tax liability of 11c instead of 10c.

The second consideration is the difficulty at the time of any sale of ascertaining whether it is the last sale for consumption. A simple example (of many) is that many people buy gasoline both for personal consumption and for business purposes and will want the tax stated separately for purposes of securing credit against their own VAT liability for tax passed on to them. This same situation obviously applies to innumerable sales of all kinds of articles and of sales of services.

State retail sales taxes are today very generally stated separately on sales slips. One reason is that there is a widespread customer insistence of this for purposes of the income tax deduction. Why VAT proponents insist that the case will be different as to a much more burdensome VAT (even though it will not likely be an income tax deduction) is difficult to understand.

It is generally presumed that a VAT will be passed on to customers, and in general it is inevitable that it is shifted forward. The tax is too substantial a percentage of the sales price for the seller to absorb it. Some proponents contend that the process of shifting does not occur universally or promptly, even if the tax is shown as a separate item added to the quoted price. The VAT is a universal, identifiable item of cost and hence may be expected to be reflected in prices charged. But depending on elasticities of demand and supply for a particular product and for alternatives to it, a change in even the most universal cost items may, under competitive pressures, be partially absorbed by a producer by lowering his pre-tax price. Nonetheless, the VAT is correctly regarded as, by and large, shifted forward to final consumers.

A VAT is a tax on consumption—paid by the consumer. At levels below the retail level it operates exactly like a manufacturer's or wholesaler's sales tax. At the retail level it is precisely and clearly a retail sales tax. At the retail sales level the full burden of the impact of the VAT appears—all VAT that was imposed and paid at every intermediate sales stage, prior to the retail sale, has been credited off—and the consumer buying the article for final consumption at the retail level picks up and pays 100 per cent of the VAT price tag.

There seems to be the very definite possibility that a VAT (certainly at a high rate) can seriously handicap the formation and buildup of new businesses. Unlike the income tax loss carryover system, which reflects a new business's problems of start-up costs and high cost initial products, the VAT in this regard is probably merciless. Under a VAT a new business, particularly a small new business, could, it would seem, have major problems of ever getting off the ground in competition with large, highly efficient existing companies.

One argument strongly advanced by VAT proponents is that such a tax encourages the efficient and economic use of national resources, whereas the corporate income tax is said to work in exactly the opposite direction. This is debatable and would not appear to be a major consideration on whether a choice should be made between a VAT and an income tax on business. To many, it is rather difficult to accept a position that an inefficient business that pays very little income tax because it is inefficient, yet enjoys the benefits of all the national services, is a basic fault with, and a reason for the abandonment of, the federal income tax on business. There seems little difference between this situation and that of the ne'er-do-well, on public relief, who pays no individual income tax at all. Or that of the marginal business which is a proprietorship and subject to the individual rather than the corporate income tax. These situations would hardly be accepted as a basic justification for abandonment of the federal individual income tax.

Parallel bills of indictment of the separate items of economic and administrative imperfections of the corporate income tax and of a VAT would each be quite long. By the time a tax bill creating a federal VAT has gone through the legislative process, the "classification" and exemption rules written into it, plus the inherent imperfections of any VAT would probably make the corporation income tax indictment look rather abbreviated.

A harsh fact is that most taxes are inefficient and are a burden and cause economic dislocations. But an equally harsh fact is that a state must have revenue to survive and to furnish the services the public demands. Economic perfection and perfection of concept are impossible in any system of taxation and this the lessons of history teach.

Historically, the United States has, for many years, depended largely on the income

tax, individual and corporate, as a principal source of revenue.

It has also maintained for many years a series of consumption taxes—excises. These include taxes on tobacco, alcohol, gasoline, transportation, automobiles, etc. With the exception of the transportation tax, these federal consumption excises have been relatively simple to administer and have not been a major source of administrative problems to the Internal Revenue Service and taxpayers. Their revenue yields are very large; around $14 billion and nearly 10 per cent of total federal revenues.

In the early 1930s when, because of the Depression, the federal income tax yields were falling, the government did resort to a fairly broad program of consumption taxes: selective manufacturers' and retail sales taxes. For World War II revenue programs, temporary selective retail sales taxes were imposed, such as those on jewelry, furs and cosmetics, and some selective manufacturers' sales taxes were also imposed. In 1965, the federal government initiated an intended basic withdrawal from the sales tax field except for a few such as alcohol, tobacco, and gasoline which were simple to administer and produced substantial amounts of revenue. As is known, because of later national revenue needs, this intended withdrawal has not been successful.

The federal government has not in modern times imposed anything as far-reaching as general sales taxes—either a general manufacturer's sales tax or a general retail sales tax. The thinking seems to have been that sales taxes should be largely left to the states as a prime source of needed state revenue and most states now have a pattern of retail sales taxes as well as state income taxes. State revenue needs are constantly increasing and the impact of both state and federal taxes on the public is a matter of serious national concern.

For the federal government to seriously consider utilizing the VAT would be to consider a major far-reaching sales tax affecting every sale in the United States of goods, from the first raw material sale through all of the processing and distribution levels and on through to the final sale for final consumption. If European concepts were to be followed, such a VAT would include a sales tax on all forms of services (legal, accounting, etc.) and all acquisitions of capital goods to be utilized in industry.

ADMINISTRATIVE PROBLEMS

Since it would have to be recognized broadly at the outset that many types of exemptions from a VAT would have to be written into the law, and that these exemptions would cover both articles the sale of which was to be exempt and also exemption of some types of businesses, a VAT would present many serious administrative problems to both government administration *and* to the taxpaying public.

On a national basis, VAT administration would require an extremely large field staff, including field headquarters' personnel, and a substantial increase in IRS National Office personnel in Washington. The personnel required for the administration of such a tax would be in addition to that required under the present federal tax structure.

Advance tax payment by depositary receipts would be necessary several times a month for the same urgent revenue flow needs of the Treasury that are present in existing federal taxes. VAT tax returns would probably have to be required monthly from all taxpayers, both for the necessity of early tax accounting and also because the taxpayers must clearly know their tax position at an early date because they must recover their tax as they invoice their sales to their customers. A VAT rate of 5 per cent or 10 per cent or 15 per cent represents a very substantial amount of money as to each sales invoice. Taxpayers accounting periodically to the federal government for their tax liabilities would include every person selling goods at each point beginning with the raw material stage through manufacturing, processing, wholesaling and ending up with the retailer, including all of those rendering taxable services.

CLASSIFICATION ISSUES

In any sales tax of the breadth of a VAT, exemptions as to particular items or particular types of persons create difficult "classification" issues and many twilight zone issues as to whether an article or person falls within or without an exemption. Experience shows that this always imposes on federal personnel and the courts difficult questions for ruling or judicial determination. Federal excise tax experience of the last 40 years shows that many sales tax classification disputes can take one to five years to resolve.

Of perhaps greater importance than government administrative burden and expense are the business uncertainties on the part of taxpayers that will be created by these "classification" and "exemption" problems. One needs only look at tax liability uncertainties in past years in the case of some of the federal manufacturer's sales taxes.

Since it must be expected that any federal VAT would have multiple rates (including a zero rate for some items and zero itself is a "rate") the classification problems would be compounded. Among other things a zero rate (exemption) would frequently, to be effective, have to include not only exempt items but an exempt type of consumption of an item which would have been in the VAT tax stream up to the consumption point.

RATE STRUCTURE PROBLEMS

One must, from federal tax history, assume that the United States Congress would certainly outdo any European country in devising a multiple rate structure for a federal VAT. A look at a rough summary of rate structure of the Belgian VAT which started January 1, 1971, plus a bit of reflection on obvious administrative and classification problems and a long look at item (d) should at least raise ones' eyebrows.

(a) 6 per cent rate on necessities and services of a social character, such as food items, most beverages, soap, pharmaceuticals, newspapers and books, art, passenger transportation services, travel agency service, restaurants, hotels, recreation, etc.

(b) 14 per cent rate on goods currently consumed and representing special economic, social, or cultural interests, such as combustibles, electricity, heating and cooling, many oils, most textile products, shoes, most repair work and maintenance, construction, architecture, engineering, parking, use of garages, supervision or leasing of real property, telecommunications.

(c) 25 per cent rate on luxury items such as automobiles, pleasure boats, jewelry, planes, watches, weapons, thermometers, radios and televisions, perfumes, cosmetics, alcoholic beverages, photographic equipment.

(d) 18 per cent rate on goods and services to which none of the above rates apply.

Queries: where would one fit medical, legal, accounting and hospital services? Would a federal VAT dare to impose anything but a zero rate on sales by farmers?

A single rate federal VAT would not raise insurmountable classification problems. But a single rate VAT, which included a zero rate as to exempt items or uses, obviously would.

VAT administration in this country under what might be called the "American habit pattern" would, no doubt, have its administrative burdens increased by "unjust enrichment" considerations which have been built into some federal sales taxes for many years. A person claiming refund for an overpayment of VAT will, no doubt, be required to prove he has not included this VAT in his own invoices or that, if he has, he will refund it to his customer who may have included it in his own invoices to his customer who will have to consent to the refund, but the second customer removed may have done the same thing, etc. through third, fourth and fifth customers removed. Confusion like this will inevitably be compounded by multiple rates, which would include a zero rate.

One of the many VAT administrative problems to the taxpayer will be "financing" his federal tax payments. Assuming a business purchasing $1,000,000 worth of goods during a month having sales of $1,500,000 a month, it would, at a 10 per cent VAT rate, have $100,000 passed on to it in its incoming invoices, and would collect $150,000 from customers on its own invoices. The tax law would allow him to credit on his current VAT liability of $150,000 the $100,000 shifted to him, but until he has been paid by his own customers he has to seek a source of funds to pay to the government that additional $50,000. Accepting present federal tax collection practices as a norm, the federal government will expect its tax payment from *every* seller in the orbit of a federal VAT in a matter of weeks via the depository receipt procedures.

In the case of a seasonal inventory business, a "fall goods" inventory would have been invoiced to it in, say September—but the sale of that inventory (and payment by customers) would take a period of some months. In such a case, the business has also to find a way to finance the tax passed on to it in its purchase invoices covering this inventory. Customarily, it has used bank financing to carry the inventory—so the problem is the willingness of the bank to add to its financing commitment the additional funds needed because of the VAT amount contained in the purchase invoices covering the inventory. The additional interest cost of the additional financing will, assumedly, find its way into cost of goods sold.

MATTER OF INVOICES

Included in administrative considerations is the matter of invoices. Under the European VAT pattern, despite claims to the contrary, it would seem that the tax must be shown on all invoices. A seller will accumulate the credits for the tax passed on to him on his income invoices, and will show the amount of tax he has passed on on his own invoices, and will take credit against the tax liability shown on his own invoices for the amount of tax he had paid on his incoming invoices.

This will make every invoice in the extraordinarily complex American business cycle a very valuable and precious community, the loss, theft or destruction of which would be a taxpayer's disaster. It would also suggest that there will be serious administrative problems respecting forged invoices and inaccurate invoices, and, to the extent that the tax statute creates exemptions (as it certainly will) either as to certain types of taxpayers or certain types of goods, that the usual administrative problems inherent in "bootlegging," and "blackmarketing" will arise. To such problems will be added those stemming from tax-exempt goods and services competing with taxable goods and services.

The serious and massive administrative problems of this tax to both the government and the taxpaying public are not in themselves an argument against adoption of such a tax—if it is mandatorily necessarily and if the public will accept it. The problems do suggest strongly that the imposition of a federal level VAT in the United States is not a matter to be considered lightly, but only in circumstances where there is a mandatory need for the revenue the tax will yield and it is impossible to raise this revenue from

other taxes now in existence and that do have public acceptance and experience.

IMPACT OF VAT ON COST OF LIVING

Substantial increases in the corporate income tax rate above 50 per cent are seldom proposed seriously by any group. Tax rates above that level are almost intuitively recognized as having perverse effects on both management decisions and equity capital financing, whether from retained earnings or new stock issues. There is, thus, little room for large amounts of additional revenue from the corporate income tax beyond the sums which may come over the years from an expanding economy.

Recent legislative consideration of the individual income tax shows that it is unrealistic to expect to secure much more revenue from the income group which receives the great bulk of the nation's income. High marginal rates on large incomes have left little room for additional tax revenue; they are in fact destructive and self-defeating. Successive Revenue Acts have raised the level at which the income tax becomes applicable by increasing the minimum deduction and shifting the distributon of the burden to higher incomes. This process seems irreversible in the absence of a major crisis in national affairs.

The basic economics of a VAT are those of any other sales tax—they are consumption taxes and are, as noted above, largely passed on to purchasers of goods and services. As consumption taxes, they fall most heavily in terms of per cent of income expenditures on the lower income levels of the population. History has shown repeatedly that consumption taxes on goods and services are regressive and are usually passed on to the consumer of the goods or utilizer of the services. A federal VAT in the last taxable transaction, the sale to the ultimate consumer, will have the same economic impact on him as a general federal retail sales tax.

Considering the American pattern of steadily rising price and wage structures over a period of many, many years, and at a very accelerated pace currently and during the last several years, a decision to adopt a federal level VAT requires first an acceptance of the probability of an inevitable major increase in the level of prices in this country. This, in turn, requires acceptance of successful pressures to raise wage levels to meet the price level increases. To the extent that wage levels are increased, there will be the usual pressures to increase price levels, followed by further pressures for appropriate increases in wage levels.

That this is a real consideration, not to be dismissed lightly, is shown rather effectively in a newspaper report of the impact of VAT on the cost of living in the Netherlands. The VAT began in the Netherlands on January 1, 1969. Tax rates are 4 per cent on "essentials" and 12 per cent on "nonessentials" (increased from 1 per cent and 6 per cent). By the end of the first month, the report states that the "cost of living soared 3.5 per cent," and that a "typical household's grocery costs had jumped 16.5 per cent." The report notes the Netherlands government "managed to stem the rise in April by decreeing maximum amounts by which prices could rise." But the report noted further: "By August, however, prices were rising again despite a valiant government enforcement campaign."

Significant in the report is this statement: "By year-end, government economists concede, prices will have advanced 7.5% from pre-VAT days, or more than five times more than the original forecast." The article also notes, as to wages, that the increase so far this year already has hit 8.8%."

The same newspaper article noted the following interesting item: "In neighboring Belgium, fears of duplicating Holland's price spiral have prompted Brussels officials to postpone imposing a VAT for another year, until January 1, 1971. . . . Officials cautiously concluded the Belgian franc just couldn't stand the buffeting of such an inflationary spurt."

CONTRASTING POSITION OF COMMON MARKET COUNTRIES

It has been argued with some persuasiveness that if the Common Market countries, and their taxpayers, can accept and utilize VATs and their administrative and economic facets, the same situation could prevail in the United States. There are, it would seem, several much more persuasive considerations bearing on this:

(a) The Common Market countries, prior to their adoption of a VAT, each had forms of cascading "turnover" taxes, involving compounding of the tax on each sales transaction. In substituting a VAT no one country was, broadly speaking, compounding to any substantial extent, its sales tax administrative and economic problems.

The United States at the federal level does not now have general turnover sales taxes. Hence, a federal VAT would be entirely new to the United States.

(b) The size, geographical proximity and attempted mutual economic integration considerations, that exist respecting the Common Market countries, as arguments for a VAT as to each of such countries, do not exist in the case of the United States.

(c) In contrast to the latter considerations, the federal government must respect and live with the separate and increasing revenue needs and the tax systems of the 50 states and their political subdivisions. Most states of the Union have sales taxes—at the retail level. A federal VAT would be in addition to, and operate alongside of, nationwide state sales tax structures. The state sales taxes are major parts of each state's revenue structure—and would have to continue even if a federal level VAT were imposed. It would seem that only an extreme national emergency would justify imposing a federal level VAT which would operate on a national basis alongside the numerous (and varying) state sales tax systems. Absent such an emergency, it seems inconceivable that the public, including the some 15 to 20 million people who would have to do the tax return accounting to the tax collector, would accept a federal VAT tax burden.

SUBSTITUTE FOR CORPORATE TAX?

Proponents of a federal VAT in the United States have usually taken the position that it should be substituted for part or all of the federal corporate income tax. By this it is assumed they mean to include both the corporate income tax and the individual income tax to the extent the latter is imposed on business. There are in the United States, subject to federal individual income tax, perhaps 1½ million businesses conducted in proprietorship and not corporate form.

The federal income tax has been a part of the American revenue structure since March 1, 1913. Even before that date, there was a predecessor form of federal corporate income taxation (although called an excise tax). The country is "tuned" to the income tax on business and, as is known, this tax has "shaped" the economics of many industries because of differentials in income tax treatment. It is a major source of federal revenues. To abruptly discard the income tax on business in favor of an untried, as to the United States, VAT regime of consumption taxes would seem very certainly to cause a major economic upheaval for a period of years until both business and consumers adjusted themselves to the transition. Considering the present economic problems in this country, not the least of which is that of inflation, the possibility of such a substitution seems out of the question for many years in the future. As a matter of fact, such a substitution could probably only be considered in a period of massive depression (such as that of the early 1930s) with its major deflation of national price and wage structures and major unemployment.

A "partial substitution" of VAT for the business income tax seems to be equally out of the question as a practical matter. All the claimed inequities of the business income tax, including the tax accounting problems, would continue to exist. On top of this would be superimposed the massive tax and business accounting, and economic and inflationary problems of a major national consumption tax effective on every turnover of goods and services from the earliest raw material stage until the final sale of the product to the ultimate consumer. It would seem very clear that only in the case of a serious national emergency could there be any hope of public and political acceptance of VAT as an added form of federal taxation.

A principal argument by VAT proponents is that VAT helps the export position of a country by making possible "neutral" border tax adjustments. If VAT is the only, or the principal, tax ingredient affecting the cost of goods, the fact is that it can be removed when goods leave the country, and imposed when goods arrive in a country. This, it is argued, would enable the products of the country to compete tax free in international commerce.

Since it seems clearly impossible in this country in the foreseeable future to contemplate substituting a VAT wholly, or partially, for an income tax on business, this means of removing the federal tax ingredients from the cost of goods sold abroad is not practicable as to the United States. In particular is this true as to a VAT as a partial substitute for the business income tax. Currently, the federal corporate income tax has an annual revenue yield of roughly $37 billion. If corporate income tax rates were reduced enough to cut this yield by 50 per cent, the corporate rate would have to be roughly 25 per cent. The VAT substitute rate to raise approximately $18 or $19 billion would have to be in the neighborhood of at least 5 per cent—making rough assumptions of the inevitable and unavoidable torrent of statutory exemptions as to particular items and particular businesses. Relieving exports at the border of this partial VAT could obviously have little helpful plus impact on the United States export position.

The need for "border tax adjustments" is, admittedly, very real because of the competitive impact of relatively tax-free Common Market exports on basically fully taxed American exports.

REVIEW OF GATT

The use of a federal VAT as the device for meeting this problem is not, for the reasons noted, the basic cure needed for the problem. The problem stems from the General Agreement on Tariffs and Trade (GATT), which is considered to have a meaning to the effect that it is illegal to remove from the cost of exports business income tax ingredients that are buried in those costs.

Considering that the "border tax adjustment" problem as to United States exports is a serious one, and considering what seem to be compelling reasons why a federal level VAT cannot in the United States be substituted for state and federal income taxes on business, the obvious simple solution for the United States is a necessary review and recasting of GATT. The latter possibly could be along the lines of looking to formulas allowing border tax adjustment for assumed income tax burdens buried in the cost of goods sold. This can be done without reconciling in any specific detail the dispute that has existed for many years as to what extent, if any, business income taxes are passed on to consumers in the price of goods.

One recognizes the frequently stated position that a revision of GATT in this respect is not practicable. But a very positive reality

seems to be this: in the present situation and foreseeable future, it seems inconceivable that the American public will accept the following position: Since GATT is considered sacred and inviolate, the American public must accept the bitter medicine of VAT as a substitute for the business income tax as the only way open to secure border tax adjustments and remove tax costs from American goods competing in foreign markets.

The fact that the Common Market countries, utilizing the GATT umbrella, are using the VAT device to give their export shipments a competitive advantage tax-wise does not mean that the only alternative left to the United States is a VAT. It would seem that what has been negotiated once—in different terms of reference tax-wise than those that exist today—can be renegotiated. If GATT is inviolate and cannot be renegotiated to secure reflection of the business income tax ingredient in cost of goods sold, there is certainly enough ingenuity to devise unilateral steps on the part of this country which will achieve the same effect as a renegotiation.

In the case of domestic competition with imported goods as to which the foreign shipper's cost-of-goods-sold has been reduced by rebate of foreign value added tax, there is admittedly a pricing problem stemming from the grant of foreign tax immunity (by border adjustment rebate) on goods shipped into the United States. But a federal level VAT as the solution is, for the several considerations discussed above, a very high, a very unwieldy, a very expensive and a very burdensome price to pay for meeting this problem.

USE OF "COMPENSATING" TAXES

There must be a number of simpler and more direct solutions. To illustrate that VAT is not the only answer, one possibility is "compensating" internal taxes administered in the case of imported goods like duties. Such "compensating" taxes have been used in the past by the United States, very notably in the case of the federal taxes imposed in the mid 1930s on the processing of agricultural commodities such as cotton, wheat, corn, sugar and others.

At that time "compensating" taxes, collected at ports of entry like duties, balancing the United States internal taxes, were imposed on imports. A simple illustration of a present day sample is found in Internal Revenue Code Section 4504, the manufacturer's tax on sugar. The domestic manufacturing tax is balanced by a compensating tax on imported sugar.

This existing United States "compensating" tax pattern would seem to exactly duplicate the VAT pattern in the Common Market countries. The VAT of these countries is imposed at the border on imported goods (to match the internal VAT tax) just as it is rebated at the border on exports from these countries.

Such an approach, no doubt, would require treaty negotiations plus studies to appraise an average business income tax ingredient in cost-of-goods-sold, or to devise some sort of average "compensating" rate of tax in the case of imported goods.

The "compensating" tax pattern is not mentioned here as a recommendation, but as an illustration of the point that VAT is not the only answer—there are certainly others that can be devised and studied.

A further consideration that VAT proponents have never adequately answered may best be framed as a question: Give the proponents of VAT their major premise of abolishing the corporation income tax (assumedly also the application of the individual income tax to one and a half million proprietorship businesses). How do proponents propose to secure an appropriate tax contribution to government needs from such businesses as banking (and all of its facets), insurance and the many other types of businesses not involved in the manufacture or distribution of goods, or the servicing of this part of the economy? These businesses are certainly not seeking a general tax immunity, and, obviously, neither the public nor government would tolerate one.

A related question is whether proponents of a substitution of VAT for the business income tax are willing to grant a federal tax immunity to the overseas businesses of the so-called "multi national" American companies? These overseas businesses, whether foreign branch offices or subsidiary corporations, today make a major income tax contribution to the Federal Treasury on the various forms of income they generate, including income tax revenues on direct profits of branches and on dividends, royalties and service fees from foreign subsidiaries. Replacement of the business income tax with a VAT would give this segment of American business an unasked for federal tax immunity since a federal VAT could hardly have extra territorial application. What foreign taxes, including foreign VAT, they pay would flow into foreign treasuries.

CONCLUSION AND SUMMARY

If a major new source of federal revenue must be tried because the revenue yields of the individual and corporate income tax and present federal consumption taxes become hopelessly inadequate, a federal VAT is not the answer.

True, in the situation hypothesized, the one remaining source of major revenue yield that the government can turn to is a general consumption tax. But that can be accomplished by a general federal retail sales tax which is not the administrative monstrosity of a VAT. It is not a pleasant happy tax, but it is much simpler in structure and has fewer "taxpayers" for the government to police—those who sell at retail.

Under a VAT every retailer in the United States will be a taxpayer, as well as every other business entity that lies behind the retailers in the entire production chain from raw material to consumer products.

Every retailer will be passing on, under a VAT, the full burden of that tax to his customers—both the VAT included in the retailer's purchase invoices and the VAT included in the difference between his purchase and his selling price.

In a federal retail sales tax these same retailers will be passing on the same tax burden to their customers: a separately identified federal tax as a percentage of the retail sales price.

A curious argument made by VAT proponents is that it is difficult to collect tax from retailers; hence VAT is better than a retail sales tax. This is sort of a non sequitur, since on any retail mark-up under a VAT the retailer must pay VAT on that as his "value added." It is true that if the retailer sells at a loss (less than his purchase price), he pays no VAT, but that is certainly the exceptional situation which should not be allowed to establish the rule.

Since the state sales taxes certainly must continue in operation, it would seem much easier to devise a general federal retail sales tax that would harmonize closely with the most usual pattern of state sales taxes. It would also seem logical to assume that if necessity forced the federal government to enact a general retail sales tax, within a period of a few years most state sales taxes would have been changed to harmonize with the controlling federal pattern.

A summary of the foregoing rather broad and general discussion is:

(1) A federal level VAT should not be considered for the United States as a substitute, in whole or in part, for the income tax on business because:

(a) Such a tax will be an expensive administrative monstrosity both to the government and to the taxpaying public.

(b) Such a tax invades an area which should be reserved to states for their revenue needs—retail sales taxes.

(c) Such a tax will be inflationary.

(d) As a consumption tax, its burden will fall more heavily on lower income people; it will not go nearly as far as the income tax does in recognizing "ability to pay." It is regressive.

(e) The American public should not be burdened with, and very likely will never accept, a major national consumption tax as well as the individual income tax.

(2) Such a tax should be considered by the federal government only as a supplement to the present federal tax structure and then only in a period of major national emergency and a major failure of the present federal tax structure to meet federal revenue needs.

Even then, a general federal retail sales tax would be much preferable to a federal VAT.

(3) As an aid to the United States export position, and as an aid to domestic competition with imports that have benefited by rebate of foreign VAT, a VAT is not the answer.

There must be simpler and less burdensome (to the American public) ways to meet these two problems of price competition as affected by tax immunities granted by foreign governments. VAT as the cure is, as stated, a very bitter medicine which the American public will never accept.

THE NEED TO INCREASE EXPORTS

Mr. JAVITS. Mr. President, in a recent speech before the National Council of Jewish Women, I made a proposal that would have the effect of generating increased exports for the United States and such increased exports in turn would generate American jobs and help our balance of payments. Under Secretary Volcker, who accompanied Secretary Connally in his recent testimony before the Joint Economic Committee, has testified that every $1 billion in increased exports would create approximately 50,000 jobs.

My proposal is very simple although it is often phrased in unnecessary complex terms. It proposes an alternate method of special drawing rights distribution so that a greater portion of special drawing rights would be channeled to the developing world. These special drawing rights, which are recognized as official reserves, could then be used by the developing world to purchase real goods and services from developed countries such as the United States.

In making this proposal, I give recognition to the fact that 12 eminent economists have made a similar proposal in their well-known study on "Reshaping the International Economic Order."

I ask unanimous consent that the names of these 12 economists be printed in the RECORD, along with my speech, to be followed by the recommendations of the economists as they concern the "link".

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

RESHAPING THE INTERNATIONAL ECONOMIC ORDER

A tripartite report by twelve economists from North America:

C. Fred Bergsten, Council on Foreign Relations.

Richard N. Cooper, Yale University.

Edward R. Fried, Brookings Institution.

Fritz Machlup, New York University; Professor Emeritus, Princeton University.

Roy A. Matthews, Private Planning Association of Canada.

The European Community:

Sir Alex Cairncross, Master of St. Peter's College, Oxford; former British Government official.

Jean-Claude Casanova, University of Paris.

Don Guido Colonna di Paliano, President of La Rinascente; former member of the Commission of the European Economic Community.

Norbert Kloten, University of Tübingen; chairman of the German Council of Economic Experts.

And Japan:

Motoo Kaji, Tokyo University.

Saburo Okita, Japan Economic Research Center.

Kiichi Saeki, Nomura Research Institute of Technology and Economics.

NARROWING THE GAP BETWEEN THE DEVELOPED AND DEVELOPING WORLDS

(By Senator JAVITS)

As is widely recognized, the President's speech of August 15 signaled the end of an era in our domestic and foreign economic policy. What is often not recognized, however, is that this decisive policy speech also laid the groundwork for the Senate defeat of the foreign aid bill since the President—by saying "I have ordered a 10 percent cut in foreign *economic* aid,"—made it clear that aid was one of the more expendable items in our budget.

For a program which already suffered from waning popular and political support—unwise as that was—these words gave the anti-aid forces all the ammunition they needed momentarily to scuttle the aid program. The program was soon revived, and the Congress passed authorization legislation running through FY 1973, which was recently signed into law by the President. The conference committee on the FY 1972 appropriations bill will soon be convened to reconcile the differences in the appropriations bills passed by the Senate and the House and by the summer, the FY 1973 aid appropriation bill will be before the Congress.

However, it is my view that it would be naive to view this reprieve as more than temporary—I would expect that fundamental changes will be demanded by the Congress and should be made when the next authorization bill is written. What will emerge is exceedingly conjectural at the moment, primarily because the Senate increasingly gives evidence of being disenchanted with bilateral economic assistance while the House does not seem to be convinced of the virtues of multilateral aid. It seems clear that this dichotomy of opinion may not be resolved over the short term; the subsequent destructive cross fire may continue, and, if so, probably result in lower funding levels for both bilateral and multilateral aid.

Because of these factors, it will be more difficult for the United States to meet the one percent of the Gross National Product target that has been adopted by the U.S. and the main nations of the world as set forth in the International Development Strategy for the Second United Nations Development Decade. In my view, this will have the effect of making it more difficult to bridge the gap between the have and have-not nations, and over time, this will not work to our own best interests, including those of our national security. In this regard, we would do well to recall the words of Machiavelli—"in the poverty of the people lies the destruction of the princes"—and then substitute the words "developing world" for "people" and "industrialized states" for "princes."

For those who would respond that I am ringing the alarm too soon, I would remind them of the extraordinary and growing vulnerability of the world's industrial states to the loss of the energy resources located in the developing nations. The United States is not immune to this growing dependency—and the developing world knows it.

As to the future, there are some inadequately explored avenues which show great promise. The Administration has proposed reforms in the operating structure of our foreign aid programs that make sense and which deserve the serious consideration of the Congress, but it is my view that structural reforms alone are not a completely adequate response to the increasing public and Congressional mood. In turn, advocacy of structural reforms without firm Presidential leadership and a strong Presidential commitment to foreign economic development and assistance is likely to prove abortive once again.

But, let me explore one of the avenues which deserves the priority attention of our Government as well as the governments of the other developed countries of the world.

I refer to the linking of development objectives to the future creation of Special Drawing Rights (SDRs) issued by the International Monetary Fund (IMF), thereby tying the upcoming world monetary reform to an increase of the real resources available to the poorer countries.

Let me provide you with some background. Approximately two years ago, the IMF began creating something akin to international money in large amounts—over $3-billion a year. This international money—Special Drawings Rights (SDRs)—is being used by governments as part of their reserves. The U.S. New Economic Policy of August 15, 1971, will have the effect of making the dollar less desirable as official reserves, and a consensus seems to be emerging that these SDRs will become an increasingly important reserve component.

In deciding on how SDRs should be distributed, the decision was made to distribute SDRs in accordance with the member country's original contribution or quota in the IMF. Thus, the members which set up the IMF and subscribed the largest quotas will get the most SDRs. It works out that the 25 so-called developed countries have received nearly 73 percent of SDR created to date while the remaining 86 less-developed countries that participate in the SDR scheme receive the remaining 27 percent. Thus, in creating "mannah from heaven," the developed countries of the world have efficiently insured that said "mannah" is being showered primarily on them.

Does this distribution formula, as it applies to future SDR creation, best serve the interests of the world community? And, even more narrowly, does it best serve the interests of the U.S.? In my opinion, it does not serve our best interests; rather it helps to widen the already dangerous political and economic gaps between the have and the have-not nations.

Let us make the hypothetical assumption that the distribution formula were reversed and that the developing world were to receive 73 percent of SDR creation while the developed world were to receive 27 percent—or in some such order of magnitude. What would be the beneficial effects?

First and foremost, this new distribution would afford better integration of the developing world into the world's monetary and trading system. At a time when the nations of the developing world are groaning under an enormous debt burden, it would give them the resources to buy more goods and services; thusly used, SDRs would be smoothly integrated into the world's monetary reserves, thereby helping to insure adequate world liquidity.

In turn, as the developing countries of the world use SDRs to buy real goods and services (primarily from the developed world, it should be added), exports from developed countries to the developing world would increase, and the United States would share in this increase. This would have a positive effect on our trade balance and the trade balance of other developed countries. Indeed, looking down the road, I don't see how the United States is going to regain its trade surplus position unless sales to the developing world are significantly increased.

As the developing world increasingly uses its SDRs to buy real goods and services from the developed world, there will be a positive effect on job creation in the developed world, and again, the developed countries need the jobs. The long-standing six percent unemployment rate in the United States is ample testimony that our society is not creating enough jobs fast enough.

It is argued that the use of SDRs for this development purpose is a gimmick and that it gets around the normal Congressional authorization and budgetary process since the Congress does not have to authorize SDR creation. My response would be that increased exports and increased jobs are no gimmick, that increased exports and jobs will contribute to greater harmony between the developed and developing world, and that other arguments against the SDR creation—development "link", and there are many, can be similarly answered.

If this is not incentive enough to persuade our policy level officials to seriously consider this idea, it seems clear that the "link" may emerge as a major issue at the upcoming world trade and development conference which will open in Santiago this April. It would seem to be in our national interest to put forward a "link" type proposal either formally or informally to help convince the developing world that there is more than rhetoric in our concern for economic development. To date, outside the rhetoric, the performance level with the developing world is weak—be it on the 1 percent aid target or on trade matters such as generalized preferences. I repeat the word of President Nixon in his recently released State of the World Message—

"The failure of this, the world's richest nation, to assist adequately the world's poor nations in their development efforts today and in the decade ahead would be one of the great human tragedies of history."

ASSISTANCE TO DEVELOPING COUNTRIES

Discussion about reshaping international monetary arrangements has centered almost exclusively on relations among the industrial countries. This is a serious deficiency, because the developing countries have obvious interests in how the system is changed, and also because the process of making changes afford a unique opportunity for the industrial countries to improve their performance in providing development assistance to the poor countries.

While the total flow of capital to developing countries continues to rise moderately, official development assistance over the past five years has been relatively flat in nominal terms and has been declining in real terms. As a consequence, there has been a steady erosion in the grant element of development assistance and a piling up of debt servicing problems. To this bleak prospect should be added the substantial costs of developing countries that continue to be inherent in aid tying.

The recent deterioration in aid flows is principally a consequence of U.S. performance, but it is worth noting that, as far as official development assistance is concerned, none of the donor countries are able to show a particularly outstanding record. In 1970 this category of foreign aid amounted to only one-third of 1 percent of gross national product(GNP) in the Development Assistance Committee countries as a whole. The simple truth is that all donor governments face difficulties in getting appropriations for un-

tied loans at low interest and long maturities.

New monetary arrangements could be used to revive the flagging foreign aid effort in several ways.

First, a new monetary system would remove current balance-of-payments constraints on the amount of aid appropriations and on providing aid in untied form. At the least, the agreement on a new set of exchange parities should be used as the occasion to resume the currently stalled negotiations aimed at having donor countries act together to untie bilateral lending.

This has an importance far beyond the capital flows that will eventually take place within the EC, for it will pose for the Community an increasing acute problem if these restrictions are abandoned only on investment inside the Community and retained in full force on other investment. It is not easy to see how the national controls now in operation can survive. There is therefore a prospect of greater freedom internationally, and not only in Europe.

This outcome will lead to direct investment cross-flows on a fairly specialized basis, much as seems to have happened to international trade flows. The possibilities for fitting U.S. technical and management features into certain sectors of the Western European and Japanese economies probably still would be quite compelling; and Western European countries and Japan might expand their investment footholds in the United States. If this were the direction of events, the political disabilities of direct foreign investment would doubtless be further reduced.

While the prospect of increased two-way investment may remove some of the political objections to direct investment, such investment—particularly in the form of takeovers—nonetheless calls for close collective surveillance by governments to prevent the diminution of competition and the substitution of private barriers to trade for those that have been removed through joint official action.

The international community also needs to examine the influence on capital movements of differing tax rates or systems, direct subsidy arrangements, or support for local enterprises against possible foreign competitors. All of these may be a source of distortion in the flow of capital into investment, or of diminution in the flow below what would be desirable. The tax and other incentives held out to foreign investors should also be the subject of international review to ensure that they conform to agreed rules and are not designed merely to outdo offers made by other countries.

Direct investment in the less developed countries, while of considerable significance in the development process, can raise acute political problems, which may prompt the less developed countries to introduce obstacles to inward investment or to impose conditions on the form it takes. These countries may need advice and guidance from some reputable international body such as the World Bank on the conditions that would both serve them best and prove internationally acceptable. The developing countries may also be helped to acquire advanced technical knowledge in ways that do not involve foreign ownership of their industries. But they will not necessarily be helped by industrial countries' efforts to interfere in the process, even if such interference takes the form of subsidies—investment guarantees or other special system would be little affected. Further, the amounts involved would be relatively small and the effects little different from those that would obtain if countries had continued to bring new gold production into reserves. It is also worth pointing out that under conditions of less than full employment, the link to development assistance could provide a useful economic stimulus. These concerns, then, come down to a political judgment about the ability of the international community to run its affairs soberly and might apply equally to other aspects of monetary reform.

These arguments pro and con should be put into the larger context of how relations between poor and rich countries are to be managed. A sizable flow of untied, long-term, grantlike, multilateral aid mobilized through these kinds of links would promote a more rapid internationalization of the world aid and development effort, and this could be a key element in building effective cooperation between rich and poor countries in this area.

CARL HAYDEN

Mr. TUNNEY. Mr. President, the Nation, the West, and Arizona have lost a great man. Carl Hayden was truly a man of the American West. He descended from pioneer stock that first settled what is now Tempe, Ariz. He was a frontier sheriff. Elected to the Congress in the year Arizona was first admitted to the Union, he served his country and his State for 57 years. His tireless devotion helped to bring prosperity and unparalleled growth to his State and the Southwest.

Two things stand out in my mind about Carl Hayden. The first concerns his feelings for his country. Although he served in Congress longer than any other man and was in his nineties when he retired, Carl Hayden never opposed progressive legislation if he felt it was for the good of the country. He was never heard to say, "That's not the way we used to do it in the good old days." He always favored new ideas. A perfect example of this was his senatorial staff. One would think that a man of his age and power in the Senate would surround himself with his cronies. But that was not Carl Hayden's way. He always had a young staff—usually a third his age—with young ideas, and he listened to what they had to say.

The second is a story I heard about this great man that shows the kind of stuff he was made of. A woman walked into the Senator's office one day and told him she had been deserted by her husband and stranded in Washington with their small child. The woman said she was originally from northern Arizona, and she felt Senator Hayden was the only one she could turn to for help. She had spent her last money on her child, and she finished her story with the simple words, "Senator, I'm hungry." Senator Hayden rose from behind his desk, took the woman by the arm, and led her to the Senate cafeteria where he bought her lunch. He then got her a job on a committee staff, and was rewarded by the fact that she held that job until she had put her child through college and had become a grandmother. All that Senator Hayden had to say about the incident was that he knew she was a good woman, and he knew she would do a good job.

This is the kind of man that builds nations. Quietly, industriously, he works in the service of his country. But while he is nationbuilding he never loses touch with the people he serves. This is the kind of man Carl Hayden was.

MASSACHUSETTS HOUSE OF REPRESENTATIVES RESOLUTIONS ON NORTHERN IRELAND

Mr. BROOKE. Mr. President, on February 14, the Massachusetts House of Representatives adopted two resolutions regarding the situation in Northern Ireland.

I view the resolutions as a sincere expression of the deep concern with which the American people view the continuing strife in Northern Ireland. The appeal expressed in the first resolution that the U.S. Government "use its good graces and attempt to assist in bringing about a peaceful solution to the Northern Ireland problem" represents a point of view which I have previously expressed in this body, and with which I believe the majority of Americans concur.

I ask unanimous consent that the text of both resolutions be printed in the RECORD.

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

RESOLUTIONS PROTESTING THE PRESENT POLITICAL DIVISION OF IRELAND

Whereas, The present political division of Ireland is not in keeping with the principles of self-determination and is not based on the racial, economic or historical background of the people of Ireland; and

Whereas, The Republic of Ireland should embrace the entire territory unless a clear majority of the people of Ireland in a free plebiscite determine and declare to the contrary; and

Whereas, This approach to the problem of a united Ireland is entirely in keeping with the free democratic ideals and principles of our own democracy and all free nations of the world; and

Whereas, Ireland from the very beginning of our own beloved country through tremendous hardships and adversity has always been a staunch and unflinching friend of America; and

Whereas, The current Northern Ireland movement is aimed at securing equality for all in local government, voting and public housing, at ending property ownership requirements to vote and at terminating discrimination in public housing allocation by local officials; therefore be it

Resolved, That the Massachusetts House of Representatives hereby urges the United States Government to use its good graces and attempt to assist in bringing about a peaceful solution to the Northern Ireland problem presently plaguing the Irish people and thereby lay the foundation for uniting this great nation under one flag; and be it further

Resolved, That copies of these resolutions be sent forthwith by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress, to the members thereof from the Commonwealth and to the Secretary of State.

RESOLUTIONS URGING THE WITHDRAWAL OF BRITISH TROOPS FROM NORTHERN IRELAND

Whereas, The presence of British troops in Northern Ireland has increased the tension which has existed therein for many years; and

Whereas, Riots and bloodshed resulting from the presence of such troops have become an almost daily occurrence; and

Whereas, On Sunday, January 30, 1972, British soldiers fired at Irish Catholic sympathizers thereby killing thirteen persons; and

Whereas, The continued presence of British troops in Northern Ireland will result in

further riots, bloodshed and deaths; therefore be it

Resolved, That the Massachusetts House of Representatives urges the President of the United States to use the full weight and power of his office to effect the immediate withdrawal of British troops from Northern Ireland; and be it further

Resolved, That a copy of these resolutions be sent by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress, to the members thereof from the Commonwealth and to the British Consul.

DAMAGE CAUSED BY WEST COAST DOCK STRIKE

Mr. FANNIN. Mr. President, the American economy suffered extensive and in many cases irreparable damage during the west coast dock strike.

Longshoremen alone lost an estimated $45 million in wages and fringe benefits.

Most of the damage, however, was suffered by innocent people—businessmen, workers in export industries, and farmers.

American companies lost foreign customers which may never come back to U.S.-made goods. Our chances of rebounding from last year's $2.05 billion trade deficit have been seriously impaired.

Thousands of American jobs may well be lost permanently as a result of this strike.

The Department of Agriculture estimates that American farmers lost $1 billion as a result of labor disputes in American ports in 1971–72.

Mr. President, when we have a strike like the west coast dock strike, only one man wins—and in this case it was Harry Bridges. This was the man who arrogantly defied this Congress and then walked away in the national spotlight.

Strikes in the transportation industry, and in other key industries, cause harm to millions of persons. The disastrous effects linger long after the inconvenience has ended.

Now that the west coast crisis has subsided, I suppose that Congress will again retreat inside its shell and pretend that all is well.

The fact is, Mr. President, that Congress has an unbelievably dismal record when it comes to protecting the rights of the American public from the danger of irresponsible labor stoppages.

If there is any right which should be fundamental in a free society, it is the right of a man to work or to carry on commerce. It is wrong that a vast number of people should be made to suffer, or that the national economy should be severely damaged, just because a relatively small group of people want higher wages.

Mr. President, a number of informative articles were written during and immediately following the dock strike.

The Washington Evening Star carried an editorial on February 2 under the headline "Labor Stalemate." The editorial concludes:

The legislators eventually must face the fact that the nation cannot continue paying the costs of frequent failures of the collective bargaining system, when these affect indispensable segments of the economy on which we all depend.

The Phoenix Gazette on February 9 commented on "Harry Bridges' Frightening Power." It concluded:

Power concentrated is the worst enemy of the American way, and Harry Bridges has enough power that he can inflict hardship on thousands, as witness his arrogant threat to close down the foreign commerce of the United States.

Mr. President, the Wall Street Journal of February 10 listed a few of the ill effects of the west coast strike under the heading, "Many Firms in West Fear Lasting Impact Despite Tentative Accord in Dock Strike." The magazine the Great Plainsman for January–February has an article entitled "Dock Strikes Cost Farmers $1 Billion, Threaten Future Agricultural Exports."

Mr. President, I ask unanimous consent to have printed in the RECORD the two editorials and the two articles that I have mentioned.

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

[From the Washington Evening Star, Feb. 2, 1972]

LABOR STALEMATE

Congressional inaction on the administration's call for emergency legislation in the West Coast dock strike is in line with the legislators' generally sorry record on saving the nation from damaging labor stoppages.

The dispute that closed the Pacific ports for 100 days last year and, after expiration of a Taft-Hartley injunction, shut them down again on January 17, is the kind for which the law should provide a method of fair and certain solution. While many shippers have made alternate arrangements, and port activity was speeded during the cooling-off period in anticipation of a resumption of the walkout, a prolongation of the current disruption would pose a substantial threat of economic harm. With the nation struggling to recover from the first trade deficit in more than 80 years, important agricultural exports have been curtailed. The West Coast ports could lose business permanently to rivals in Canada and Mexico. Hawaii's major channel for supplies from the continent has been cut.

Though the difference between union and employers have been narrowed, the uncertainty of an early settlement has left the administration with little choice but to seek ad hoc legislation, in this case requiring a return to work and binding arbitration. As the House and Senate Labor Committees drag their feet on the administration request, it is clear that the legislative need has run afoul of election-year politics. Congressmen, particularly Democratic members dependent on labor support, do not want to offend powerful unions by embracing compulsory arbitration.

The Congress is even less likely, as labor girds for the attempt to hold President Nixon to one term, to act now on the two-year-old administration proposal for broader legislation to prevent costly strikes in the transportation industry. Such legislation is needed—covering other economically vital industries as well—because of the lack of legal tools to require settlements after exhaustion of delays under the Taft-Hartley and Railway Labor Acts.

The administration proposal would give the President a set of options—including possible imposition of the last offer of either side—for ending transportation labor disputes. The plan has merit, as do broader suggestions for adjudication of otherwise insoluble disputes through labor courts or some other binding mechanism.

As it is, Congress repeatedly in the last couple of years has had to legislate specific settlements ending nationwide rail strikes—cases in wihch national paralysis was so obvious that action could not be avoided. Labor law should not have to be made on a case-by-case basis, but only Congress' failure to approve more comprehensive solutions has made this necessary, as in the West Coast dock crisis.

The legislators eventually must face the fact that the nation cannot continue paying the costs of frequent failures of the collective bargaining system, when these affect indispensable segments of the economy on which we all depend.

[From the Phoenix Gazette]

HARRY BRIDGES' FRIGHTENING POWER

By threatening a worldwide shipping tie-up in retaliation for any congressional action to end the west coast dock strike, labor boss Harry Bridges displayed such an alarming disregard for the law and the welfare of the nation that Congress should consider broad legislation to break the stranglehold Bridges and a few others like him have on America.

Bridges may not have enough muscle to cut America off entirely from the rest of the world, but when he said that he could call on "friends in other countries" to prevent ships from making ports of call in the United States, he wasn't making an idle threat.

Once described by a federal judge as "one of the most potent figures in the Communist Party in America," Bridges doubtless enjoys considerable influence among dock bosses overseas who share his strong list to the left. Significantly, Canadian longshoremen did cooperate.

If a foreign power threatened to blockade America's ports and cut its trade lines to other countries, the United States might begin mobilizing for war. Yet Bridges may very well be able to isolate America more effectively than any naval power.

The fact that a labor-management agreement promises to end the strike doesn't make Bridges' threat any less frightening. The settlement, a victory for Bridges, has served to extend his power. If he decides to shut the docks down again, he'll have no difficulty finding an excuse. He still could make good on his threat.

Bridges' strike has cost innocents hundreds of millions of dollars, left workers unemployed all over the country, put companies into financial difficulties from which they may not recover, aggravated America's balance of trade problems and damaged the economy generally.

Power concentrated is the worst enemy of the American way, and Harry Bridges has enough power that he can inflict hardship on thousands, as witness his arrogant threat to close down the foreign commerce of the United States. Congress should do something to dilute his frightening power.

[From the Wall Street Journal, Feb. 10, 1972]

A LOSS OF MARKETS: MANY FIRMS IN WEST FEAR LASTING IMPACT DESPITE TENTATIVE ACCORD IN DOCK STRIKE

(By James Carberry and James E. Bylin)

Most West Coast businessmen may be sighing with relief at the apparent settlement of the prolonged Western dock strike, which has been costing the California economy alone about $17 million a day.

But a number of companies that ship through West Coast ports now are worrying about a serious and long-lasting problem created by the strike—the permanent loss of business and markets it had taken years to cultivate.

"It's as simple as this—some customers who leave don't come back, or don't come back immediately," says Donald Martin, an official with San Francisco-based California & Hawaiian Sugar Co., an association of 22 Hawaiian sugar companies that markets all of that state's sugar. C&H refines its sugar in

Crockett, Calif., which means raw sugar must be shipped from the islands. "Some of our competitors haven't been affected at all, namely the beet sugar producers" (which produce in the contiguous U.S.), he says.

C&H, which lost about $6 million of business during the strike, plans "to try to recapture the share of the market we had," Mr. Martin says. But he acknowledges some market losses might be permanent.

TOYS, WIGS, AND FRUIT

"There's no question: Some highly-competitive markets outside the U.S. (like certain agricultural products) will be lost to foreign competition," says Gordon Larkin, a California state official who has been compiling data on the strike's economic impact.

West Coast longshoremen went on strike July 1 but were ordered back to work Oct. 6 under an 80-day "cooling off" period of a Taft-Hartley injunction. The strike was renewed Jan. 17 after negotiators failed to agree on various issues. Tentative agreement was reached Monday.

While longshoremen are preparing to return to work, businesses are assessing the damage on their profit and loss statements. Mattel Inc., the toy manufacturer, has said it expects to report a loss for the fourth fiscal quarter ended Jan. 31, because of the strike. For the nine months ended Oct. 30, Mattel previously reported a loss of $4 million, as compared with a profit of $14.5 million, or 93 cents a share, a year earlier. Brentwood Industries Inc., Los Angeles, a wig maker whose main plant is in Hong Kong, figures it spent $1 million to import its product by air freight during the initial 100 days of the strike—nearly five times what it would ordinarily have cost.

RICE AND MAZDAS

California Valley Exports, the overseas marketing arm for two major producers of canned fruit, estimates sales for the crop year begun July 1, 1971, are running 40% less than a year ago because of the strike. Because California Valley couldn't meet delivery schedules, many customers have turned to other sources, says Percy Rideout, managing director. And there is "no guarantee" the company can win them back, he says.

Even those companies that didn't lose markets as a result of the strike paid dearly to keep them. Robert Freeland, executive vice president of the Rice Growers Association of California, says rice normally is shipped directly from Sacramento to Puerto Rico—the association's major market. But during the strike it was routed by rail to Houston and by ship to Puerto Rico; that proved "very expensive" to the association, which absorbed the extra costs, says Mr. Freeland.

Mazda Motors of America, headquartered near Los Angeles, absorbed about $1.4 million in extra handling charges to bring its cars through alternate ports during the initial 100 days of the strike, reports C. R. Brown, general manager. The strike hit last summer just as the company launched an advertising campaign to introduce its car in California, "but at the time we didn't have enough cars to meet the demand," says Mr. Brown. To make matters worse, a shipload of Mazdas had arrived in port the night before the strike began, and "it took us about eight weeks to get that ship unloaded."

For a few companies, however, the strike was an unexpected bonanza. Flying Tiger Line Inc., the cargo carrier, says its traffic increased substantially as a result of the strike. An official of Seattle-based Airborne Freight Corp., an air freight forwarder, says "we expect to keep" most of the 10% to 15% extra business picked up during the most recent walkout. And the California Beet Growers Association reports that during the strike its 3,000 members have supplied 70% to 75% of all sugar sold in the state, up from a normal 65%. "We've had a windfall from it (the dock strike), there's no question," says Malcolm Young, executive director.

A few companies, like Amfac Inc., a diversified, Honolulu-based concern, figure they can spring back fairly quickly. Amfac figures that its earnings would have been five to seven cents a share higher last year if the dock strike hadn't added to costs. The company reported 1971 earnings of $1.92 a share, up from a restated $1.73 a year earlier. But "there won't be any permanent effect on Amfac" because of the strike, says Henry A. Walker Jr., president. And the national forest products association says the wood-products industry lost about $1 million daily in exports of logs and wood mill residues in Japan, but it expects to recover that market once the strike officially is over.

[From the Great Plainsman]

LEGISLATION SOUGHT—DOCK STRIKES COST FARMERS $1 BILLION, THREATEN FUTURE AGRICULTURAL EXPORTS

January 18.—Labor disputes at U.S. ports in 1971–72 have already cost American farmers one billion dollars in gross income according to the USDA. And, since the dock strike problem began on the West Coast on July 1 the USDA estimates that the dollar value of wheat and flour exports has fallen 100 million dollars, compared with the same period last year.

These losses to farmers and the U.S. economy have been immediate and irretrievable, but the most damaging effects are perhaps only beginning to be felt. The total long-range damages are inestimable.

LONG-TERM EFFECTS CITED

The most damaging effect of any dock strike or threat of a strike on U.S. agricultural exports is the weakening of our ability to assure a continuous supply of agricultural commodities to foreign customers. Foreign buyers can, and quickly do, turn to other sources when supplies from a traditional supplying country are cut off. As GPW's Executive Vice President Joseph Halow pointed out in a recent letter to Senator Harrison Williams, Chairman of the Senate Committee on Labor and Public Welfare, "Foreign consumers will not stop eating bread, and foreign mills will not stop milling wheat because they don't have available supplies from the United States. They will obviously and understandably turn to other suppliers, and lost business in the short run is multiplied many fold in long-term losses which may never be recovered."

The USDA estimates that one-fourth of all U.S. agricultural production must be exported. The percentage is much greater for wheat, since exports roughly equal total domestic consumption of wheat for food and feed. Any interruption in the flow of wheat into export markets is a serious disruption in the U.S. wheat economy.

A second costly effect of maritime industry work stoppages is the weakening of producers' self-help market development work. Great Plains Wheat and other similar organizations have spent years and large sums of money, which have come directly from levies against crop production in the U.S. and through funds contracted from the USDA, to develop markets for U.S. agriculture. Foreign markets developed and maintained in this manner can be lost overnight when buyers lose confidence in the U.S. as a reliable supplier.

The world's millers are particularly accustomed to using certain wheat qualities. While they are reluctant to switch wheats, they do switch when traditional supplies are cut off. By the same token, millers are also reluctant to return to the traditional supplier when the circumstances forcing the change no longer exist. For this reason, Great Plains wheat producers are fearful of long-term losses in foreign markets.

GPW APPEALS FOR LEGISLATION

Since mid-summer, Great Plains Wheat has repeatedly appealed to government leaders in the Administration and the Congress for relief for producers from the recurring transportation labor dispute problem. The GPW Board of Directors, in an effort they believe is the one realistic hope of relief, voted to actively support legislation which would help bring the current dock strikes to a close or at least assure work continuation during negotiations. GPW reaffirmed its position to key Congressmen—in December after the International Longshoremen's and Warehousemen's Union refused management's "last" offer, acceptance of which could have settled the West Coast dock strike—and in mid-January after the West Coast dock strike resumed and the Congress returned to session.

In his letter to Congressmen on behalf of Great Plains wheat producers Joseph Halow pointed out that "During the January–March period, based on previous years experience, we would expect to be exporting around $100 million worth of wheat off the West Coast. Most of this wheat is destined for Far Eastern countries, which will buy from other sources if they cannot be assured of shipment from the West Coast during this period of time. These sales will now easily be lost."

"We cannot be indifferent," Halow said, "nor do we feel the Congress can be indifferent to the frustration of the U.S. agricultural producer in his efforts to help himself. The United States is again building up commodity surpluses, at a time when other wheat exporting countries are enjoying a very good export year. It can be no coincidence that the United States is the only one of these countries now hampered in its sales efforts by a dock strike which could now not produce any benefits to the longshoremen which could offset the losses already incurred in export sales."

Halow pointed out that Great Plains Wheat is "not against action by any one segment of the working population in an attempt to receive better work benefits or conditions. Strikes such as those at the docks go beyond this and seriously prejudice the interests of large segments of the population. There must be a point at which the government decides that the strikes cannot produce any benefits which would offset the harm being done. There must be some form of effective government mediation which would bring all parties together in a solution acceptable to all."

Halow also noted that "the point at which govenrment intervention is necessary must be left to the discretion of those individuals in whom the citizens have placed their trust, as demonstrated by their election to office. Considering the length and already unbearable cost of the current strike, which could not have come at a worse time for our economy," Halow concluded, "it would appear that the time for action has come."

OTHERS SUFFER, TOO!

In his statement before the Senate Subcommittee on Agricultural Exports on November 5, Kenneth Frick, Administrator, ASCS, pointed out that the impact of the dock strikes were not limited to one part of the economy. He said, "There are many other segments of our economy which are dependent upon agriculture and which are also suffering economic losses. The small-town businessman who is dependent upon the cash flow from agriculture, the trucker who is dependent upon seasonal business, and many others are sharing the farmers' pain. The dock workers themselves are a vital part of the system and are also dependent for their livelihood on export sales of agricultural products. At a time when we are desperately trying to get our Nation's economic house in order, we all need to work together instead of pulling apart, in order that we

may all benefit from a strong economy and a unified nation. It is for this reason that the Department of Agriculture urges an immediate end to the dock strikes and their threat to the agricultural economy."

THE GENOCIDE CONVENTION BLOCKED BY ABA

Mr. PROXMIRE. Mr. President, I have taken the opportunity to make a statement concerning the Genocide Convention and to urge its ratification each day that the Senate is in session. The need for approval is well known yet still no action is taken. One reason for this is the powerful opposition it has met from certain interest groups. The following is a forthright statement made by the Milwaukee Journal, which clearly recognizes the opposition of one group in particular.

FOOT DRAGGING ON GENOCIDE

As if the American image in world affairs were not tarnished enough by events, a nonevent continues to make it appear thoroughly disreputable. That is the 23 year history of Senate refusal to ratify the U.N. treaty by which 75 more self-respecting nations have formally renounced genocide (systematic extermination of an ethnic class of people as national policy). Finally last March the Senate Foreign Relations Committee approved it, 10–4, and sent it to the floor, but there it still lies untouched.

The stumbling block always was and still is the American Bar Association, where a fear has prevailed that overinterpretation might intrude upon purely domestic sovereignty. Repeated disproof of any reason to prolong that resistance has pervaded every pertinent ABA section and committee, however, leaving only the House of Delegates to be tipped over. And the current ABA Journal gives space to a thorough, conclusive case for quick ratification at this time, by Arthur Goldberg, former Supreme Court justice and UN ambassador, and Richard Gardner, the distinguished Columbia professor of international law.

That should do it. How can the United States longer retain its dignity in a posture of refusal to renounce the unspeakable crime, leaving a distrustful world to infer that the U.S. wants to keep this option open for itself?

SENATOR CARL HAYDEN WAS A GOOD MAN AND A DEARLY LOVED CITIZEN

Mr. RANDOLPH. Mr. President, the Nation lost a good and dearly loved citizen in the passing of Carl Hayden. His service to his State of Arizona in the Congress of the United States spans two generations. Those of us who were privileged to know and work with Carl Hayden in both the House and Senate, until he voluntarily retired 2 years ago, miss his wise counsel. As chairman of the Appropriations Committee for many years, he served the Nation well. As President pro tempore of the Senate for the last 12 years, he gave great strength and dignity to the legislative process. In the history of the Nation, there have been many individuals who have gained respect and admiration through long and dedicated service. Carl Hayden stands in the front ranks of those truly great Americans who have earned the lasting gratitude of our citizens. I join with my colleagues in mourning the recent death of this distinguished man who was my cherished friend. The State of Arizona and the Republic shared his unparalleled abilities.

DYNAMIC LEADERSHIP OF SECRETARY BUTZ

Mr. ALLOTT. Mr. President, since assuming the leadership of the Department of Agriculture only 2 short months ago, Secretary Earl L. Butz has shown dynamic leadership. I have for years known that our farmers are not receiving a fair return on their investment and labors. Perhaps coming from a rural community, it gives me a greater insight into this fact which possibly explains my awareness.

Secretary Butz is assuming a position of spokesman for our Nation's farmers. He has filled a void—a need—to enlighten Americans on the plight of rural America. Mr. President, I ask unanimous consent that an address by Secretary of Agriculture Earl L. Butz before the National Livestock Feeders Association in Omaha, Nebr., be printed in the RECORD at the conclusion of my remarks. I commend him for assuming the position of spokesman for rural America and wish to add my endorsement—my "amen"—to that portion of the Secretary's speech in which he says:

City people want a fair wage, and they should get it. Businessmen want a fair return on their investment, and they should get it. And everyone should realize that farmers want a fair return for their work and investment—and they should get it.

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

ADDRESS BY SECRETARY OF AGRICULTURE EARL L. BUTZ

If someone asked me for a title of my remarks today, I would say, "Battles That Farmers Must Fight."

When President Nixon put up my name for Secretary of Agriculture three months ago, I told him I intend to speak on behalf of farmers as loud as I could. I've been doing that, and we are beginning to see some results.

Actions have to go with the words—the willingness to get into things and do some hard fighting if farmers are to keep control of farming and get higher prices and better net incomes.

From where I look at the agricultural situation, quite a few battles lie before us to be waged and won so that we can reach the day when farmers earn enough return on their labor and investments to match, at least, what city people are making. That's my goal.

Speaking on behalf of farmers, and acting on their behalf, is a major part of my job. I intend to go into these battles hammer and tongs. These are *your* battles. They are battles that farmers must fight, just as much as Earl Butz. I need all the help you can give me.

Let's take a look at some of these fights—some in progress now, others that we can see shaping up for the future.

We must fight to move our harvests to market.

I doubt if anybody can even begin to size up the harm that transportation strikes have done, and are continuing to do, to American agriculture. We need to put a stop to this insanity.

Time after time, shipments of commodities to markets have either been blocked or threatened with paralysis as the result of labor disputes in which farmers have no part and no vote. Almost invariably, this sort of trouble breaks out just at harvest time, when many products have to be moved immediately.

The dock strike situation is the latest example of this problem, of course. It started last July. I wish we could say we've seen the end of it. First the West Coast longshoremen, then Atlantic and Gulf Coast dock workers and elevator employees in Chicago, marched off their jobs—just when farmers were harvesting the greatest crops of wheat, food grain, and soybeans in history.

The latest word is that the West Coast dispute is close to some kind of settlement. The 80-day Taft-Hartley cooling off period expires next Monday for the East and Gulf ports, and the unions in those areas are reported to be working for a settlement.

But for seven months, the dock tie-ups have caused America's farmers hundreds of millions of dollars in lost sales, depressed prices, reduced incomes, and the long-range loss of potential future markets overseas. Farmers simply cannot tolerate a recurrence of this kind of situation, and we must fight to end it for once and for all. If we don't do it now, we'll be in trouble again and again.

Two years ago this month, the President proposed legislation that would overhaul the present weak safeguards against crippling strikes in all key transportation areas. It's high time this legislation is adopted.

The way things stand now, we operate on a crisis-to-crisis basis whenever a major labor dispute hits the Nation. When that happens, farmers are usually the ones who are victimized the most. We need legislation to more adequately deal with these transportation tie-ups. You can help. You can demand action. This is your fight—and the stakes for agriculture are great because, more and more, exports offer the greatest growth opportunities for American farmers. Now let's look at another battle on our hands.

We must fight to get fair prices for farm products.

Recently beef prices hit the highest level in 20 years. And the outlook for the rest of the year is promising. But, as this is happening, it is bringing a rash of articles quoting someone about "high meat prices," and it is spurring considerable agitation among the uninformed for "price controls" on food.

I say, isn't it about time that beef prices got up to levels of 20 years ago? After all, farmers' costs are 50 percent higher than 20 years ago. Compared with 20 years ago, average hourly wages in the United States have more than doubled. So, isn't it about time that beef got up to levels of 20 years ago?

We can invite a searching look at agriculture by any open-minded person. In that 20-year period, the economy has expanded tremendously. Let's take a look at some of the increases in the amount of money going to different groups. Money paid to wage earners in this country is 3.4 times larger than 20 years ago; money paid to service industry workers is 4.9 times more; money for wage supplements and fringe benefits has gone up 7-fold; total money paid to Government employees is 4.3 times higher; dividends are up 3 times from 20 years ago; and, business and professional income has doubled. And yet total net farm income to the Nation's farmers has stayed almost the same—a bare 3 percent increase in 20 years. Isn't it about time that farmers did a little better?

Twenty years ago, people spent $7½ billion more for services than they did for food and beverages. Now, people are spending $146 billion a year more for services than they are for food and beverages. So why talk about food prices?

Total expenditures for food and beverages are 2.3 times higher than 20 years ago—but

total expenditures for furniture and household equipment are 2.7 times higher; and, expenditures for automobiles and parts are 4 times higher than 20 years ago.

Food prices at the store have increased 43 percent over 20 years ago—but rent is 57 percent higher, and medical care, 128 percent higher. Actually, whereas people 20 years ago were spending 23 percent of their take-home pay for food, they are now spending only 15.5 percent of their take-home pay for food that is of better quality, of wider diversity, better packaged, and the safest in the world.

By any measurement you want to make, agriculture stands out. Farmers are producing enough beef to provide twice as much beef per person as 20 years ago.

The gain in overall productivity among farmers is almost twice as great as in our manufacturing industries. The output per man hour in manufacturing has increased 1.7 times in the last 20 years—but output per man hour of farmers is 3.3 times higher than 20 years.

In our fight to get fair prices for farmers, I think it's urgent that you and I get across the true story of food prices. The housewive may spend more on her week's trip to the store, and when she gets home she complains about food prices as she takes the panty hose, detergent, mouth wash, and floor wax out of her shopping bag. The burgeoning labor costs at packing houses and retail stores, transportation expenses, parking and overhead facilities, convenience packaging—these all contribute to the higher retail prices for food.

Among the rank and file of wage-earning Americans who have received their regular pay increases over the years, it has not been their practice to complain very much when their fellow workers also received pay boosts. I hope they can see the justice in fair treatment for farmers, especially when the record shows that farmers are making only three-fourths as much income per person as nonfarm people.

We must fight for more freedom for farmers to manage their own business.

This is another vital battle—a fight against going back to rigid controls over farming. The whole idea of the set-aside approach to major crop programs is for farmers to have more freedom, more options, in what they plant and how they operate their farms for greatest efficiency and for the most advantageous market opportunities.

We are trying to move away from production quotas, penalties for over-planting, cross-compliance requirements, and other kinds of Government interference. And in the process, we are seeing some significant changes taking place in cropping patterns. The shifts involve more than 60 million acres—a healthy realignment in production is taking place.

This is why I thought the recent proposal of a 25 percent increase in loan levels and creation of an excessive, inflexible Government grain reserve was not in farmers' best interests. I stand squarely against going back to tight production controls on farmers. I am against Government-owned reserves that hang like a deadweight over markets, putting a ceiling on farmers' prices and opportunities. I can recall the charges of "dumping" made against every administration whenever Government supplies were finally sold off.

The short-term effect of the strategic reserve proposal might have been good for some farmers who had not sold their 1971 grain. But what of the year after next, with more corn and wheat than we could use, with exports diminishing, with other countries working to take our markets, and with a huge reserve piling up in Government hands? On top of all that, the chief beneficiaries of the plan would have been the middleman and agribusiness interests and speculators, who would have been handed a quarter-billion-dollar windfall bonanza.

Livestock as well as crops would have felt the effects of the proposal, because it would have increased the cost of production for beef, hog, dairy, and poultry farmers. Livestock products represent the greatest area of potential expansion of food use, and the fastest growing portion of farmers' income. I did not want to see the Government put squarely between the grain producer and livestock producer, stifling livestock output and reducing grain consumption while the production of corn and wheat shot up.

Any price support or reserve proposal has to be looked at with the most careful and critical eye. The way I see it, our fight for greater farm prosperity must be based on a determination to make the present new programs succeed. The recently announced plan for voluntary diversion of additional wheat and corn-sorghum acreages are aimed at that goal.

This is a pivotal year for wheat. Growers have important decisions to make in using the freedom they have in the 1970 Act in a rational manner, to make production adjustments essential to their future. There are attractive incentives for those adjustments. I have authorized an additional voluntary set aside of wheat cropland equivalent up to 75 percent of a farm's domestic allotment. This year's wheat payments could run up to $200 million higher than the 1971 level.

I hope wheat growers are seriously considering the incentive which will put money in their pockets while cutting back on production. The National Association of Wheat Growers is directing an appeal to all wheat growers to use the extra set aside feature this year. Producers should give serious thought about the impact that overproduction will have not only on this year's market but for many years to come.

You may be sure I'll be keeping a close eye on the sign-up now in progress and farmers' planting intentions. I'm strong for rewarding those farmers who help work down our grain supplies so that output can be brought into better balance with market outlets. That's what will get agriculture back on the right track, with better prices and better incomes for farmers.

We must wage a constant fight for better farm income.

This is the biggest campaign at all. There are other battles under way—for better rural living, for greater economic and job opportunities in the countryside, for the protection and growth of family farms. They are all part of this major effort in which I hope you and I can join forces.

We are all pleased that farmers' prospects for 1972 are looking better. Farm prices in January were 13 percent higher than a year ago; and the prices you had to pay were up about 5 percent, so that was a net gain.

Chances are that livestock farmers this year will gross $1¾ billion to $2 billion more than in 1972. Overall, the Nation's farmers should take in $3 billion to $3½ billion more gross income than last year. Even better news is that farm costs are likely to increase less than in recent years. Phase II of the Administration's economic program is slowing the inflationary rise in costs.

That means, as prospects now shape up, that farmers should have $1½ billion to $2 billion more realized net income from farming in 1972 than in 1971. That would be a 10 percent to 12 percent increase over 1971. And isn't it about time?

We are making some progress with increasing our levels of farm income. If 1972 turns out the way it now appears that it will, farmers' realized net will average $16.4 billion for the four years, 1969 through 1972—compared with an average of $13.8 billion from 1961 through 1968. That's a 19 percent increase, and it's progress—but it's still not good enough.

It's not good enough, because the average disposable income of farm people is still only three-fourths, 75 percent, as much as the average income for non-farm people. That 75 percent average over the last three years is 10 percent better than the 68 percent average of the preceding eight years. But, I won't be happy until the average income of farm people is at least as high as that of non-farm people. Even that won't satisfy me.

Considering the hours farmers work; the marvelous record of farmers in increasing their productivity per man hour; the high investments that farmers have in their land and equipment that must be recapitalized; and, taking into account the risks of farming, and the high tax burden on farmers—well, considering all this, I know you agree that the average income of farm people should be considerably higher than the average nonfarm income. And I'm going to do everything I can to see that farmers get it. It's only fair, and I think anyone will agree with that when they know all the facts.

One of the responsibilities that I am taking on is to travel this country from one end of the land to the other to tell those facts about the Nation's farmers to the American people.

In 1972, the average income per farm from farming will be the highest on record—somewhat over $6,000 per farm, or more than $600 higher than in 1971. That will mean that the income per farm from farming for the four years, 1969–72, will average somewhat more than $5,650—an increase of about 40 percent over the average of $4,079 for the previous eight years.

Still, this is not good enough. Farmers are a long way from getting the average factory wage for their labor and the average business percentage return on their farm investment.

City people want a fair wage, and they should get it. Businessmen want a fair return on their investment, and they should get it. And everyone should realize that farmers want a fair return for their work and investment—and they should get it. I intend to do all that I can to see that farmers make progress toward that goal.

We would like to see farmers do better so that they will find more opportunity to stay in agriculture. That's good for farmers, good for farm communities, good for the rural countryside, and good for the Nation.

We are making some progress in this regard, too. The average decline in the number of farms during the last thee years has been 47,000 a year. That's considerably better than the average loss of 106,000 farms a year during the preceding eight years of 1961 through 1968. But we want to do still better.

That's why the Department of Agriculture and this Administration are taking a two-pronged approach to improving farm and rural opportunity. Our first is the battle to improve farm income. Our second is the effort to improve economic opportunities in the non-metropolitan areas, with a countryside growth program that will increase economic activity and job opportunities in rural communities.

We want more of the future economic expansion of this Nation to be invested in rural America, so that farm and rural people can find more and better jobs in their home areas and won't have to move off to some far-away city that is already overcrowded and congested. We want more off-farm work opportunities nearby for those farmers and members of farm families who want to earn off-farm money.

During the past year, funds for rural credit advanced by the Department of Agriculture amounted to a record-breaking high of more than $2.5 billion in supplementary financial assistance made available to rural people for housing, family farms, and community facilities. In addition to that, the President has asked Congress to adopt a program which would give the States new

money resources to spark economic activity in the countryside.

We want more job opportunities in rural areas for farm and rural young people so that they can enjoy a good life nearby if that is what they seek. We also want more recreational opportunities in rural America for young people, and old.

In short, we want a better life for farm and rural people. Not only because it's about time they had a better life. Not only because they are due for something better. But because I am convinced that the road to national prosperity starts on the farms and in the countryside of America. Let's fight to keep that road open.

CONQUEST OF ALCOHOLISM

Mr. JAVITS. Mr. President, with the Senator from Utah (Mr. Moss), we pioneered the struggle to establish a national commitment for the conquest of alcoholism. Thereafter, Senator HUGHES of Iowa took on a guest role in the battle against alcoholism—the Nation's fourth most serious health problem—which culminated in the enactment into law of the comprehensive "Alcoholism Prevention, Treatment and Rehabilitation Act of 1970"—Public Law 91-16, which Senator HUGHES and I introduced with the cosponsorship of over half of the Senate. I invite the attention of Senators to a special report on alcoholism, published in American Medical News of February 7, 1972. The article is entitled "Alcoholics Face a 'Therapy Gap'" and describes in the words of one of the Nation's leading authorities, Dr. Morris E. Chafetz, Director of the Division of Alcohol Abuse and Alcoholism of the National Institute of Mental Health, how alcoholism has become "the most treatable untreated illness." He blames much of the problem on the "negligent attitude of physicians toward alcoholic patients."

The American Medical Association is to be commended, as this report published in their weekly newspaper not only focuses attention on alcoholism as a disease, but also forthrightly puts the responsibility for much of the problem on physicians' attitudes.

It is rare indeed when a professional publication admits to such fault of attitude among its professionals.

I ask unanimous consent that the complete text of "Alcoholics Face a 'Therapy Gap'" and the American Medical News editorial entitled "Treating the Alcoholic" be printed in the RECORD at the conclusion of my remarks.

One solution to the problems of stimulating medical school interest in alcoholism as a disease, which is highlighted in this report, will, I hope be found in the amendment by Senator HUGHES and me to the Comprehensive Health Manpower Training Act of 1971—Public Law 91-157—which provides incentives to medical schools, through special project grants, for the development of programs in the prevention, diagnosis, treatment, and rehabilitation of alcoholics and the assessment of the efficacy of various therapeutic regimens.

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

ALCOHOLICS FACE A "THERAPY GAP"

"Alcoholism is the most treatable untreated illness in the United States today."

Morris E. Chafetz, MD, author of that remark, says that in his 20 years in the field, "the only part of alcoholism I found untreatable is the negative attitude of physicians toward the problem."

Dr. Chafetz, director of the Division of Alcohol Abuse and Alcoholism of the National Institute of Mental Health and a member of the American Medical Association's Committee on Alcoholism and Drug Dependence, has considerable support.

Most physicians active in the treatment of alcoholics, for example, tend to agree with him. They point out that many doctors shy from this problem because of the frustrations involved in such treatment, or because they may have an alcoholic problem of their own; that many hospitals refuse to accept patients specifically for the treatment of alcoholism; and that the nation's medical schools devote little, if any, of their curricula to this subject.

Marvin A. Block, MD, Buffalo, N.Y., a member of the AMA Committee on Alcoholism and Drug Abuse and a physician who has limited his practice to the area of alcoholism and drugs, says:

"It is one of the great public health problems of our time and our profession has neglected it."

Robert Straus, PhD, director of the Dept. of Behavioral Science at the U. of Kentucky College of Medicine who also is a member of the AMA committee, adds:

"The health professions, although long involved in treating alcoholics suffering from cirrhosis of the liver, nutritional deficiency, and other specific diseases or injuries, still try to avoid responsibility for treating alcoholism."

Just as guilty, Dr. Straus says, are the nation's general hospitals which "resist or forbid accepting patients specifically for the treatment of alcoholism."

Samuel Nieder, MD, Chicago, director of the Alcoholic Treatment Center at the city's Martha Washington Hospital, charges:

"We need to stimulate the medical profession. We have to get the doctors to get off their butts to help these people."

Part of the problem falls on the nation's medical schools. William F. Jessee, a senior at the U. of California San Diego School of Medicine, reflects the feelings of many students. He says:

"Most of us are appalled at how little is being taught on this problem at our medical schools. It is pitiful that students are not being adequately trained in a subject in which some 20% of their patients will be involved."

Jessee admits there are problems in establishing courses on alcoholism in medical school curricula. Among other things, he cites a shortage of capable teachers, the lack of funds, and the attitude problems (e.g. getting the student to understand, not only the alcoholic, but his own "hang-ups" in the treatment of such patients).

Dr. Chafetz, interviewed by *American Medical News* (Oct. 18, 1971) says:

"We are trying—through the activities of the Institute and its relationship with organizations such as the AMA, the American Psychiatric Assn., the National Council on Alcoholism, the North American Assn. of Alcoholism Programs, the Assn. of American Medical Colleges, and a variety of other important national organizations—to mobilize support to have such education a part of the medical curriculum and in a meaningful way.

"We are working in conjunction with the President's Special Action Office on Drug Abuse Prevention and the Division of Narcotics in NIMH. In this regard, we have established a competitive program to create scholarships in medical schools for persons taking leadership roles in problems involving drugs and alcoholism."

Stirred by student critics and some involved practitioners, medical schools are making greater efforts to institute alcoholism studies into their curricula. But it's the opinion of many, including Frank A. Seixas, MD, that much more remains to be done.

Dr. Seixas, medical director of the National Council for Alcoholism and assistant clinical professor of medicine at the Cornell U. Medical School, declares:

"In the past, the medical schools got what we consider an anti-education in alcoholism. Students were told that nothing could be done about the behavioral aspects of the alcoholic; that he could be treated only for his organic-related problems. Once these attitudes were engendered by a medical school, it was very difficult to change them in postgraduate education."

Dr. Seixas says "the expertise and techniques of teaching necessary to make a course in alcoholism a part of a medical school curriculum aren't readily available, but it is absolutely imperative that health professionals know what to do when confronted with the alcohol problem."

What is needed in his opinion is to "change the teaching parts of the staff and coordinate the various aspects of the program using educational means and abilities present in every medical school community.

"We need," he says, "to give the medical student what he has never felt before—the confidence and hope in dealing with the alcoholic patient.

"This effort needs to be carried through rapidly throughout the United States. We have models in various medical schools such as the U. of Maryland, Howard U., Harvard, and Johns Hopkins. But, for the most part, we have just bits and pieces of the kind of education we need. The urgency of the problem cannot be underestimated. The time has come when the medical schools need to pull this into an appropriate setting."

Joseph B. Kendis, MD, St. Louis internist, thinks both professional and public education are necessary. Dr. Kendis, active in the field of alcoholism for 30 years and medical director of the St. Louis Detoxification and Diagnostic Evaluation Center, says:

"I think medical education, where alcoholism is concerned, is sorely lacking. More about this should be taught to our medical students, interns, and residents—especially where therapy is concerned—how to approach the alcoholic and how to treat him.

"In addition, we have to continue with the education of the general public. We should start with the primary levels in our schools and work on up. First, we need to teach the teachers. Then, the teaching of alcoholism can be brought into all our schools on up through the college level. Adult education also should be pursued through special night school courses and through our various communications media."

Dr. Straus finds medical education today "in ferment," with most schools revising curricula. He doesn't believe, at least at this time, that any set format for alcoholism education can be established; and feels that curricula "should be sufficiently flexible so that students can study the use and abuse of alcohol with varying degrees of intensity and personal involvement."

As for postgraduate courses on alcoholism, Dr. Block believes that there are "many around the country which adequately prepare physicians."

Dr. Block, who annually teaches several such courses, says the "trouble is many doctors want simple answers and there are none."

Dr. Block, whose practice involves patients

in the upper- to middle-upper income class, says this group "constitutes the bulk of our alcoholism population. But this is a group," he says, "where alcoholics are extremely hard to detect. Excessive drinking in this group is acceptable in our social behavior, and many of these people drink all day and are not aware of their alcoholism problem until some physiological changes begin to occur."

It is Dr. Block's opinion that "most doctors, especially the general practitioners, are capable of handling problems of alcoholism. But they don't like to take the time that this involves, are afraid to handle these people because they are frustrating and not easy to get along with, and because some of these doctors have drinking problems themselves and it's difficult to label someone else an alcoholic when you, yourself, might be one."

Contending that alcoholism is "one of the most communicable of all diseases (it can be learned from parents by children)," Dr. Block says a certain number of people—"perhaps 10%"—become alcoholics with their very first drink.

"An alcoholic," he says, "is psychologically dependent on the drug and he must be made to realize he is using a drug when he drinks to produce certain effects. If he reaches that stage and has any intelligence at all, he will recognize he is hooked on a drug."

H. Thomas McGuire, MD, New Castle, Del., who was vice president of the AMA in 1970–71, is one of the growing number of physicians in industrial medicine who is deeply involved in the problem of alcoholism.

As medical director of the Eastern Division of the Getty Oil Co., he initiated a control program. "It took some real missionary work," he says. "We had to get management to recognize the problem of alcoholism within its ranks."

Dr. McGuire suggests "industry is not enlightened to the extent it should be. Management doesn't want to admit such a problem exists because often it involves top people.

"There are many alcoholics in industry who are not identified early enough. What we are trying to do here is make this early identification. This requires an educational process that starts with me and works down through management to the employee level. It must be made clear that early identification of alcoholics is important if they are to be treated successfully."

Once an alcoholic is identified, Dr. McGuire says it becomes "my job to discuss his problem with him, his family, and his family doctor. I have to try to coordinate all of the involved people, but it is especially important that I make the alcoholic aware of how his problem affects his lifestyle."

Dr. McGuire emphasizes that although "there is so much that needs to be done, the greatest need as I see it is for the medical profession to assume more responsibility."

Three doctors extensively involved in day-to-day treatment of alcoholics are MDs Nieder, Kendis, and Ronold J. Catanzaro. The latter is a psychiatrist and director of the Palm Beach (Fla.) Institute.

"We have some new things going here," says Dr. Catanzaro, "that we are quite elated about. We have private inpatient facilities in what we call a family residential center where we treat alcoholism, drug abuse, and emotional hang-ups in all the same program."

The patients, ranging from 14–82, form, in a sense, a "treatment family" The therapy includes "family" sessions, "group" sessions (where only persons with a specific problem are involved), and individual psychotherapy.

The Institute, according to Dr. Catanzaro, treats 30 patients at a time, usually has a waiting list, and has an average patient stay of eight or more weeks. About 40% of the patients are alcoholics.

Another unusual aspect of the program, according to Dr. Catanzaro, is that the Institute routinely admits a key family member or members (sometimes two or three family members) as copatients so that they can participate in the treatment and see for themselves some of the problems that are involved.

He says the Institute has "drug rap groups, alcoholics anonymous, hang-up groups, and a multi-disciplinary treatment team consisting of a psychiatrist, psychologist, social worker, recovered alcoholic, and ex-drug addict."

What is the private physician's role toward alcoholic patients? Dr. Catanzaro says:

"Individual physicians need to learn more about the illness of alcoholism but it's difficult to get them interested in this. For many years (as director of the Florida State Alcoholism Program and as director of the Missouri State Alcoholism-Drug Program) I conducted seminars for private physicians on this. As a rule, the attendance at these meetings was quite low."

It is Dr. Catanzaro's opinion that "the only promising places to generate interest are at the county medical society level or in the medical schools where you have a captive audience.

"There never will be any quick cure-all for the problem," asserts Dr. Catanzaro. "It's usually caused by emotional or personality troubles and is part of a person's problem of having an unhealthy living pattern."

Dr. Kendis says his detoxification center involves alcoholics who "come mostly from the bottom of the social ladder. Many people," he noted, "say there's nothing you can do for alcoholics in this category. But we're proving this wrong. We're doing something for these people everyday."

As Dr. Kendis views it, "The medical profession should avail itself of the many opportunities that are offered to learn more about the treatment of alcoholism. And the learning isn't as difficult as some physicians think. On the contrary, it is relatively simple.

"Unfortunately, most hospital administrators, and doctors, too, for that matter, think of the alcoholic as some kind of an uncontrollably wild person who runs up and down the halls, has the shakes, and tears up buildings. This is no more true of an alcoholic than for any other person."

Dr. Kendis believes the treatment of alcoholics "should be largely in the hands of the family practitioner or the internist. I know," he says, "that such physicians are busy people and that such treatment takes considerable time. But this is a public health problem of such immense proportions that it becomes their problem, too.

"The disease of alcoholism not only affects the patient but his entire family. The whole family needs treatment in these cases, and who better to carry out this treatment than the family doctor?"

Dr. Kendis suggests, "We had better make great progress in treating these people or the problem will get one hell of a lot worse than it already is. We'd better find more people who are willing to look into things like this, and who will do something about it."

"I probably see more alcoholics in the city of Chicago in one day than any other doctor," claims Dr. Nieder in pointing out the need to get more private physicians involved.

"I don't think the physicians of today have any interest in this area," he says, "because there is no specific treatment for this disease and because physicians so often have such hard luck in treating these patients. Just when you think you have achieved a cure, a patient falls off the wagon, and this is very frustrating to some doctors.

"Frustration of this sort doesn't bother me," says Dr. Nieder. "What does bother me is there is no permanent cure. I'm sure it will come some day. After all, we've cured polio and some other supposedly incurable diseases and we have many medications to treat illnesses once thought to be hopeless. So, I see a permanent treatment for this in the not too distant future."

The Martha Washington Alcoholic Treatment Center is the oldest in Chicago (established in 1863). As far as Dr. Nieder knows, it is the only center in the entire Chicago area devoting its attention to the acutely alcoholic ill.

The patients, who enter the hospital voluntarily, are 20–88 years of age (average is 40–50), and represent a cross-section of society. The center is almost always at full capacity (26 maximum in detoxification and 14 in the hospitals' extended treatment program), and has about three male patients to every female.

The average patient is in the detoxification program about five days before being discharged, but this phase can be as long as five months if complications occur. The extended treatment program is a minimum of 30 days, but can take as long as a physician thinks is necessary.

The center, according to Dr. Nieder, averages eight to 12 admissions a day and treats 1,500 patients a year.

Dr. Nieder, who assumed the center's directorship on a "one month trial basis seven years ago," says, "I think the general practitioner is the one most qualified to handle such patients but they're the ones who seem to be the least involved.

"We've got to stimulate the entire medical profession and get the doctor off his butt to help these people. But frankly, I don't know how to do it. I wish someone had the answer."

TREATING THE ALCOHOLIC

The alcoholic patient continues to be a major problem for the medical profession. Morris E. Chafetz, MD, one of the leading authorities in the field, has pointed out that alcoholism is the nation's "most treatable untreated illness," blaming much of the problem on "the negative attitude of physicians" toward such patients.

As the special report on alcoholism on pages 8–11 indicates, most physicians who are actively involved in treating alcoholics are in agreement.

Fortunately, the report also shows that steps are being taken to alleviate the problem, although much remains to be done. The unequivocal statement on alcoholism adopted last December by the American Medical Association hopefully will add more impetus to the search for solutions. In identifying alcoholism as a complex disease and recognizing "medicine's responsibility in behalf of affected persons," the Association has reiterated the importance of the problem to all physicians, not just those who specialize in treating this widespread illness.

THE FUTURE OF THE PEACE CORPS

Mr. HARTKE. Mr. President, sometime this week the Senate and House conferees will meet to discuss the foreign aid appropriation bill. I urge the conferees to give serious consideration to the need for maintaining the Senate's recommendation for funding of the Peace Corps. The continued existence of the Peace Corps is currently jeopardized by the possibility of congressional restriction of their funding.

The Peace Corps is faced with the critical effects on its programs, if not the total dismantling, that a further budget cut would impose on it. At the onset of fiscal year 1972, the Peace Corps was authorized $77.2 million, significantly lower than the 82.2 million requested. The Peace Corps therefore undertook massive reductions in staff, in volunteer

trainees, and in country operating budgets. The Peace Corps obviously cannot effectively function with an appropriation of less than $77.2 million, and yet in December Congress established a ceiling of $72 million in a continuing resolution which expires February 22, 1972.

According to Corps Director Joseph Blatchford, such a cut in the middle of the fiscal year would force the Peace Corps to adopt a contingency plan. This plan would recall 4,000 volunteers from the field, withdraw the Peace Corps from 15 countries, cancel training plans for 2,400 volunteers, and reduce considerably the staff at home and abroad.

Ironically, this possible budget reduction comes at a time when both domestic and international public opinion supports the Peace Corps more than ever. The Peace Corps should not be permitted to die as a result of the general disenchantment with the necessity and advisability of foreign aid. The Peace Corps represents this Nation's most credible evidence of its concern for the people of other countries.

Mr. President, I ask unanimous consent that a letter written by Mr. Blatchford to Peace Corps volunteers, outlining the grave crisis facing the Peace Corps, be printed in the RECORD.

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

PEACE CORPS,
Washington, D.C., January 11, 1972.

DEAR PEACE CORPS VOLUNTEER: The Peace Corps faces a moment of truth, a point of decision second to none in its history. Press reports about cutbacks in the Peace Corps have suggested the critical nature of the present situation, but they have left many members of the Peace Corps' large family confused and concerned. Thus, I am taking this moment to write to you, to explain the gravity of the days ahead and to outline the steps we have taken to preserve the Peace Corps idea.

As a result of unexpected budget pressures by the Congress, the Peace Corps must prepare a contingency plan in the event Congress fails to properly fund our activities. These include:

To recall nearly 4,000 of the 8,000 volunteers now in service before their terms can be completed;

To withdraw from 15 or more of the present 55 countries;

To cancel the training plans and postpone or cancel the projects of the 2,400 volunteers scheduled to enter the Peace Corps between now and the end of June;

And to reduce staff both at home and abroad for the second time this year—having just absorbed a 15% reduction.

Oddly, these measures are threatened at a time of particular popularity and support for the Peace Corps. President Nixon has expressed his support for the Peace Corps personally to me, and in his public statements and speeches.

In spite of austere economic conditions in the nation, the President requested an $82.2 million budget for fiscal 1972.[1] His confidence in the important mission of the Peace Corps was illustrated, too, when he indicated that the success of the Peace Corps lent promise to his plans for ACTION, the new Federal citizen service idea inaugurated on July 1, 1971.

Foreign leaders have joined their people in renewed enthusiasm and interest. Many countries of the world have initiated domestic volunteer corps' of their own, and at the same time requested more and more volunteers from the U.S. Peace Corps.

Americans, too, have continued to demonstrate their belief in the Peace Corps: 26,564 applied last year, and applications in recent months have arrived at the highest level in five years. When the Peace Corps held a poster contest celebrating its Tenth Anniversary, over 1500 entries arrived; one of the designs will become a U.S. postage stamp early next month.

But in spite of these signs of obvious health, the Peace Corps is in crisis. Here, then, is the history. Last year, fiscal 1971, the Peace Corps spent $85 million and placed approximately 5000 new volunteers into the field. This year, fiscal 1972, we sought ways of saving in line with the President's attempt to reduce Federal expenditures. In planning this year's programs, the Peace Corps found that it was able to increase the numbers of volunteers and trainees from last year and still operate on a lower budget of $82.2 million. During fiscal 1972, it was planned, the Peace Corps would grow to 8,500 volunteers, and enroll 5,800 trainees. But the Congress, instead of passing the Peace Corps bill as requested, responded to these efficiencies by cutting the Peace Corps budget.

After hearings, the Congress passed the authorization bill,[2] setting a ceiling of $77.2 million. In order to operate within this budget, instead of the $82.2 million, we were forced to do rigorous cost-cutting. Heavy reductions were made in staff and two of the four operating regions were combined. We reluctantly decided to invite 800 less into training. Additionally, Washington and country budgets were cut to barest operating minimums. Finally, we even reviewed each training program to reduce the normal training time and effect cost savings.

If we are to keep the Peace Corps operative—as it now stands—to avoid massive cutbacks on the present volunteer and staff strength—$77.2 million is rock bottom. This means that the Congress must pass an appropriation bill equal to the authorized $77.2 million. As of this date—over six months into the fiscal year—the Congress has not passed an appropriations bill for the Peace Corps. Since the 1st of July, we have been operating on a series of continuing resolutions, acts of Congress which permit continued spending in lieu of specific appropriations bills. As indicated, we had found ways to continue effectively under the $77.2 million ceiling. But in December, unexpectedly, the Congress set a new ceiling of $72 million on its most recent continuing resolution, which expires on February 22nd.

To meet the present crisis of having to operate the Peace Corps at $72 million, I have issued instructions to prepare the contingency plans outlined at the beginning of this letter.

This, then, is the issue: If at this late stage in the fiscal year, the Congress votes only an appropriation of $72 million, the drastic action of recalling volunteers, cancelling training projects, and cutting staff further will be necessary. If $77.2 million is approved, we will survive. The difference may seem small, but it is a vital difference when the full year's expenditures are taken into account. Having started the year spending at the rate of the $82 million the President requested, then cutting costs down to $77.2 million when the authorization was passed, the Peace Corps now will be forced to cut back at a disproportionate rate for the remainder of the year, if the budget is cut now. In actual terms, this means that no more than $19 million would be available for the period following February 22, or the date that the continuing resolution expires. Because the volunteers' allowances are small, a large number must be brought home in order to curb expenditures significantly. And since efforts we can make to save money are in themselves costly—airfare for returning volunteers and staff, severance pay, costs of breaking leases and terminating contracts, etc.—these will further compound the strains on Peace Corps funding.

So we are in the painful, and paradoxical, situation of having today to begin to bring about a significant reduction in the Peace Corps activities—in spite of rising levels of support for the Peace Corps both at home and abroad—in order to avoid having to dismantle it completely in the very near future.

The fate of the final Peace Corps appropriation is still in doubt. The Congress must take up this bill when it returns. Obviously, the consequences of an appropriation of $72 million are so severe that we are very hopeful that the Congress will appropriate the amount authorized: $77.2 million.

By the time the issue is resolved, Peace Corps projects around the world will have been done irreparable harm. We are struggling to keep the very idea of the Peace Corps alive. It has always been the Peace Corps philosophy that if things must be cut back to meet spending limitations, the volunteers must be kept in the field as long as possible. We are adhering to that philosophy, and yet recalling volunteers and cancelling projects may still prove necessary. These are indeed moments of truth for the Peace Corps.

As you can see, we are fighting as hard as we can to keep the Peace Corps alive: we are redoubling our efforts to explain to the Congress what the Peace Corps has done, and can do; we are attempting to place before them a clear picture of the critical moments ahead.

We must win. The moment has not yet arrived when the United States will allow the Peace Corps to die out because small amounts of money are not made available to support all the benefits to mankind the Peace Corps can and does deliver. I expect the Peace Corps will emerge from this fight stronger, and even more importantly, that it will emerge from the fight with renewed commitment of support from both the American people and their representatives in Congress.

Sincerely,

JOSEPH H. BLATCHFORD.

[1] The 1972 fiscal year runs from July 1, 1971 to June 30, 1972.

[2] The Congress goes through two steps in setting the Peace Corps budget. It first passes an authorization bill which authorizes us to spend at a certain level; it then passes an appropriation bill which actually appropriates the money.

THE STATE OF OUR POLITICAL PARTIES

Mr. BENTSEN. Mr. President, I ask unanimous consent to have printed in the RECORD the very fine address on the state of our political parties and structure given by our assistant majority leader, the distinguished Senator from West Virginia (Mr. BYRD), before the political forum at Texas A. & M. University on February 10, 1972.

This enlightening address describes the challenge which both major parties face in the changing politics of the 1970's. These are words which need to be weighed and heeded both because of their wisdom and their source. The Senator from West Virginia is as keen a practitioner and observer of the political process as I have had the privilege of knowing.

His skill and hard work in the legislative process have earned him an unrivaled reputation for knowledge and diligence, both within this body and in his

home State of West Virginia. The huge majority given him in his last election certainly attests to the high regard in which his constituents hold him. Consequently, his thoughtful and perceptive views of our political processes today will certainly be of broad interest.

When a man has worked as successfully within the political and legislative areas as has the Senator from West Virginia, it is certainly not surprising to find such depth and comprehension throughout his remarks. I found the remarks most enlightening, just as I have found his friendship and counsel enlightening and helpful.

We are all in his debt for the hours he has spent and the skill he has brought to the Senate. Texas A. & M. University is in his debt for taking the time from his busy schedule to give this excellent address.

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

SPEECH FOR THE POLITICAL FORUM, TEXAS A. & M. UNIVERSITY, COLLEGE STATION, TEX., THURSDAY, FEBRUARY 10, 1972

Mr. Chairman, Ladies and Gentlemen: Allow me to express my pleasure at being at Texas A&M University. A mountaineer from West Virginia feels at home so close to the Texas hill country, and, despite the propaganda put out by a *former* football power some hundred miles to the southwest, I am well aware of the proud history of scholastic and athletic achievement associated with this excellent school. I am also aware of your reputation for fostering a spirit of loyalty, discipline, and good behavior in the student body. I have never had the pleasure of attending an A&M-versus-Texas game in Kyle Field, but I am led to understand by Congressman Tiger Teague that when you sing "The Aggie War Hymn", the orange turns pale and the white assumes a deathly pallor.

When your Program Chairman suggested the subject of this address—"Political Parties and the New Politics"—I must confess I was apprehensive as to whether such an all-encompassing subject could be intelligently discussed in the relatively brief time we have at our disposal.

Over the years, there has been a conventional and widely-accepted definition of "Political Parties". What they have been—and, to some extent, what they are now—has been familiar to the American voter. The second part of the program title—"The New Politics"—is almost beyond definition. It is not unlikely that six different people would apply six different definitions, because, in the final analysis, the "New Politics" is really what one reads into it.

I can imagine, for instance, that William Buckley might use the definition, "The Politics of Revolution". Gloria Steinem might use "The Politics of Equality"; and John Kenneth Galbraith might use "The Politics of Change and Progress". There is, no doubt, an element of justifiability in each of these definitions, though none of them is wholly justifiable or sufficient of itself.

To be truthful, I doubt whether "New Politics" *can* be clearly defined. It is really a media catch-phrase in the same category as "Credibility Gap".

At the risk of over-simplifying, "new politics" might be described as a disenchantment with the political process in the United States which the new politicians characterize as having a cynical attitude toward the people and an irrelevance to, and disinterest in, a host of critical problems facing the nation.

In addition, these proponents of the *new* politics proclaim, polls and television have so revolutionized the political process that the traditional concept of parties no longer applies to the American scene. While I cannot deny that polls and television are making their mark, it is not just their existence, but also how they are used or abused and how they are controlled that will decide whether the new politics will oust the old or merely be absorbed into an existing structure that has been refined or reformed by advanced communications technology.

I said earlier that the political parties were familiar to and understood by the American voter, and they still are; but despite this, their former clear definition is now more complicated by new attitudes and new ideas being bred within them. In modern times, we have narrowed the parties down to two. True, we have had the emergence from time to time of the Socialist Party, under the zealous optimism of Norman Thomas, and the American Independent Party, under the belligerent banner of George Wallace—plus several "splinter" parties too insignificant to mention. For practical purposes, however, the American electorate has had the choice of two philosophers for more than a century.

The new breed say, of course, that there is no real difference between Democrats and Republicans—that there is nothing fundamentally different in their approach to national problems. But, broadly speaking, the Democrats have been synonymous with liberal thought; and the G.O.P., with conservative tenets. President Franklin D. Roosevelt, in his "Public Papers and Addresses", published in 1941, wrote: "One great difference which has characterized the division between the liberal and the conservative parties has been that the liberal party—no matter what its particular name was at the time—believed in the wisdom and efficacy of the will of the great majority of the people, as distinguished from the judgment of a small minority. The other great difference between the parties has been this: the liberal party is a party which believes that, as new conditions and problems arise beyond the power of men and women to meet as individuals, it becomes the duty of the government itself to find new remedies with which to meet them. The liberal party insists that the government has the definite duty to use all its power and resources to meet new social problems with new social controls . . ."

This was written thirty years ago. At that time, there were similar verities in American political behavior. Democrats voted down the line for Democrats, and Republicans voted down the line for Republicans. Except for times of great stress, maverick voters—or ticket-splitters—were a curiosity and a very insignificant minority. Until the late 1940's, something like 80% of the electorate could be counted on to vote a straight ticket. But in the election of 1968, according to the best statistics available, only a little more than half of the voters went down the line for their party.

That there is considerably less party loyalty today is evidenced by the incidence of party switching by prominent political figures. Witness the recent switch to the majority party by Mayor John Lindsay.

Once upon a time, it was considered almost disgraceful for a man to change from the party of his fathers. But in more recent times, this has not been so. In the 1970 general election, Virginia's highly respected U.S. Senator Harry F. Byrd, Jr., gave a boost to all who think of themselves as "independent" by cutting himself loose from the Democratic party in which his father and family had been leaders for generations, and Senator Byrd independently won a significant election victory.

If I may be forgiven a personal reference in this connection, I, myself, had some experience with the softening of party distinctions in the same 1970 election. After I had been nominated by the West Virginia Democrats for a third term in the Senate, a number of Republican newspapers and Republican leaders publicly urged that I also be nominated by the West Virginia Republicans. (I mention this not to be boastful, but merely to emphasize that party regularity and identification seem to be far less important today than they were a few years ago.)

There is a theory prevalent—and, indeed, espoused by so prestigious an institution as the University of Michigan Survey Research Center—that the independent voter who feels no strong loyalty to either party is poorly informed, uninterested in politics, and rarely, if ever, involved in political action. This theory has had no little adherence by political managers, who concluded that these "swing" voters could best be appealed to emotionally and were natural targets for slick television spots and highly-charged campaigns conceived and born in the copy rooms and production studios of Madison Avenue and other flossy advertising complexes throughout the country. In other words, the political experts concluded that the "swing", "Maverick", or uncommitted voters—call them what you will—could be sold a platform, a party, or a candidate as easily as they can be sold a deodorant or a particular brand of cornflakes.

Now, there is no doubt in my mind that the medium of television is by far the most influential tool that has ever been available to a politician—certainly on the national scene. No candidate even if he has vast funds, hundreds of advance men, and thousands of campaign workers—can ever possibly hope to reach the number of people by conventional campaigning that he can reach by a single television appearance.

If we assume, as most knowledgable analysts do, that approximately 70% of the electorate will cast their votes for the Democrats or the Republicans, and roughly 30% will make up the so-called uninterested, politically uneducated, "swing" voter, it does not take a mathematical genius to understand how vitally important is this 30% to the parties or to the candidates. This is an arithmetical problem that even I could work out.

Because these so-called independent voters—who comprise 30% of the electorate—are so vital in the winning or losing of an election today, I believe it is imperative that a true reading of their political sophistication be made; and I have a feeling that, the University of Michigan notwithstanding, these uncommitted Americans, far from being uninterested or politically uneducated, are exactly the opposite! The voter who picks his or her way through a ballot, choosing a Democrat for Senator, say, and a Republican for Governor, is apt to be better educated and much more politically aware than the voter who pulls a single lever.

If I may cite one example. In the gubernatorial campaign in Michigan in 1970, it was discovered through polling that television advertising per se had little or no effect on the uncommitted voters. Their strongest impressions were received through television newscasts, documentaries, newspaper stories, and editorials. The official Republican party apparatus, furthermore had virtually no influence, ranking below the influence of radio spots in importance. In that campaign, therefore, selling Governor Milliken to the important uncommitted segment of the Michigan voters became a process of portraying him in serious "on-the-job" roles through regular news events. Getting him on the evening news shows behaving in a way concerned people think a Governor should behave became the basic campaign strategy—and it worked! I am aware that Michigan is only one State, but it has strong contrasts between its heavily industrialized urban centers, its wealthy

suburbs and extensive agricultural and rural areas, and it represents as good a cross-section of the American electorate as can be found.

It may seem too easy an equation to accept, that perhaps two-thirds of those who vote in November of this year will vote Democratic or Republican, and approximately one-third will vote either way according to their acceptance or rejection of the candidates or the issues. But because acceptance of these percentages may seem to be too tempting is no reason to abjure them. Important changes are taking place in the voting habits of the American people, and both the old and the new politicians must heed them or suffer the consequences.

I do not claim for a moment that the habits, customs, and modus operandi of the political parties have been, or are, all good. Nor do I accept the contentions of the disciples of the new politics that *their* desired innovations would all be good. As a matter of fact, I sometimes think that the original Messiah of the new politics, whoever he actually was, was an avid reader of Shelley, who wrote in his poem "Queen Mab":

"Power, like a desolating pestilence,
Pollutes whate'er it touches; and obedience,
Bane of all genius, virtue, freedom, truth,
Makes slaves of men, and, of the human frame,
A mechanized automation."

These lines might have had validity in the days of Tammany Hall, Boss Crump, or Boss Hague. Their minions in New York City, Memphis, or Jersey City might well have been described as "a mechanized automation." But these men and their methods have been dead these many years, and the ruthless excesses of the machines they controlled have disappeared from the political scene. It is true that there are still faint vestiges of the old-time machines around the country, but their influence is negligible. This has evolved because the voter ignorance that nurtured their power has been superseded by varying degrees of political awareness. It is interesting to note that this awareness has taken place within the framework of the traditional parties and was born before any rays of light were shed by the new politics.

What the proponents of the new politics are asking for, really, is the opening up of what they consider to be the closed-shop character of the party machinery. This may have some merit, but the great danger lies in the possibility that too much flexibility would create a mess of splinter parties, the special interests of which would render them not stronger, but weaker, as the power became dispersed.

The power in representative, democratic government comes from people working together, not at cross-purposes or for selfish interest. There is a real danger that the divisiveness inherent in the new politics would cause such political fragmentation that cohesive government, which has served America well for two hundred years, would be impossible. I hope that day never comes, for if the new politics ever succeeds in destroying the party structure, it would make even easier the domination of American political life by those whom the new politics most distrusts. The veneer might appear to be "participatory democracy", but the substance would be government by special interest as never before.

Perhaps the resolution of whtaever conflict there seems to be between the new politics and the major parties lies in a reexamination by the new politicians of the opportunities within the political parties' organization, for the advancement of their views. This assumes, of course, that they have a realization that effectively working within any group is conditional on the acceptance of the maxim that compromise on some issues is necessary in order to achieve success in others.

I mentioned earlier that some of the more hidebound customs of the traditional parties were eliminated long before the new politics came on the scene, and even more obvious responses are evident today. The national Democratic party has adopted guidelines for the selection of delegates to the national convention. These guidelines insure—or are, at least, supposed to insure—that the delegation-selection process in 1972 will furnish greater opportunities than ever before for rank-and-file participation in the presidential selection process.

At least three-fourths of every state's delegation will be chosen at a level no higher than the congressional district, thus allowing greater direct control over delegates by the lower echelons; all meetings at all levels of the Democratic Party are to be open; provision has been made for the adequate representation of minority political views at each stage in the delegate-selection process; and publicizing the times, places, and rules for all public meetings of the Party has been made mandatory. These guidelines have been agreed to and passed. Still others have been proposed.

An interesting example of the new look in the parties is in the State of Illinois, where a new primary law sharply curtails the power held for many years by Mayor Richard Daley. Formerly, the 170 Illinois delegates to the Democratic National Convention were handpicked by Mayor Daley, and their motto was "What Daley wants, Daley gets." Now, however, all but 10 of the delegates will be elected in the primary of March 21. In addition, prospective delegates can now run committed to national candidates. Prior to the new law, they could run only as uncommitted delegates—a rule which enabled Mayor Daley's powerful organization to exercise total control. It is true that Illinois and Richard Daley represent only one segment of the country, but no-one will argue that the Cook County organization, under the benevolent despotism of Mr. Daley, has been for years the most powerful and effective political mechanism in the nation. It has been a feature of Democratic conventions that, at a suitable dramatic moment, Mayor Daley would deliver his large bloc of delegates to the Presidential nominee of his choice. As the Kennedy camp said in 1960: "Daley is the ball game!"

What all these changes really mean is that the political parties, much-maligned as they are, are not only amenable to innovation and suggestion, but have already started the metamorphosis on their own.

It might surprise some of the more fanatical devotees of the new politics to discover this, but within the ranks of the old guard there are a remarkable number of men and women who are intelligent, competent, politically flexible, and dedicated to building the best possible future for all Americans. They are eminently capable of seeing the urbanization/suburbanization of our society. They realize the impact of organized minorities. They can see the influx of youth into our electorate, and the implications of the 18-year-old franchise. They are profoundly aware of the social and political changes that have been going on for several generations, and they are not blind to the confluence of the many and varied forces that surfaced in the presidential election of 1968.

They know that American politics will be substantially different in the next several decades from what has been the norm since the birth of the Republic.

They also know, through experience, that the great American public is basically more interested in government than in politics, and that the public will support the politics that promise the best government regardless of the party or of any confluence of new forces that seek to eliminate the parties.

In the glory days of the British Empire, it was a matter of pride—if not always of absolute truth—that the soldiers of Britain never retreated. They merely withdrew to previously prepared positions. Perhaps there is an analogy in the political parties in America today. I certainly disagree with the doomsday pronouncement of Marshall McLuhan, who wrote: "The day of political democracy as we know it is finished . . . voting in the traditional sense is through as we leave the age of political parties, political issues and political goals and enter an age where the iconic image of the tribal chieftain is the over-riding political reality."

McLuhan's theory is obviously based on the belief that the American voter no longer has a need to *know*, but has only a need to *experience*, perhaps vicariously, through the information media developed by our vast technology—principally the color television set. McLuhan thinks that the process is at hand whereby awareness and judgment of political communications by the voter is displaced by experiential reactions, and he obviously feels that this spells the doom of democracy. In my opinion, this theory—this cornerstone of the new political thought—is substantially hallucigenic.

The clear synonym for McLuhan's "tribal chieftain" is *dictator;* and I just cannot accept the contention that the American people will sit still for this kind of insidious imposition if an intelligent, workable alternative—to wit, restructured, forward-oriented political parties—is available to them. George Romney claimed he was brainwashed in Vietnam, and possibly he was; but I cannot accept the vision of any "tribal chieftain"—however handsome, attractive, or ingratiating—brainwashing the electorate into accepting a form of government wholly foreign to the American milieu and the American tradition.

I am strongly convinced that the party structures will continue to absorb the pressures for change, will make the necessary future adjustments, and will continue to be the operative forces in the body politic of our nation. They will have to effect changes, but I am confident that the people who hold the reins, at least in the Democratic party, are fully capable of carrying out what common sense dictates has to be done.

Lest you think that compromise for overall improvement in our political process is incumbent only on the established parties, I think it fair to point out that the supporters of the new politics also have their responsibilities. I am convinced that their ambitions and objectives are doomed to failure if they seek to attain them through confrontation and violence and the advocation of special interests only. The new politics must be *more* than the politics of stating issues; it should also be the politics of seeking intelligent solutions. It must be *more* than the politics of demanding rights; it must also be the politics of accepting responsibilities.

The new politics should *not* be the politics of emphasizing and exacerbating the things that divide the American people; it should veer *more* toward what unites the American people. It should *not* be the politics of tearing us apart; it *must* be the politics of bringing us together. It *must*, in the final analysis, be the politics which recognizes differences and includes many shades of opinion—for that is what this country is all about.

The same ideal must guide us as we seek to compromise our differences: the most good for the greatest number. With all our shortcomings and inequities, I submit that America, through its political system, has done more to benefit more people than has any other nation in history. That is what the new politics should seek above all else to continue. As the old country farmer used to say: "Any durn fool can tear down a barn: it takes a good man to build one."

I think we all realize that the campaign amphitheater is more so in the voter's home today than it is in the convention hall or the city auditorium. I think we are all aware that the days of the string tie, the stovepipe hat, and the stump speech are over. Intelligent politicians—and believe it or not, intelligent ones are in the majority—know the meaning of the words "Mene, Mene, Tekel, Upharsin"; and they have no desire to see the handwriting on *their* wall.

Just as the messiah of the new politics knew his Shelley, the old guard knew their Tennyson, who wrote in "Morte D'Arthur":

"And slowly answered Arthur from the barge,
The old order changeth, yielding place to new,
And God fulfills himself in many ways,
Lest one good custom should corrupt the world."

URGENCY OF CONFERENCE ON FOREIGN ASSISTANCE APPROPRIATION BILL

Mr. PROXMIRE. Mr. President, many weeks ago I stated that I would not follow the House's lead in reporting a foreign assistance appropriation bill in the absence of an authorizing bill. I did, however, make a commitment to report a bill just as soon as possible after the authorizing bill was agreed upon.

This commitment was honored when the Senate Committee reported the bill on January 24—2 days after House passage of the authorizing bill—and the Senate passed this bill on February 4.

Immediately after passage of the bill, the Senate requested a conference with the House, and I informally relayed a message to the Chairman of the House Subcommittee on Foreign Operations that I was ready to meet at the earliest possible date. No request was forthcoming from the House, whose conferees were not appointed until February 9. I had earlier suggested 2:30 p.m., February 8, as a possible time which would be mutually convenient. On Monday, February 7, I was advised that the House had not named its conferees, and that a meeting could not be held on the date which I had suggested. Informal conversations with House conferees since that time have failed to produce an indication as to when the House conferees might be willing to meet.

The Senate conferees have been willing to meet at any time since the Senate passed the foreign assistance and related programs appropriation bill on February 4.

The continuing resolution under which these programs are funded will expire on February 22, and the President will be in China beginning Monday, February 21, thus compounding the problems of having the bill signed into law.

Clearly, the responsible thing to do is to set a conference, resolve the differences between the Senate and the House, and pass a bill. This I will do, but I will not be forced into a conditional conference, nor will I be forced into a continuing resolution when one is so patently unnecessary.

RUN FOR THE MIDDLE GROUND

Mr. BROCK. Mr. President, the high-powered politicians of Washington have severely underestimated the American peoples' resistance to massive busing.

Recent developments show that the overwhelming majority of Americans, both black and white, have united in their opposition to allowing their children to be used as pawns in games of social manipulation. Early busing proponents are now back-peddling in high gear from their former positions of advocating racial balance at any price. Assuming that black parents were more interested in integration than education and predominantly black schools are inferior, busing advocates raced to court the voters of the black community and were met with icy glares.

This reaction touched off what is now documented as the run to the middle ground. Whatever arguments are used by these hopscotching politicians to explain their midair reversals, questions are sure to be raised about where they will stand when they finally come down to terra firma.

An article written recently by Sam Shaffer, of Newsweek magazine, illustrates the pervasive influence of this "Most Explosive Issue."

I ask unanimous consent that the article be printed in the RECORD. I hope that the Senate will soon recognize the futility of forced busing and will work for quality education for all of America's children.

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

SCHOOL BUSING: 1972'S MOST EXPLOSIVE ISSUE

(By Samuel Shaffer)

"I've been a Democrat all my life," says an Ohio housewife, "but I'll tell you this: if the Democratic candidate for President says he's for busing, and Nixon says he's against it, I'm going to vote Republican."

"With me it's a matter of principle," adds a Western laborer. "Sure, the economy's an important issue; so's the Vietnam war. But any man I'm going to vote for will have to tell me he's not going to let some judge play God with my children."

It is still eight months until the Presidential election of 1972. Not one state primary has yet been held. But it is already clear that one of the hottest, most significant—and most confusing—issues of this election year will be the busing of school children to achieve racial balance.

Even now, according to an aide to one Democratic candidate, busing has become a "scare issue, which may well be the 'law-and-order' issue of the '72 campaign."

In theory, the bitter debate about busing should divide along fairly distinct ideological lines because it has always been regarded as a policy favored by liberals anxious to speed school desegregation and opposed by conservatives anxious to slow it down.

In fact, however, busing has transcended all established lines and threatens to throw the campaign into an ideological muddle.

It might be predictable that President Nixon would oppose busing, and he has. But as Alabama Gov. George Wallace has noted, "more busing has happened under the Nixon Administration than any Administration in the history of the United States."

It might be logical to assume that Dr. Benjamin Spock, the liberal, politically active pediatrician who is running for President on the People's Party ticket, would be vociferously in favor of busing. Instead, in late January Dr. Spock came out flatly against it.

Aspirants to the Democratic nomination have been waffling, trying to find a middle ground on which they can seem to stand for racial equality and civil rights and, at the same, against busing to achieve that equality and guarantee those rights.

Sen. Henry Jackson of Washington has been fairly consistent. "I am opposed to busing purely to achieve racial balance," he says. And in mid-February he became the first Presidential aspirant to sponsor a constitutional amendment against busing.

Sen. Hubert Humphrey of Minnesota is still searching for stable ground. On one recent occasion, he said, "Busing to help improve education, yes. Compulsory busing . . . just because you think it is going to solve all your problems, I say no."

But he has also been heard to say, "I'd be less than frank . . . if I didn't add that I don't think busing is the answer."

Sen. George McGovern of South Dakota has been reported to be reconsidering his long-time advocacy of busing—though his campaign staff, which includes many former assistants to the late Sen. Robert Kennedy, has taken pains to deny all such reports.

Several months ago, Sen. Edmund Muskie of Maine told an audience in Chattanooga, Tenn., that while compulsory busing "might not be comfortable," it is a necessary tool to achieve the total goal of "freedom of mobility" through education for people of all races.

The next morning, one Chattanooga paper ran the headline: "Muskie Stand for Busing Ruins Him with State Party."

Conversely, politicians up for re-election to the House or Senate have, in many cases, all but guaranteed their victories by coming out against busing. Tennessee Sen. Howard Baker, for instance, has supported a constitutional amendment that would end compulsory attendance at any school because of race, color or creed, and he is now considered a shoo-in for re-election in November.

"People are not as concerned by the philosophy of compulsory busing as they are by the absurdity of the things required of the children," Baker explains. "Nashville is the most liberal town in Tennessee and now 75 per cent of the people there are vehement on the subject. I have a hunch that everybody will end up against busing before it's over. If I ever saw an issue in my whole career where everyone is trying to find a way to decently oppose it, this is it. It's really ferocious."

If polls are to be believed, nearly everybody in the country is already against busing. As far back as April 1970, a Gallup poll showed that 86 per cent of the population were against it, while only 11 per cent favored busing.

To many, especially adamant segregationists, busing is simply an insidious means of accomplishing an undesirable end.

But the vast majority of busing's opponents agree with Baker that the worst thing about busing is that it does precious little to help the children involved, be they black or white.

Parents complain that children who are forced to spend up to two hours a day in buses have no time for the extracurricular activities that are an essential part of a well-rounded education; that the schools their children attend are so far away from home that parents can't ever involve themselves in school-related activities; that bused children never get to know their neighborhood peers, and that exposing children to long bus trips is exhausting and dangerous.

But there are also several glaring ironies in the opposition. Most of the 19.6 million children who travel to and from school in the country's 256,000 school buses do it because they have to: they live too far from their schools to get there any other way. Busing for the express purpose of achieving racial balance, thus, accounts for only a tiny fraction of the actual busing that goes on. The moral importance attached to compulsory busing is completely disproportionate to its practical effect.

Furthermore, some of the most vociferous opponents of busing are those who are supposed to be its beneficiaries: blacks and other minority groups.

In San Francisco, for instance, some Chinese parents sued to stop busing because they claimed neighborhood schools were critical to the continuation of Chinese culture in America.

Black mothers march alongside white mothers, demanding that their children be allowed to attend neighborhood schools.

Why, then, does busing continue to exist at all?

For one thing, the U.S. Supreme Court has declared that it is a proper and constitutional tool for desegregation, and there is no question that de facto segregation continues to exist in countless Northern and Southern states and municipalities.

State and local officials have been stymied in their efforts to comply with court orders calling for desegregation, and they have found that busing is the only workable recourse.

But there is a good chance that compulsory busing—at least as it exists today—will be legislated out of existence before long.

The Congressional hopper is packed with proposals to end or limit busing; they range from constitutional amendments that would ban it altogether to suggestions that Federal busing funds be cut off and that the Justice Department and the Department of Health, Education, and Welfare be forbidden to do anything to encourage busing.

And legislators, be they liberal or conservative, are being swamped with angry communications from their home districts informing them that their political survival will be determined by their stance on busing.

Nothing more delights the opponents of busing. "God must not like busing," says Irene McCabe, an anti-busing militant in Pontiac, Mich., "because he let it happen at a time when we have national elections coming up."

THE OSTPOLITIK OF THE BRANDT REGIME

Mr. ALLOTT. Mr. President, although Americans—and especially the American news media—are preoccupied with the subject of China, a momentous event is about to begin in Germany. This event, which may be as significant as the trip to China, is the debate which begins next week in the Bundestag. The subject of the debate is the Ostpolitik of the Brandt regime. The immediate focus of the debate is the German-Russian treaty signed in Moscow on August 12, 1970.

There is in America today so little understanding of European affairs—because there is so little attention given them in any of the news media—that those few Americans who remember the considerable publicity attending the Moscow signing of this treaty might be forgiven for assuming that the treaty is already in effect. It is not.

This misconception is understandable. Indeed, it is in part the product of assiduous cultivation of those—within Germany and without—who favor bringing that treaty into effect.

There is a similarity between the status of the Ostpolitik and the status of the British entry into the Common Market.

Last autumn the British House of Commons in a basically party-line vote, approved in principle the terms under which the government of Prime Minister Heath was seeking to enter the Common Market. The press reporting of this event, and of the recent treaty-signing ceremony in Brussels, fostered the public impression that Britain has "entered Europe." That impression is incorrect.

Britain has not entered Europe, and will not until Parliament passes enabling legislation. This legislation is very controversial, and some seasoned observers of British politics consider it possible—if not yet probable—that the legislation will not pass and British entry into the Common Market will become the nonevent of the decade.

Similarly, Mr. President, it is just possible that Chancellor Willy Brandt's Ostpolitik may become another famous nonevent. Without the Moscow Treaty, the Ostpolitik is a bundle of abortive gestures. And the Moscow treaty is no treaty until it has been ratified by the Bundestag. Such ratification may not be forthcoming, and that might be a good thing.

Last week the upper chamber of the German parliament, the Bundesrat, adopted a resolution proposed by the opposition party, the Christian Democrats, rejecting one first reading the so-called nonaggression treaties concluded in 1970 between the Bundesrepublic and the Soviet Union and the Soviet's client government in Poland.

Defeat in the Bundestag will mean defeat for the important Moscow treaty. The Brandt government has a slender majority in the Bundestag and if the Social Democrats are sufficiently draconian in imposing strict party discipline, the treaty will pass.

Perhaps the Brandt government has something to learn from the statesmanlike approach taken by the government of Prime Minister Heath. When the question of giving approval in principle to Common Market entry came to a vote last autumn, the Conservative Party allowed its members to vote their individual consciences. A significant number of Tory members voted against entering the Common Market. But approval for the principle of entry was won anyway, and the fact that it was won without draconian party discipline enhanced the force of the vote.

Prime Minister Heath was confident in the wisdom of his course, and was willing to trust argument, rather than blind party discipline, to carry his position. One wonders if Chancellor Brandt has similar confidence in the wisdom of his Ostpolitik.

One wonders how the majority in the Bundestag will form if Chancellor Brandt allows all members to vote their consciences unimpeded. This is a particularly intriguing possibility now that the Christian Democrats have formulated a convincing alternative to the substance of the Brandt Ospolitik. By offering a constructive alternative, the Christian Democrats have done a great service to the cause of rational debate about the future of secure freedom in Western Europe.

It is my hope that all Americans, and all persons in all countries vitally concerned with the fate of central and Western Europe, will give careful attention to the alternative treaty proposal advanced by the Christian Democrats.

By drafting this careful and prudent document, the Christian Democrats have laid to rest the charge that criticism of the Brandt approach is only negative. The Christian Democrats have decisively refuted the demagogic notion that opposition to the Brandt Ostpolitik is equivalent to support for bellicosity. The Christian Democrats' alternative makes it clear that prudent men of good will can object to the Brandt approach while still favoring a constructive and creative diplomacy with regard to the Soviet bloc.

Now perhaps it is time for the Brandt government to demonstrate that it will allow all members of the Bundestag to freely vote their conscience in choosing between the alternative approaches to treaties with the Soviet Union.

Mr. President, so that all Senators can examine the Christian Democrat alternative, I ask unanimous consent that it be printed in the RECORD, along with an introduction by Herr Franz Josef Strauss.

In addition, Mr. President, I ask unanimous consent to have printed in the RECORD an article explaining why some people find the Brandt versions of the Moscow treaty inadequate. The article was published in the January issue of the magazine Central Europe. The article includes a synoptic account of the stages of development of the Moscow treaty.

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

ALTERNATIVE PROPOSAL TO THE GERMAN-SOVIET TREATY PRESENTED BY THE CHAIRMAN OF THE CHRISTIAN SOCIAL UNION, FRANZ JOSEF STRAUSS

On Monday, January 31, 1972, the Bureau of the Christian Social Union has adopted unanimously the alternative proposal put forward by the CSU—and presented by the Chairman of the CSU Franz Josef Strauss and the Chairman of the CSU-Landesgruppe (Parlamentarians) in the German Bundestag Richard Stücklen—to the German-Soviet Treaty of August 12, 1970. The text of the draft treaty, which you will find enclosed, has been explained by the CSU-Chairman at a press conference. He said:

1. Konrad Adenauer had laid the basis of a policy of durable peace and freedom in security. He had accomplished the approach to the West and initiated the normalization of the relations between the Federal Republic and the Soviet Union without renouncing thereby fundamental German rights and positions.

Ludwig Erhard had continued this policy by his peace-note of May 1966 and the establishment of trade missions in Eastern European countries.

Kurt Georg Kiesinger had made this the basis of his policy and had offered Moscow and the other members of the Warsaw Pact negotiations on a comprehensive renunciation of the use of force and negotiations on a modus vivendi in order to solve urgent technical questions as regards the particular German problems and to facilitate human relations without renouncing fundamental rights. The Soviet Union was willing to take up these negotiations because she could not but be interested in settling the problems in connection with the Western border of her sphere of influence.

Both the American change of attitude towards the People's Republic of China and the Soviet preparedness to enter into peace negotiations with Japan prove this and moreover confirm the opinion of the CDU/CSU that the German Ostpolitik should have been put in the global context of world evolution and that its promotors should not

have acted alone. Then the Soviet Union had waited for the outcome of the elections to the Bundestag in 1969, but before she had invited politicians of the SPD and the FDP in order to explore whether it would be possible to reach a settlement more favourable to her with another Federal Government. The new Federal Government formed by the SPD and the FDP had already declared before coming to power, that it would start from the existence of two German States. It thus has offered by unilateral advanced concessions the Soviet Union the desired result without receiving any counter-performances deteriorating thereby the course of the German Ostpolitik in a fatal way.

2. Both the CSU and the CDU have always been pursuing a policy of peace for Europe. Moreover, the present Federal Government continues stressing the fact, that this policy of peace of the CDU/CSU is the indispensable basis of any conceivable policy of understanding with the East. We have laid down what a non-aggression treaty with the Soviet Union worth its name should look like in our opinion.

3. The CDU/CSU has always been a partisan of a policy of the renunciation of the use of force. In 1954 the Federal Government headed by Konrad Adenauer had by acceding to the Treaties of Paris undertaken to pursue a policy of non-aggression—also and especially with regard to the East—in accordance with the principles laid down in the UN-Charta and with the objectives embodied in the Statutes of the Council of Europe. However, as the German-Soviet Treaty of the Brandt/Scheel Government—contrary to the original objectives of the present Federal Government—may not even be called any longer a "treaty on the renunciation of the use of force" as the Soviet Union does not renounce therein her right of intervention, we feel, that German policy should make any effort to reach a true treaty on the renunciation of the use of force.

We have laid down in our draft treaty the ideas to be represented by a German Foreign policy built on the continuity of Konrad Adenauer's peace policy. The Brandt/Scheel Government has left this line of continuity.

4. In accordance with the NATO-Communiqué of December 1971 we want to reach détente by "Removing the causes of tension" (Art. 1 (1) Draft Treaty).

5. We want to develop peaceful relations between the European States by speeding up cooperation in the economic, scientific and cultural fields as well as by opening all frontiers to an unimpeded traffic.

6. Our draft treaty notes that a politically united and independent Europe shall contribute to peaceful cooperation with all the other nations of the world.

7. We feel, that peace in Europe can only be maintained if the Principles of international law, of equality of rights, of the rights of nations to self-determination, of the nonintervention in the internal affairs of other states, as well as the respect of the human rights and fundamental freedoms, especially the right to free movement of persons and ideas are respected by all European States.

8. A definitive settlement of the German Question including the German boundaries should be reserved for a peace treaty with Germany as a whole. Moreover, this continues to be valid German treaty law.

9. We do not expect the Federal Government to approve this draft treaty, because its own intentions to conclude a true non-aggression treaty were denounced by its renunciation of German interests when negotiating in Moscow. There is no more significant sign of that fact, that the Brandt/Scheel Government does no longer stick to the tradition of German peace policy.

10. Nor do we expect the Soviet Union to immediately accept such a draft. Tough negotiations will be necessary to achieve this. But it must be of interest to the Soviet Union to pursue a policy of understanding, cooperation, peace and non-aggression with regard to her Western neighbours. We do know, that only a wearisome process can lead to this objective.

An example of this is the tough wrestling of the Austrian Federal Government under Raab/Figl. It was only after wearisome negotiations that the Soviet Union approved in 1955 the re-establishment of the Austrian unity in freedom.

Recently we have seen another proof of the fact, that a policy of patience and the indispensable representation of national interests can lead to success. For 27 years Japan has been waiting for a peace treaty to be concluded with the Soviet Union. Having already concluded the peace treaty of San Francisco with the Western Powers in 1951, Moscow up to now has constantly refused to enter into peace negotiations with Tokyo. But Japan continues to require the restitution of the Southern Kuriles to Japan, which the Soviet Union had occupied in 1945 after her surprise attack on Japan. As Japan is beginning to normalize her relations with the People's Republic of China, the Soviet Foreign Minister Gromyko has visited Japan and has declared himself willing to take up peace negotiations with Japan still within the course of this year.

11. The CSU continues to pursue in the future as well as in the past a policy of securing peace and freedom but also of maintaining the pre-conditions of German unity. In the official German-Soviet Treaty concluded by the Federal Government the CSU does not see any progress which facilitates detente and makes peace more secure, but the source of new antagonisms, the support of the Soviet power politics and the compromise of European unity. In its 20 years of government, the CDU/CSU had succeeded in securing peace and freedom as equal objectives. It will try by all means to avoid a policy which in the last resort is bound to compromise freedom, to make peace less secure and to enable the Soviet party to the treaty to make the world believe in the renunciation by the Germans of their right to self-determination despite all contrary affirmations by the Federal Government. By these treaties the Federal Government has made more difficult any true Ostpolitik. But the CSU leaves no doubt, that it pursues the conclusion of a treaty with the Soviet Union and the other Warsaw Pact States, which is to settle to renunciation of the use of force and the willingness to cooperate. The present draft treaty contains the opinion of the CDU and of the CSU which will both secure the continuity of the German Ostpolitik and represent its further development in contractual terms and not impose any unreasonable demands on either party.

TREATY ON THE RENUNCIATION OF THE USE OF FORCE BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE UNION OF SOVIET SOCIALIST REPUBLICS

The High Contracting Parties anxious to contribute to strengthening peace and security in Europe and the world,

Convinced that peaceful cooperation in all of Europe complies with the ardent desire of nationals and the general interests of international peace,

Appreciating the fact, that the measures agreed previously, in particular the conclusion of the agreement of September 13, 1955 on the Establishment of Diplomatic Relations, have created a basis for further developing and strengthening their mutual relations,

Noting, that the declared exclusion of the use of force contributes to creating a political climate favourable for an ulterior settlement of contentious questions and questions interpreted in a different way and leads to the realization of the right to self-determination of the divided German nation,

Desiring to lend expression in the form of a treaty to their determination to improve and extend cooperation between them, have agreed as follows:

ARTICLE 1

(1) The Federal Republic of Germany and the Union of Soviet Socialist Republics consider it an important objective of their policies to maintain international peace and achieve détente by removing the causes of tension;

(2) they undertake to settle all contentious questions including those affecting frontiers and demarcation lines, only by peaceful means and to refrain in their relations from the threat of the use of force;

(3) they affirm their endeavor to further the development of peaceful relations between the European States by speeding up the cooperation in the economic, scientific, and cultural fields as well as by opening all frontiers to an unimpeded traffic.

ARTICLE 2

(1) The Federal Republic of Germany and the Union of Soviet Socialist Republics shall in their mutual relations as well as in matters of ensuring European and international security be guided by the purposes and principles embodied in the Charter of the United Nations.

(2) The Union of Soviet Socialist Republics declares not to claim any unilateral right of intervention with regard to the Federal Republic of Germany pursuant to Art. 107 and 53 of the Charta of the United Nations.

(3) The Federal Republic of Germany declares:

That its policy of creating a politically united Europe is not directed against anybody. A politically united and independent Europe shall serve the peaceful cooperation with all other nations of the world.

That by the conclusion of the present treaty it has not undertaken any obligation to renounce or to restrict in future the right it represents and exercises to pursue by peaceful means the self-determination and unity of the German nation as an objective of its policy.

ARTICLE 3

The Federal Republic of Germany and the Union of Soviet Socialist Republics share the realization that peace in Europe can only be maintained if the Principles of International Law, of the Equality of Rights, of the Rights of Nations to self-determination, of the Non-Intervention as well as the respect of Human Rights and Fundamental Freedoms, in particular the Right to Free Movement of persons and ideas are respected everywhere.

ARTICLE 4

A definitive settlement of the German Question including the German frontiers is reserved to a peace treaty with Germany as a whole.

ARTICLE 5

The present treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics shall not encroach the validity of any bilateral or multilateral treaties or arrangements previously concluded by them.

ARTICLE 6

The present Treaty is subject to ratification and shall enter into force on the date of exchange of the instruments of ratification which shall take place in ———. Done at ———, on ———, in two originals, each in German and Russian languages, both texts being equally authentic.

THE MOSCOW TREATY

(By Hans Count Huyn)

(NOTE.—The author was born in 1930 in Warsaw where his father was Press Attaché

in the German Embassy until he voluntarily quit on Hitler's rise to power. Hans Count Huyn was in the German Diplomatic Service from 1955 until 1965 and is now a senior civil servant in Cologne. He is known as a political publicist with his own opinions. The following contribution is taken in abbreviated form by kind permission of the author from his book "Ostpolitik im Kreuzfeuer" (Seewald Verlag, Stuttgart). The accompanying chart with a synoptic account of the stages of development of the Moscow Treaty may be regarded as documentation.)

The German-Russian treaty signed in Moscow on August 12, 1970, is a milestone in Russia's Western expansionist policy. It legalises Stalin's war booty. This is not just a malicious imputation, but a stated conviction of Brezhnev, explained by him at Alma Ata on August 28, 1970, in these words: "As far as the Soviet Union is concerned this agreement is the result of a consequent policy of our party, the result of long-lasting efforts of the Soviet state and of the socialist countries allied with it, the result of our policy aimed at the removal of the remnants of the Second World War in Europe, and at firmly establishing the result of the heroic fight of the Russian people in the Great Patriotic War and the successes and gains of the anti-fascist struggle for liberation by the nations of Europe." In contrast Brandt stated on the day of the signing of the treaty in his television address from Moscow to Germany: "This agreement with the Soviet Union is a success of German post-war policy."

The discussion on the German-Soviet treaty is being conducted in German public life mostly under false aspects: It is not a question of yesterday's frontiers, but of Europe's freedom tomorrow. The German-Soviet agreement not only legalizes existing wrong, but its main danger is in its effect upon our future.

The Kremlin's aim in its Western policy is to extract Bonn from its alliances with the West. By means of Article 3 of the treaty Moscow has placed its foot in the West European door: Bonn therein accepts the obligation to consider "the frontiers of all countries in Europe as inviolable now and in the future". The resolution of the executive committee of the SPD for the Federal Republic of September 14, 1970, has approved Moscow's right to participate in matters concerning Western Europe thus: "The nature of the frontiers in Germany, and in Europe as a whole, may only be changed by negotiation and agreement. The participation of the Soviet Union herein is indispensable."

On February 24, 1970, Brandt stated at Hamburg his foreign policy is "not only Western European, but in the interest of Europe as a whole."

In making this statement, Brandt is meeting the ideas of Moscow, which is striving for a "Greater Europe" under its domination and attempting to prevent any consolidation of free Europe. For this purpose the Kremlin is using the plan of a European "security conference," already produced in 1954, as an additional way of preventing the union of free Europe.

On February 22, 1971, the official Russian news agency TASS reported: "At present the idea of calling a forum representative of all Europe to deal with problems of security and co-operation receives ever growing support. The meeting of such a forum would undoubtedly contribute to an improvement in the political climate and open up far-reaching possibilities for co-operation on an equal basis by all countries. Such a development, however, is undeniably opposed by a policy aimed at the fortification of closed political-economic blocs, like the EEC. This is more particularly so, if certain forces intend to convert this bloc into a political-military federation of some kind."

A further impetus of the German-Soviet agreement is aimed at the presence of the United States in Europe. Here, too, is demonstrated, how dangerous and provincial it is to see the treaty only under the Bonn aspect of German Eastern policy, whose anxious stare towards Moscow and East Berlin is confined to vague hopes for alleviations inter-German and Berlin relations. In fact, the treaty represents a decisive move in Moscow's Western policy within the scope of a world-wide struggle for hegemony, both with Washington and also with Peking. The treaty is to confirm to Moscow, which is not making any concessions, the division of Europe achieved at Yalta, and is to create the prerequisite for covering its rear in the confrontation with China. As a Soviet foundation stone for "the normalisation of the European situation" (Art. 1) the treaty is aimed at pushing the United States out of Europe, thereby achieving Moscow's hegemony in a Europe reaching from the Urals to the Atlantic, via the European "security conference" planned by Moscow and "welcomed" by Bonn. Already on August 28, 1970 Brezhnev stated at Alma Ata, the treaty is "the result of our policy of removing the remnants of the Second World War in Europe." The European "security conference" then is to put its seal on it for good. Moscow's further intentions were stated openly by the counsellor of the Soviet legation at Bonn, Michael Boronin, and for this thanks are due to him. He said: "The presence of American troops in Europe we consider as legitimate, until the situation caused by the Second World War in Europe has been remedied, but thereafter it will no longer be so."

The agreement is a decisive step for Moscow, leading via the "Finlandization" of Central Europe finally to a "renversement des alliances", a reversal of the existing alliances, with the intention of drawing the whole of Germany into Moscow's camp. Germany is beginning to break out of its firmly cemented place in the free world, attained by Adenauer. The world will have to deal once more with the "restive" and "incalculable" Germans.

It is wrong and dangerous to see in the German-Soviet treaty merely a static recognition of "realities". In fact, the agreement serves Moscow not only for the purpose of its power-political expansion, but also as an instrument of ideological dynamics. "The status quo according to the Russians" writes Manlio Brosio—"is not static or purely defensive. Moreover, it is changeable and politically even aggressive." Moscow has an entirely different interpretation than the West of "peaceful relations" (Art. 1 of the Moscow agreement) and for "peaceful co-existence". Brezhnev stated in regard to this on October 1, 1970: "The conclusion of the treaty between the Soviet Union and the Federal Republic of Germany in August last has been a great success for the foreign policy of our country . . . The actual international role of this document will be seen in its full effect only then, when it has been ratified and becomes effective. But already now the signing of such a treaty undoubtedly has a certain political influence upon the situation in Europe. I have in mind the consolidation of the tendencies, for the principles of peaceful co-existence to prevail even more strongly than before."

What is meant by these principles in particular could be read a week later in a contribution, published in *Pravda* by instruction of the Soviet Communist Party on "Lenin's principle of peaceful co-existence and its opponents"—"The policy of peaceful co-existence contributes to the development of the class struggle on the national and international plane . . . The bourgeois Liberals and Pacifists have a different idea of the nature of peaceful co-existence. Many of them consider for instance the 'reconciliation of ideologies' as an important pre-requisite of peaceful co-existence. Even the idea of the nature of peace and war is different for Marxist-Leninists and the representatives of bourgeois ideology . . . 'Our attitude towards war', Lenin wrote, 'is basically different from that of the bourgeois pacifists (the friends of peace and preachers of peace) and of the anarchists . . . From the former we distinguish ourselves by our understanding of the unchangeable correlation between wars and the internal class struggle in a country . . ., also that we fully recognise the justice, progressiveness and necessity of civil wars, of wars by the suppressed class against the suppressing class . . . The Marxist-Leninist conception of peaceful co-existence by no means includes the pacifist propagation of peace . . . Peaceful coexistence presumes mobilization for the active struggle . . . and the use of the full power of Socialism."—Thus far *Pravda*.

No-one has been able to show convincingly and conclusively, what concrete return by the Soviets for the unquestionable performance on the part of the Germans is contained in the Moscow treaty. Sometimes it is alleged, the fact that the Soviet Union has renounced the use of force, represents an equivalent. But this allegation is not borne out by the wording of the treaty. It is a fact that the Soviet Government presumes for itself by reason of Art. 107 and 53 of the Charter of the United Nations a unilateral right of intervention towards Germany. Of this it has officially informed the Federal Government by its Memorandum of November 21, 1967 and it has confirmed it on July 5, 1968, once more in the following words: "The provisions of the UN Charter on forcible measures in the event of a renewed policy of aggression, referred to by the Government of the Federal Republic, remain fully and completely valid in the case of the Federal Republic". To underline its right of intervention at any time the Soviet government stated at the same time: The Federal Republic, as pointed out, "carries on a policy threatening peace".

The Soviet Union has not renounced this illegal presumption to intervene, derived from Art. 107 and 53 of the UN Charter in the Moscow treaty. In Art. 2 of the Moscow agreement is stated: "Bonn and Moscow assume the obligation, according to Art. 2 of the Charter of the United Nations, in their mutual relations to abstain from any threat of force or from any application of force." However, this does not remove the Soviet claim to be able to intervene, because Art. 107 of the UN Charter permits such an intervention: "Measures taken or sanctioned by any government, brought about by reason of the Second World War, in respect of a country, which during the war has been an enemy of a signatory of this Charter, are neither abrogated nor prohibited by this Charter."

The Moscow treaty, therefore, does not contain a renunciation of intervention by the Soviets. But even if Moscow should have expressly renounced its presumption to intervene by reason of Art. 107 and 53 of the UN Charter, it would still be without any practical significance, because the First Secretary of the Soviet Embassy in Bonn, A. G. Popov, stated on September 9, 1970, a Soviet right of intervention is derived already from the Potsdam Agreement, and this could only be altered by a peace treaty; the Moscow treaty has no connection with Art. 53 and 107 of the UN Charter. The Soviet Ambassador at Bonn, Falin, also stated already in Moscow, before taking up his post at Bonn, the provisions relating to enemy states had not been invalidated in principle, they might perhaps be "overlapping" only. Falin and Popov stated, in like fashion, if nothing happened in the Federal Republic to endanger peace and if the Moscow treaty would be complied with, the Soviet Union would not intervene.

It has to be asked, what worth has a solemn renunciation of force by the Soviets. The Soviet invasion of Czechoslovakia took place, although the Soviet Union has solemnly

signed the Statutes of the United Nations, whose Article 2 imposes the renunciation of force. And what use is a renunciation of force, if the shooting at the Berlin wall, the Zonal frontier and along the Iron Curtain continues?

The concessions made to Moscow remind us in a painful way of Chamberlain's policy of appeasement towards Hitler. The success can be anticipated. The dictator is made stronger and remains implacable.

The Moscow treaty is a perfect example indeed of patience and perseverance lacking in negotiations, if compared with the tough conduct of negotiations by the Austrians resulting in the Vienna State treaty, or with the stern attitude of Japan vis-à-vis Moscow when dealing with the problem of the Kurile islands, occupied by the Soviet Union in 1945.

Soviet pressure started immediately: Ambassador Zarapkin stated in fall 1970 to a member of the Federal Parliament in Bonn: "You have to ratify the treaty, because we have the power!" And Soviet party boss Leonid Brezhnev, in his opening speech to the 24th Party Congress of the Soviet Communist Party on March 30, 1971, in Moscow, urged the speedy ratification of the treaty by Bonn. A delay, Brezhnev declared, would provoke a new crisis of confidence in the policy of the Federal Republic in general, the political climate in Europe and the prospects of an international reduction of tension would deteriorate."

Should the treaty be ratified, it can be anticipated already now that Soviet pressure against the Federal Republic would increase even more.

The members of the Federal Parliament, who will vote for the treaty, must be aware that by the ratification of the Moscow treaty in its present form they would, according to the Kremlin's intentions, at the same time turn the first sod in digging the grave for the freedom of Germany and of Europe.

THE STAGES OF DEVELOPMENT OF THE MOSCOW TREATY

Walter Ulbricht: New Year's address—Dec. 31, 1966	Carlsbad Declaration: By 24 Communist Parties—Apr. 26, 1967	Walter Ulbricht: Speech to the Peoples Chamber on the Constitution of G.D.R.—Jan. 31, 1968	Gromyko Paper—Mar. 6, 1970	Bahr Paper—May 22, 1970	German-Soviet Treaty (incl. part approved of Bahr Paper)—Aug. 12, 1970	Walter Ulbricht: Address at 25th anniversary of foundation of S.E.D.—Dec. 17, 1970
The Governments of both German states will conclude a treaty, embodying the renunciation of force in their mutual relations.	Conclusion of a treaty between all European states renouncing the application or threat of force.	Agreements between all European states including the G.D.R. on renunciation of force.	Obligation to abstain from threat of force or application of force.	Obligation to abstain from threat of force of application of force.	Obligation to abstain from threat of force or application of force.	Wherein is to be seen the historic significance of the treaty between the Soviet Union and the G.F.R.? In this treaty important achievements of the victory of the anti-Hitler coalition over the Hitler-Fascism have been formulated internationally. By the obligation . . .
The Governments of both German states recognize . . . The existing frontiers in Europe.	Recognition of the inviolability of the existing frontiers and in particular . . . between both German states.	Recognition of the existing frontiers including the frontiers of the G.D.R.	The U.S.S.R. and the G.F.R. accept and will accept that the frontiers, existing on Jan. 1, 1970, of the countries in Europe including . . . the frontiers between the G.D.R. and the G.F.R. are final.	They consider the frontiers of all European states, as they exist on the date of the signing of this Agreement, as inviolable now and for the future, including . . . the frontier between the G.F.R. and the G.D.R.	They consider the frontiers of all European states, as they exist on the date of the signing of this Agreement, as inviolable now and for the future, including . . . the frontier between the G.F.R. and the G.D.R.	. . . to recognize the existing frontiers . . . . . to that effect to establish normal relations between the G.F.R. and the G.D.R. . . .
The Governments of both German states will agree to resume normal relations with each other.	Normalization of the relations . . . between the 2 German states.	Establishment of normal relations between both German states.	The G.F.R. . . . expresses its readiness to develop its relations with the G.D.R. upon the basis of the principle of full equality, nondiscrimination and noninterference in internal affairs . . .	The Government of the G.F.R. will . . . place its relations with the G.D.R. upon the footing of full equality, nondiscrimination, respect the sovereignty and independence of each of the 2 states.	The Government of the G.F.R. will . . . place its relations with the G.D.R. upon the footing of full equality, nondiscrimination, respect of the sovereignty and independence of each state.	
The Governments of both German states will . . . promote the establishment of diplomatic relations by all European states with both German states.	Normalization of relations between all states and the G.D.R.	European security requires the establishment of diplomatic relations by all European states with both German states and vice versa.	. . . these principles extend also to the relations of the G.F.R. and the G.D.R. with other states.	The Government of the G.F.R. assumes that relations between the G.D.R. and the G.F.R. and other states will develop upon this basis, that is to say that neither of the 2 states can represent the other abroad or act in its name.	The Government of the G.F.R. assumes that relations between the G.D.R. and the G.F.R. and other states will develop upon this basis, that is to say that neither of the 2 states can represent the other abroad or act in its name.	. . . to establish normal relations with all European states . . .
		Both German states to join the organization of the United Nations.	The U.S.S.R. and the G.F.R. will take steps, according to their position, to promote the joining by the G.F.R. and by the G.D.R. of the organization of the United Nations and of its special organizations.	The Governments of the G.F.R. and of the U.S.S.R. express their willingness . . . to take steps . . . to promote the joining by the G.F.R. and by the G.D.R. of the organization of the United Nations and of its special organizations.	The Governments of the G.F.R. and of the U.S.S.R. express their willingness to take steps . . . to promote the joining by the G.F.R. and by the G.D.R. of the organization of the United Nations and of its special organizations.	. . . to promote the membership in the U.N.O. of all states, particularly also that of the G.F.R. and of the G.D.R. . . .
	Acknowledgment that the Munich agreement is void ex tunc.	Declaration of invalidity of the Munich agreement ex tunc.	It is agreed that the problem of the invalidity of the Munich agreement ex tunc will be suitably settled between the G.F.R. and the C.S.S.R.	Between the Governments of the G.F.R. and the U.S.S.R. is full accord that the problems relating to the invalidity of the Munich agreement shall be settled by negotiation between the G.F.R. and the C.S.S.R. in a way acceptable to both parties.	Between the Governments of the G.F.R. and the U.S.S.R. is full accord that the problems relating to the invalidity of of the Munich agreement shall be settled by negotiation between the G.F.R. and the C.S.S.R. in a way acceptable to both parties.	the S.E.D. has fulfilled its program . . .

THE IMPACT OF AN ENERGY CRISIS

Mr. HANSEN. Mr. President, in England today a great many people are eating by candlelight, but those meals are not romantic interludes. London and the rest of England are suffering a "blackout. The current energy crisis in England is a dramatic example of the consequences of a fuel shortage. The interruption of the supply of fuel and energy has brought tragedy and disaster to a powerful nation.

There is a vitally important lesson for America presented in the current hardships being suffered in England. And it is a simple lesson: No modern nation can survive if its lifeline of energy is severed. Without fuel there is no energy—no power to light and heat our homes, to cook our food—no power to run the multitude of machines needed to keep our factories in operation. Any serious disruption of vital fuel supplies simply means disaster.

Many extreme environmentalists ignore the problems created by inhibiting energy production efforts. This is a mistake. These individuals, of all people, should be concerned over the ecological disaster which would occur as the result of the breakdown in energy production. After all, it is our ability to provide gas and electricity to homes, offices, and factories that has done away with the open coal or wood fire in the fireplace, the coal stove. It is this same power source that provides for the operation of waste treatment plants and other efforts to keep our air and waters clean. It is the same energy source which powers the mass transit systems needed to help our great cities function.

In any event, I am sure that responsible Government officials will not fail to heed the dramatic warning that is poignantly presented in England today.

The pictures of people living by candlelight, of elderly persons breaking up their furniture to burn for fuel, the reports of closed factories and thousands idled by the loss of power—all direct our attention in this country to the need to develop sound policies that will result in a secure, dependable supply of energy

for the American people. We must not neglect this essential task. We cannot afford to drift along continuously reducing incentives that encourage energy production, placing roadblocks in the way of its delivery, and relying more and more on foreign supplies which can be turned off like a spigot by a foreign power. We must not wait until our own people find themselves in candlelight, burning their furniture for fuel, and laid off because of plants that are closed because there is no power.

The penalties of a national power shortage, as England is learning today, are much more severe than the inconveniences of a brief blackout like that experienced one night in November 1965, in New York.

Britain has ordered a 3-day workweek and thousands of workers have been laid off during the emergency. There is an absolute ban on the use of electricity for heating offices, shops, public halls, theaters and all places used for recreation and sport. The British Government is appealing to domestic users to heat one room only and to use no more lights than absolutely necessary. The Central Electricity Board, experiencing a number of temporary blackouts, has warned that the situation is worsening and that the board might not be able to meet even the reduced demand.

John Davies, Secretary of Trade and Industry, has reported that—

> Within two weeks or so at the present rate of rundown, virtually all domestic and industrial supplies will be cut off more or less the whole time. We would be moving into a situation where we couldn't be sure of maintaining even the essential services. We could not be sure of keeping all hospitals open and some water and sewage treatment plants would have to close.

It has been estimated that if the British coal mines went back into operation today it would still be a matter of months before stockpiles could be accumulated which would support normal conditions in England. This important factor of leadtime—the time between the commencement of exploration or research and use of the fuel in our homes and factories—is often overlooked. National power supplies are not developed overnight. Billions of dollars and many years of effort have been devoted to the development of nuclear power and we still have a long time to go. It takes anywhere from 3 to 10 years from the time of geological investigation of a promising area to the time of delivery of natural gas from the area to the market.

The suffering of the British people during the coal crisis which Britain is presently experiencing is tragic. However, this is an internal situation. The British people and their government do have some control over the circumstances.

My great fear is that the United States will neglect its domestic energy resources and rely on foreign resources to the extent that a foreign political power will be able to create an energy crisis in the United States similar to the one which the people of Britain are experiencing today. It would be one of the greatest blunders of all time if this Nation, so rich in natural resources, allows foreign political entities to grasp the power to cause pain and suffering to the American people and bring our Nation to a grinding halt.

The current energy gap which is developing here shows that we are rapidly running out of our leadtime. Let us be certain that in this country we will not be "too little and too late" with fuel and energy.

SENATOR WILLIS ROBERTSON

Mr. BIBLE. Mr. President, it is a sad duty but also a privilege to join in honoring the memory of Senator Willis Robertson. I claim no distinction when I call Willis Robertson a close personal friend. For he was a man of lasting friendships, and all of us in the Senate shared a warm, personal relationship with him. He was truly a distinguished gentleman, and I use those words in the truest sense of their meaning.

Willis Robertson's fine career in Congress spanned nearly 34 years, and those were years of dedicated service to his beloved State and Nation.

I knew Willis Robertson as both a trusted ally and a respected adversary. We worked closely together in the area of natural resource conservation and wildlife preservation, and we found ourselves as opponents on the silver policy issue. In each case he was a tough, skillful battler for what he believed in, but he tempered this with a warmth of human understanding. I know from personal experience that it was best to have him on your side.

The fine record Willis Robertson wrote as chairman of the Senate Banking and Currency Committee speaks for itself, as does his entire public career. There was a private side, though, that only his friends were privileged to experience. That was his deep love for the great outdoors, particularly the woods and fields and the lakes and streams of Virginia. He was always eager to show others the beauty of Virginia, and he was a genial and generous host. Some of my fondest memories are of my visits to the Robertson home and of the hunting, fishing and hiking he loved so much.

Willis Robertson was the First Gentleman of the Senate, and his spirit remains with us. For his visionary leadership and his fierce love of the unspoiled wilds, Virginia and the Nation owe him a debt that could never be repaid.

It is with sadness and pride that I pay him this final tribute.

PRACTICAL RETURNS FROM SPACE PROGRAM

Mr. ALLOTT. Mr. President, last December, the House Committee on Science and Astronautics issued a report, entitled "For the Benefit of All Mankind," which examines some of the practical returns from our space program. I commend it to Senators as edifying reading.

The report is extremely informative, and I believe that it is especially noteworthy in light of recent denunciations of our space investment by those who have attacked the space program as nonproductive in terms of current needs, and would in its stead fund more efficaceous programs.

Mr. President, the U.S. primary objective in the space program—the exploration of space, the increase of scientific knowledge, the development of new technology and its applications, and the maintenance of a strong position of leadership among nations—is justification enough for the money already expended on space research. In fiscal year 1972, the appropriation for NASA was $3.3 billion which is only 1.4 percent of our national budget and only one-third of 1 percent of our gross national product. NASA's budget projections reveal that this $3-billion figure will not be surpassed in the 1970's even with the development of the space shuttle. However, to those who, in spite of the direct benefits from the program would sacrifice funding for our space effort, I assert that the U.S. space program is paying for itself through the numerous tangible and end-result dividends beyond those of its primary objectives.

Mr. President, in July of 1970, I rose to highlight for my colleagues the dramatic space-stimulated technological progress that has evolved since initiation of the space program. President Nixon has decided to move ahead with the development of the space shuttle. As we, in the Congress, commence to review this decision, I think it wise to review the often overlooked benefits we are enjoying today, as a result of our endeavors in space.

These "space spin-off's," sometimes unplanned and often unforeseen, can be found in virtually every field of human endeavor—communications, business and industry, medicine, agriculture, management, education, weather forecasting, the environment, aeronautics, and consumer products.

Many of these spin-off's take the form of complicated adaptations of space technology to industrial uses. Such mechanisms as servo-accelerometers and very low pressure control systems have been adapted to well drilling and turret lathe operations.

The field of petroleum exploration alone has benefited from at least nine specific advances directly attributable to space explorations. In the automotive industry, the technology used to dampen vibration in rocket engines has been incorporated into the manufacture of heavy duty clutches for trucks. And, the University of Denver, is currently adapting the "frangible tube energy absorber," developed by the NASA scientists, to automobile bumpers, hopefully making them more effective.

Numerous applications of space technology have come from the extremely intricate instrumentation developed by NASA for the continuous monitorization of the astronaut's physical condition in space.

Cardiotachometers for the accurate measure of fetal heart rates, a new electrode for use in relieving anginal pain, and a special transducer which was developed to measure pressure over small models in wind tunnels has been licensed as a cardiac catheter which is so

small, it can be inserted with a standard hypodermic needle.

Other benefits in the health industry include inflatible vests for rapid EKG measurement, motorized wheel chairs controlled by the eye, a computer produced movie isolating specific malfunctions of the heart, contamination free assembly, hospital clean room techniques, and inspection procedures.

These are just a few of the technical applications of space research, however, even broader benefits have accrued to this Nation and to the entire community of nations. Intelsat, the global telecommunications system serves over 35 countries through some 60 antennas. This system has become the most efficient and economic means of communication between nations, businesses, and individuals.

We all recently watched live television coverage of the Olympics via satellite.

Business efficiency has been immeasurably increased by Intelsat's ability to provide cheaper and more reliable long-range communication. Through the Intelsat system the number of transoceanic telephone circuits have increased from 500 to 5,000 since 1963. Comsat, which operates Intelsat, recently filed for a 25 percent rate reduction—its second in the short history of his program.

Our international space program has obvious direct benefits to the United States and its cooperating partners. It also produces an equally important indirect and less tangible benefit through the fostering of good will and mutual understanding among nations.

Mr. President, these are just a few of the more than 100 examples cited in the House Space Committee's report. They do give empirical evidence of tangible returns on our space investment.

However, they only hint at the prospects of returns which can be expected from our continued support of the space program. It is exceedingly important that we realize the program's potential for solving many of the problems which are allegedly abnegated by space supporters.

Space research is essential to the control and protection of our environment. For earth is a part of a much larger environment and knowledge is the key to understanding and protecting both.

The meteorological satellites, which have increased dramatically the accuracy of short term weather forecasting have led to the development of the earth resources technology satellite, the first of which is scheduled for launch this spring. These satellites, like the Metsats, which study our atmosphere, will use highly advanced remote sensors to gather a wide variety of data from the earth's surface and subsurface.

The first experiments will study feasibilities and gather data on such things as: vegetation damage from highway construction in Maine; the color of the ocean for the improvement of commercial fishing off the coast of Oregon; the grazing of wild and domestic animals on the public lands in the West; protection of the sea coast and tidal marshes in New Jersey; land use in the megalopolis extending from Boston to Washington, D.C.; extent of snow cover for rivers and flood forecasting in the Sierra Nevada Mountains; an inventory of the timber resources in all the major types of forests in the United States; and the analysis of the haze over Los Angeles.

Mr. President, the U.S. space program is one of the broadest and most rapidly progressing technological undertaking of all time. This endeavor, so broad in scope, yet so minutely exact has brought together thousands of individual efforts into a cohesive and successful program for the benefit of all mankind.

This is perhaps one of the most important and promising benefits developed by our space program. The capability derived from this unified effort could hold the solutions to the overwhelming problems facing the world today.

JOHN BYRNES, A FINE REPRESENTATIVE

Mr. PROXMIRE. Mr. President, Congress is losing a remarkable Representative at the end of this year in the retirement of JOHN BYRNES, of Green Bay.

JOHN BYRNES has been the ranking Republican on the House Ways and Means Committee, and as such he has done a magnificient job.

As we know, the Ways and Means Committee is where all tax legislation must originate. More than any other congressional committee, it determines the equity, the justice, the effectiveness of our tax laws.

As anyone who has been in politics very long can attest, here is where the special interests are the most persistent and the most influential in tailoring federal legislation to suit their financial interests.

Representative WILBUR MILLS, chairman of the Ways and Means Committee, and Representative JOHN BYRNES, its ranking member, have stood at the pass against the special inerests for many years, now, and through a raft of history making tax bills. They have fought against the give-aways, the special treatment in what is often a lonely, frustrating, unrewarding fight. They have made many enemies in the process but they have both served their country nobly.

Representative BYRNES' job has been especially difficult, because without the power, prerogatives, or recognition of the chairmanship, he has had to assume about the same degree of responsibility.

As a Democratic Senator from Wisconsin, I of course am sensitive to the considerable partisan political appeal of JOHN BYRNES. We have sent some excellent candidates out to do him in, but JOHN BYRNES has beaten every one for more elections than I care to count.

As a devoted Wisconsin Democrat, I have consistently opposed JOHN BYRNES, and I recall that in 1957 we engaged in a red-hot television debate. But I will miss him; the State will miss him; and it is no exaggeration to say this country will miss him. He has been a great Representative, of whom Green Bay and all Wisconsin can be mighty proud. I ask unanimous consent that a recent editorial tribute to Representative BYRNES, published in the Washington Star, be printed in the RECORD.

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

SOME LAST HURRAHS

An inordinate number of veteran congressmen are packing it in this year, having decided not to run for re-election. More than a dozen House members have announced their plans to step down, and several others may do so soon. Also retiring are four senators in their seventies—Clinton Anderson of New Mexico, John Sherman Cooper of Kentucky, Len Jordan of Idaho and Karl Mundt of South Dakota.

Their reasons vary. Some are purely personal, or relate to illness. Another factor is the wholesale redistricting that would force many members to mount extra efforts to become known and liked by the voters. Sharply higher pensions (now above $20,000 for legislators with 20 years of service) could have been influential in a few cases.

The impact of these retirements on the next Congress could be striking in one respect. Because many of the House members bowing out are ranking Republicans on key committees, next session could find diminished GOP influence and substantial changes, perhaps for the worse, in the flow and complexion of work in these committees.

Conspicuous among the retirees are Representatives John W. Byrnes of Wisconsin and Jackson Betts of Ohio, the first and second ranking Republicans on the Ways and Means Committee; and Representatives William M. McCulloch of Ohio and Richard H. Poff of Virginia, the first and second ranking Republicans on the Judiciary Committee. And of these distinguished veterans, Byrnes deserves special mention.

The popular image of the Ways and Means Committee wholly dominated by Wilbur Mills is false. It has been more a tandem operation, Mills and Byrnes, two seasoned, energetic pros working together over the years to shape an enormous amount of legislation on taxes, international trade, Social Security, health, welfare and, lately, revenue sharing. One committee member summed it up rather neatly: "The two together are 80 percent of the committee. Thirty percent will be missing when John is gone."

Byrnes personifies so many of the qualities a congressman should have. He is immensely hard-working and knowledgeable, tough-minded yet compassionate where the problems of the average citizen are at stake. And he has been a thoroughly independent thinker, willing to depart from GOP orthodoxy, as he did, to support the administration's Family Assistance Plan, or to refuse, as he did, to support Mr. Nixon's revenue sharing concept.

Chairman Mills, the committee, the House and the public interest all will feel the loss when he is gone.

MATHIAS URGES ACTION ON VETERANS EDUCATION BILLS

Mr. MATHIAS. Mr. President, in June, I introduced the Vietnam Veterans Act of 1971, S. 2163, which would provide up to $1,000 per academic year in assistance to eligible veterans for tuition, books, fees, and related supplies in direct payment from the Veterans' Administration to the educational institution where the veteran is enrolled on a half-time or more basis. My bill would also provide a $175-per-month subsistence allowance directly to the veteran with a sliding scale based on the number of dependents. I am pleased that my bill has received the cosponsorship of Senators BIBLE, CASE, CHURCH, COOPER, HOLLINGS, HUMPHREY, INOUYE, KENNEDY, MOSS, PEARSON, PELL,

and RIBICOFF, and at this time, I ask unanimous consent to have Senators PERCY and SAXBE added as cosponsors.

There are now nine veterans educational assistance measures pending before the Senate Committee on Veterans' Affairs and it is my understanding that no definite date has been set for hearings on these very important pieces of legislation. A subcommittee of the House Committee on Veterans' Affairs has already reported a bill to the full committee for action while we in the Senate have yet to act.

I firmly believe that veterans educational assistance benefits must be improved. The current program levels are inadequate to meet rising educational costs at both public and private schools. It is for this reason that I believe that the Congress should adopt the World War II GI bill payment plan whereby the Veterans' Administration pays the cost of tuition and fees directly to the educational institution so that the veteran may use his monthly allotment for other necessities.

Even though my bill would provide a direct payment of up to $1,000 per academic year, with a $175 per month subsistence allowance, it is possible to alter these figures without diminishing the aid. I would not object to a modification of this concept, for example, even down to a $500 direct payment, if the monthly assistance allotment was raised to at least $220. In this way direct payment could still be utilized to defray costs of tuition, books, or supplies, without reducing the overall total benefit allotment to the point that education could no longer be the veteran's chief concern.

The necessity for speedy action on veterans educational assistance is evident when we look at recent figures from the Veterans' Administration on the numbers of participants in the GI bill program. Since the Korean conflict, approximately 1,800,000 persons have participated in the program. As of November of last year, 200,000 persons on active duty were participating which brings the overall participation to approximately 2 million persons. When we consider that there are over 5½ million Vietnam era veterans, and with the Veterans' Administration projection that up to 50 percent of persons discharged from the armed services will utilize the program, it is possible that over 2 million veterans will participate in the program in the future which is more than the total of all participants since the Korean conflict.

I feel that it is paramount that action be taken on the various educational assistance measures now pending in the Veterans' Affairs Committee. Our Vietnam veterans are not only facing the problem of unemployment in a tight economy, but are also finding that the rising costs of education is making obtaining or continuing their education to be an added hurdle.

As an example, in my State of Maryland, based on figures of the National Council of Independent Colleges and Universities, the total number of veterans enrolled in independent colleges and universities in Maryland has decreased by approximately 900 in the 1971–72 school year as compared with the 1947–48 post-World War II enrollment level. In the 1947–48 year there were approximately 2,070 enrolled veterans in such schools in Maryland, while in the current academic year, there are approximately 1,100 veterans. Furthermore, while the number of enrolled veterans has decreased in such institutions, there has been a fourfold multiple cost increase.

If we can increase the educational benefit levels, and provide greater benefits as outlined in my bill, or through a combination of my bill and the other proposals, I am sure that our veterans will appreciate the effort. We can delay no longer.

CARL HAYDEN

Mr. RIBICOFF. Mr. President, Senator Carl Hayden built a record of public service to his State and country which may never be equaled.

Born in 1877 in Tempe, Ariz., a small town founded by his parents, Carl was elected when he was 25 to the Tempe City Council and 2 years later became the Maricopa County treasurer. From 1907 to 1911, he served as the sheriff of the county.

In 1911 it became clear that Arizona was soon to become a State, and Carl ran for the State's first seat in the House of Representatives. He won, and began a 57-year stay in the Nation's Capitol, first as a Representative and later as a Senator.

No one is more closely identified with the history of his own State than Carl Hayden was with Arizona. His public life began in a frontier territory. When he returned to Arizona in 1969, it had become one of the most prosperous and fastest growing States in the Union, in large part as a result of his years of faithful service.

Memories of Carl Hayden will be treasured by those, such as myself, who had the honor to serve with him.

BROADCAST LICENSE RENEWAL

Mr. BAKER. Mr. President, although it is clear that under the Communications Act and subsequent court decisions there is no property right in a broadcast license, until recently a broadcast licensee could rely on the fact that if he had substantially met or served the public interest, he would be given controlling preference over a new applicant for the broadcast channel. However, the FCC in the WHDH case ousted an incumbent licensee in favor of a competing group, without giving weight to the licensee's performance over the years, finding the incumbent licensee's record to be no more or less than average. This decision introduced a new standard to be met by a licensee. The broadcast industry now had to define what the Commission thought to be an above average performance. Numerous groups looked upon WHDH as a precedent which would allow them to challenge licensees throughout the country. The ensuing instability in the industry persuaded many in the Congress that the effects of the WHDH decision were contrary to the public interest and consideration was given to legislation that would provide assurance to the broadcasters that if they were serving the public interest, their licenses would be renewed.

In January 1970, the FCC issued a policy statement on license renewals, restating the law and giving weight to past performance. This policy statement was intended to stabilize the industry by providing that a licensee who had rendered substantial service during the course of his license periods without "serious deficiencies," would be preferred in the event of a competing application for his license. Only if the FCC were unable to find that the incumbent had rendered substantial service would the competing application be considered.

In June 1971, however, the U.S. Court of Appeals for the District of Columbia struck down the renewal policy statement as violating the hearing requirements of the communications Act. The court maintained that competing applicants were entitled to a comparative hearing under the terms of the act and the policy statement eliminated that hearing. The court's decision once again cast licensees into a state of extreme uncertainty, and broadcasters are now again in doubt as to the criteria they must meet in order to secure renewal of their licenses. The public interest suffers as a consequence.

At present, a competing group is encouraged to make "paper promises," that will put the broadcaster to the great administrative and financial burden of extensive hearings. Far worse is the fact that again he has no assurance that his service over the years will count for much in the face of what often are irresponsible challenges.

Stable license renewal procedures benefit the public as well as broadcasters, To build a station that can serve the community with a strong news department and local service, the broadcaster must invest considerable time, talent, and money. To do this, he must have a reasonable expectation that his investments will not be jeopardized at renewal time by an adverse decision based on nothing more than "paper promises."

Legislation is clearly necessary if the industry is to have the stability the public interest requires. If a licensee has not served the public interest that should be the end of it.

But a statutory license renewal policy is needed, and I will continue to work with the Senator from Rhode Island (Mr. PASTORE), chairman of the Communications Subcommittee, to achieve that goal. It is, however, of paramount importance that the individual broadcaster, forcefully and personally, inform his Representatives and Senators of the need for license-renewal legislation.

PRISON INMATES PROTESTS

Mr. BROCK. Mr. President, today's prisons are producing a wave of inmate protests through civil petitions. Where your average prisoner 10 years ago could barely scratch out his name, today's prisoner on the whole is a more articulate and better educated individual.

Also, we are seeing judges who seem more in tune with the nature of punish-

ment. Some are dropping traditional policies toward prisoners and taking a more responsible attitude for the nature of the punishment they order.

These two factors have brought a "breath of fresh air" into the whole penal system. It has brought an awareness to the general public that changes must occur, reform of this medieval, archaic system must take place in order to bring meaningful rehabilitation to correctional institutions.

Mr. Ben Bagdikian, in his seventh of a series of eight articles, elaborates on the subject in an in-depth study of personalities and basic problems.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

THE DRIVE FOR INMATES' RIGHTS

(By Ben H. Bagdikian)

"It used to be that the favorite recreational activity of prisoners was playing baseball. Now it's filing lawsuits," says Evelle J. Younger, attorney general of California.

Is there a new kind of person behind bars in the 1970s? More interested in politics than athletics? More militant, organized and rebellious?

Younger is right about the growth of lawsuits. There is a swelling tide of civil petitions flowing out of prison cells into courtrooms. These are not the traditional jailhouse appeals on criminal cases, which continue. The new phenomenon is civil petitions suing prison administrators for allegedly violating human and civil rights.

In 1938, federal courts received only 625 such petitions from prisoners, less than 2 per cent of all federal civil suits that year.

Last year there were 12,266. By now, one of every six civil suits in a federal district court is from an American prisoner claiming that his treatment inside a penal institution is illegal.

Evelle Younger is wrong about this being "recreational activity." Prisoners are dead serious.

Judges have been just as serious. Judges all over the country, horrified when they see conditions to which they have condemned defendants, are dropping their traditional "hands off" policy toward prisons and are taking responsibility for the nature of the punishment they order.

This is forcing the freshest air into the American prison since its invention in 1790.

Judges have called some prisons unconstitutional—for example, Holmesburg, Pa., and the entire Arkansas State system. In Florida, West Virginia, Virginia, Illinois, California and Maryland, judges have declared particular prisons unconstitutional, usually for cruel and unusual punishment or administering serious punishment without due process.

Robert N. C. Nix Jr., presiding judge in the Holmesburg, Pa., case said, "Prisons aren't supposed to be torture chambers. The separation from society is supposed to be enough.

Judge Israel Augustine of New Orleans District Court said that unless the local jails ceased being "medieval and archaic" he would resign rather than send prisoners to them.

There is reason to think that American prisoners are no worse today than they used to be. Except for overcrowding, they probably are better. But increasingly inhumane conditions are no longer being tolerated, for reasons including a change in the attitudes of prisoners and of society:

1. Nonwhites in America—blacks, Mexican-Americans, Puerto Ricans, Indians—are 12.5 percent of the total population, but they are from 40 percent to 50 percent of all persons in prisons. The entire criminal justice system—police, prosecution, Judges, jails and prisons—is largely whiterun. Ninety-five percent of prison guards are white. Nonwhites are rebelling against their depressed status in the outside world.

2. Many impoverished white prisoners, though unsupported by organized ethnic lobbies, are newly activiated by the realization that prisons are essentially places for punishment of the poor. Though there is severe tension between black and white inmates, and though many prisons do not discourage this enmity since it helps the staff maintain control over a divided population, when it comes to protest against the institution there is usually racial unity.

3. During this period of heightened sense of injustice in the criminal justice system, penalties have become harsher, increasing bitterness behind the walls.

4. Though the vast majority of prisoners are poor, there is a new, small insertion of affluent middleclass prisoners from cases involving drugs, the draft and civil protest, and this has mobilized much of the previously uninterested middle class to examine their prisons.

5. A new cadre of prison administrators is sufficiently sophisticated in sociology, psychology and statistics to be sensitive to the self-defeating nature of most prison punishment. Many wardens agree privately, and some publicly, with the reform demands of their inmates and feel inhibited by lack of money, political pressures and an unsympathetic public.

The most noticeable new kind of prisoner in the United States is the black militant. He sometimes appears as a member of the Muslims, the disciplined and puritanical followers of Elijah Muhammed. Their influence goes far beyond their membership, establishing codes of conduct and attitude for many non-Muslims. Because Muslims will not eat pork, for example, many non-Muslim blacks also refuse to eat it and many prisons now serve pork substitutes.

Black militants (and some others) frequently refer to themselves as "political prisoners." It is a term that sets wardens' teeth on edge. "We don't have any political prisoners here," says Noah Alldredge, warden of Lewisburg Federal Penitentiary, "only men who broke the law." Dr. Norval Morris, a leading American penologist, says, "What happens is that the inmate invests ordinary criminal activity with the idea that he is a part of political change. That way, you end up with the absurdity that killing a policeman or robbing a store is somehow a political act."

Blacks sometimes use "political prisoner" to refer to their depressed economic and social status, conditions that produce crime and therefore an inevitable product of "the system." At other times they use it to describe official harassment and punishment of special styles of life. Where they use it to describe their systematic unfair treatment within the criminal justice system, there is more than rhetoric supporting the complaint.

The criminal justice system screens out the affluent and makes special selection of blacks. All social classes commit significant amounts of crime. In 1947 James Wallenstein and Clement J. Wylie listed 49 serious crimes with a minimum sentence of two years; of 1,698 responses from a cross-section of New York inhabitants weighted toward the more affluent, 91 per cent admitted to one or more crimes without ever being arrested. Average for all men was 18 crimes each. There are not enough American blacks alive to account for unreported and untried crime.

Austin Porterfield compared criminal offenses of college students with 2,000 boys who had been sent to juvenile court; 100 per cent of male and female students had committed at least one of the offenses for which the 2,000 other boys had been sent to court.

So of 1,000 crimes committed in the United States, only 80 are ever reported to the police. Of those 80 reported, only 18 result in an arrest, which is the first point of special selection of blacks.

Entry into the criminal justice system usually depends on the decision of a policeman. It first depends importantly on where a policeman is.

Poor black neighborhoods are high crime areas, at least in reported crime, so they tend to be watched more closely. The closer they are watched the higher percentage of persons will be arrested.

Entry into the justice system can depend on the discretion of the policeman: Whether to make an arrest, and if so, on what charge, or to let the person go as innocent or with too weak evidence to prosecute. It is an important decision for the citizen because once he is perceived as potentially criminal by the authorities and once he has been picked up or booked, thereafter the odds go up that he will continue to be considered crime-prone.

It then becomes significant that surveys of urban policemen show overwhelming prejudice against blacks, 72 per cent according to a survey by the President's Crime Commission. Even where there is no conscious bias, there may be unconscious bias, an example of the self-feeding, self-fulfilling prophecy of guilt: Since blacks are so obvious within the criminal justice system and because they are distinctive by their color, law enforcement officials with no personal racial bias may believe that blackness is related to a higher probability of criminal activity. The result is that blacks enter the first, crucial step toward guilt in disproportionate numbers.

A study of 10,000 Philadelphia males between the ages of 10 and 17 showed that one-third of all whites had been taken into custody at some point but more than half of all blacks.

Dr. Nathan Goldman found that of all children picked up by police, twice as many black children as white had afterward been charged with a crime and sent to court.

This association of blackness with crime is not limited to policemen. In Florida, a judge placing a guilty person on probation may do so with the usual finding of "guilty" on his record or, if he thinks the person is a good prospect for probation success because he is a first offender or for other similar reasons, he can send him on probation with no guilt finding on his record. Three social scientists analyzed 2,419 such decisions by Florida judges and found that when cases had similar backgrounds, from 40 per cent to 60 per cent more blacks were sent out with the "guilty" label than whites.

So where the system selects citizens for surveillance, for picking up by the police, for booking on charge and taking to trial, it selects a disproportionate number of blacks.

Of the original 1,000 crimes committed, 14 result in court appearances and 9 are found guilty. Practically all studies show that when persons are tried on the same charges, blacks more often than whites are found guilty. A study in Stamford, Conn., for example, found that guilty findings per 100,000 ethnic inhabitants was eight times higher for black defendants than white.

Of nine Americans found guilty in a court, fewer than four actually serve time in a prison. Here, too, whites more often get probation or suspended sentences. In the Stamford study, the rate of commitment to prison per capita for each racial group was ten times more for guilty blacks than for guilty whites.

Once in prison, blacks stay there longer, partly because they get longer sentences and partly because they get from 10 per cent to 14 per cent fewer paroles. On burglary charges in Los Angeles, the longer sentences went to blacks: sentences of four months or less, 45 per cent white, 27 per cent black; sentences of 4 to 9 months, 42 per cent whites, 47 per cent blacks; 10 to 20 months, 13 per cent

whites, 27 per cent blacks. Median time served for all white prisoners in the United States is 20 months; for blacks, it is 23.5 months.

Death sentences and executions are most plainly biased against blacks. Between 1930 and 1966, when blacks were about 10 per cent of the total population, 3,857 persons were legally killed in the United States; 53.5 per cent of them were black.

This was not because only blacks committed capital crimes. Between 1940 and 1964 in Florida, 285 men were found guilty of rape. Of the 133 white men, less than 5 per cent received the death penalty. Of the 152 black men, 35 per cent received the death penalty.

Similar bias against color appears in statistics for Mexican-Americans, Puerto Ricans, and other non-whites. In addition, Spanish-speaking people suffer serious communication problems because most prisons still censor all prisoner mail and will permit only English-language letters.

The reasons for malevolence of the criminal justice system toward * * * a society of growing complexity there are more laws against certain acts than ever before; about one-third of what we call crimes today were not called crimes in 1900. This conglomeration of laws is selectively enforced. Lack of money is clearly a major factor—poorly dressed people often "look" more "criminal" and when picked up lack lawyers to defend them vigorously at every stage, including the crucial time when law enforcement officials decide how serious an offense to select.

Lack of money for bail while awaiting trial is a serious detriment to equal justice. A man in jail cannot prepare as sound a defense as a man out of jail. A study of New York prisoners by the New York City Rand Institute showed that for those of comparable cases men out on bail before a trial are less often found guilty. The poor lack good legal help for appeals and applications for parole and this affects their treatment while in prison: Prisons are more careful with prisoners who have outside connections.

Inevitably, rebels against prison find a quick response among prisoners and always will. But this has special meaning now when so many blacks are conscious of the nature of their unfair treatment. George Jackson, one of the "Soledad Brothers" recently killed in a shooting in San Quentin prison, and Angela Davis, a Communist professor charged with complicity in a fatal shootout in a California courtroom both black, are the two photographs most often found in cells of black prisoners in prisons where individual decoration of cells is permitted.

The issue of prisons has become a public one from a non-racial source—the introduction of middle-class convicts. A decade ago a high-income inmate was an exotic, a rare murderer or an unlucky embezzler.

But because of drugs and civil protest, the middle classes of America are now getting an authoritative view of the inside of prisons.

During civil rights demonstrations of the 1960s hundreds of college-educated white Americans found themselves herded into southern city and county jails and occasionally into a state prison. When protests against the war in Vietnam occurred in the North, it spread this knowledge from Southern jails to Northern jails. The resulting shock of discovery contributed to the examination of all prisons now current in the country.

The expansion of drug use into middle-class America also sent more affluent citizens behind bars. An estimated 12 million persons use marijuana and in some places the penalties are severe. Even when there is no prison sentence, the intensive law-enforcement searching for marijuana, especially routine stop-and-frisk routines of police, have helped make a large proportion of American youth anti-police and anti-criminal justice. It contributed to the conclusion of much of the middle class that jails and prisons were not just places for others.

Added to this are draft cases—evasion of Selective Service or conscientious objection—which has sent 2,600 young men into prison in the last five years, most of them affluent and from college-background families earnest about social causes.

Middle-class Americans have high standards of personal relations. They expect to be treated civilly and justly. When confronted with primitive prison conditions, cruelty and capricious handling, they are not so likely as a ghetto veteran to accept it as the inevitable harshness of a hard world. The middle-class prisoner often is skilled in the arts of communication, has affluent parents and has access to influential lawyers and friends. Consequently, prison brutality and unfairness has been recorded and transmitted to the outside world as never before.

Some of the middle-class prisoners are committed to varying degrees of social reform or revolution, and have been willing while still incarcerated to dramatize prison conditions with strikes, fasts and passive resistance. Peace inside a prison is fragile, relations between staff and inmates always tenuous, and disturbances in any prison creates shock waves in all others. So even prisoner protests far short of riots have caused correction administrators to examine their operations.

Wardens generally dismiss the influence of the protesting inmate. "They have very little influence with the regular inmates," Noah Alldredge, warden of Lewisburg Federal Penitentiary, said recently. But in Allenwood, an associated minimum security colony of Lewisburg, when one prisoner serving time for burning draft records in Catonsville, Md., was being transferred to maximum security, about 115 inmates, half the population of the camp, stood in silent protest in the yard. "That was an exception," Warden Alldredge said. At Alderson, W. Va., Federal Reformatory for Women, Warden Virginia McLaughlin similarly dismissed the impact of "political prisoners." She said, "The other women pay no attention to them." But after Attica, such prisoners led a sympathy strike of about 130 minutes, with enough large-scale involvement to require importing of guards from other prisons.

On the other hand, the political fervor of prisoners can be exaggerated. Frank Callahan, 21, a former broadcast journalist, served a year in Lewisburg for destroying draft records in Rochester, N.Y. He described his imprisonment with inmates in for conventional crimes:

"You know, we would start talking about the war and it seemed so artificial and distant from the situation at hand . . . after awhile I just stopped dealing with that. It was a thousand years away to talk about Vietnam. If a guy was a bank robber, he'd tell us about the jobs he had done, or we'd talk about the movies we'd seen. You know, just fairly average conversations. When things got political, they were political in the sense that here we are getting screwed . . ."

Groups tended to stick to their own but, Callahan says, they banded together if inmate interests within the prison conflicted with policies of the prison administration, on pragmatic treatment rather than ideological commitment.

In dozens of prisons across the country, inmates have formed unions, councils and associations to obtain personal protection against violation of "rights." It has raised the question of what rights a prisoner has, if any.

The answer is murky. American law for convicts has evolved mainly from feudal England and some of it is applied today in apparent contradiction to reason, logic and the U.S. Constitution.

"Civil death," for example, was spelled out in feudal society. Lower-class convicts were killed or mutilated. An upper-class person might escape death by permanent banishment to a distant place or by becoming a monk. In either case, he was no longer a part of the feudal community, he was declared "civilly dead" and his property was distributed to his heirs as though he were physically dead. Since he could never return, "civil death" was logical.

To this day, American convicts suffer some of the same feudal punishments: Thirteen states have "civil death" statutes.

In 17 states "civil death" is imposed if a man gets a life sentence. His property is redistributed, his marriage is dissolved and his children become subject for adoption, even though most life sentences end in parole.

A "civilly dead" prisoner is nevertheless still obligated to support his wife and children.

In most states, imprisonment is automatic grounds for divorce, though most prisoners are in for less than two years.

The best-known loss of rights is the right to vote. This loss probably had its origins in the Greek statute for persons convicted of "infamy." In three-quarters of the states, felons lose the right to vote by statute and in most of the remainder by administrative policy of local boards of election. It is defended as protecting the honesty of the ballot box from disreputable persons and as denying influence over laws and lawmakers against the law. It is criticized as adding no protection to the society and inhibiting the integration of the ex-prisoner into normal life.

Prisoners lose other rights and opportunities by law, varying from state to state. Some private and much public employment is denied them. Prisoners cannot sue others but others can sue them.

Three states (North Dakota, Virginia, Washington) prohibit marriage of offenders with three felony convictions to a woman under the age of 45 (presumably to prevent birth of children with the felon's "corrupted" blood). Seven states authorize sterilization of "habitual criminals." In at least three states, the law provides for complete or partial forfeiture of a convict's property.

All of these originate with another feudal English concept, that of "corruption of blood." Article III, Section 3 of the United States Constitution specifically forbids forfeiture and corruption of blood except during the lifetime of a person convicted of treason.

Most "prisoner's rights" moves are directed to his treatment inside prison. The assumption is that there are some punishments so cruel as to be prohibited in any case—like driving a man insane—and that others are so severe that they constitute a serious punishment that ought to be imposed only with due process to prevent its being done unjustly and without independent review.

The movement toward prisoners rights represents hope on the part of inmates, since these rights focus or the need for a prisoner to accept relations with society. But they also represent explosive tensions. All institutions in society are being re-examined for their goals and the ineffectiveness in attaining those goals. Failures are no longer as quietly accepted as in the past. The prisoner who universally hears he is being "rehabilitated" no longer passively accepts cruel and capricious treatment. Ninety-seven per cent of prison inmates return to society, and each prisoner emerging gauges his future relations with society.

A very unpolitical young man, emerging from five years in a state prison said:

"All the time I was in, I remembered what they called out at my trial: 'The People versus . . .' and then by name. The people against me. I'm not sure whether they're still against me."

DEATH OF DR. FRANK GRAHAM, FORMER SENATOR

Mr. FULBRIGHT. Mr. President, we have just heard the sad news about the

death of Dr. Frank Graham, one of the outstanding educators and public servants of our generation. A number of us in this body remember him with fondness and great respect during his regrettably short service here as a U.S. Senator from North Carolina in 1949 and 1950.

I cannot help but think that the very qualities which made him such a valuable colleague also contributed to prevent his remaining in the Senate. For he was a man of strong convictions, who never flinched from speaking out to defend the values in which he believed so deeply. He was an idealist and a liberal, in the classical sense of the word, and he could not diminish the clarity of his statements in order to gain any political advantage. And yet, since he was a man of many parts, the ending of his service here merely meant the resumption of his career of activities on behalf of the United Nations.

My colleagues from North Carolina can express far better than I, the contributions which Frank Graham made to the advancement of education in that State. But I must at least touch upon his notable career at the University of North Carolina. As a teacher of history, he was an inspiration to a host of students who flocked to his classes in the knowledge that their professor was a man who could make the subject come alive as few others could. As a totally open and approachable friend, he was a beloved figure on campus. As president of the university, he attracted and kept some of the finest academic talent available and did much to give the State university at Chapel Hill both a national and an international reputation for excellence.

Indeed, his talents were too great and too varied to permit him to devote all his time to the university. He was called to Washington with increasing frequency and given an ever greater range of tasks as this country marshalled its resources to fight the Second World War. He was Chairman of the National Advisory Council on Social Security, as well as a member of the President's Advisory Committee on Education, of the National Defense Mediation Board, and of the War Labor Board. His reputation as a mediator led to further services in the field of national labor-management relations. Then—after the creation of the United Nations—these talents were brought into the international arena.

Dr. Graham was the U.S. Representative on the Good Offices Committee on Indonesia of the United Nations Security Council, and later became the Special Adviser on Indonesian Affairs to the U.S. Secretary of State. His success in those activities led to his appointment as the United Nations mediator for India and Pakistan in relation to the dispute over Kashmir. He devoted the remainder of his career to that task, and no one could have worked harder and longer to promote a settlement. The fact that many years later the issue is still unresolved certainly is no reason to underestimate the contribution made by Dr. Graham. No one could have done better, and few could have done as well, in that heartbreaking assignment.

Mr. President, Frank P. Graham was a man of small physical stature, but one of great intellectual and moral stature. While he served his home State with great ability, he gave equal service to the Nation and to the cause of international peace. He was an international public servant in the highest sense of the phrase, and men of goodwill throughout the world have reason for sorrow over his passing.

NATIONAL VOLUNTEER BLOOD DONOR MONTH

Mr. EAGLETON. Mr. President, in recent years many far-reaching advances have been made in the technical fields of medicine. New operating techniques can arrest disease and lengthen life. Open heart surgery and organ transplants give new hope to people who might otherwise succumb to a premature death.

Despite these technical advances, the one ingredient necessary for successful recovery in many cases is the vital living tissue, blood. We often forget that science cannot reproduce blood. Even today, those in need of blood must depend on individual blood donors to provide this life-giving substance.

About 100 million persons in the United States are physically able to donate blood. Unfortunately, only 3 percent of this number do so. The rest of the blood needed is the so-called commercial blood, or blood donated for money.

Too often, this commercial blood carries with it disease which is transmitted to the patient. A recent survey revealed the risk of serum hepatitis is 12 times greater when a patient receives blood from commercial rather than from voluntary donations. Clearly, we must encourage more people voluntarily to donate blood.

That is why each year I sponsor the National Volunteer Blood Donor Month Resolution. In 1970 and 1971 the Senate passed this resolution. It is my hope that we will act on Senate Joint Resolution 126 in this session so that January 1973, will be declared officially National Volunteer Blood Donor Month.

Mr. President, I ask unanimous consent that the statement issued by President Nixon in January 1972, in tribute to volunteer donors, and an editorial published January 16, 1972, in the Vallejo, Calif., Times-Herald be printed in the RECORD.

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

THE WHITE HOUSE,
Washington.

NATIONAL VOLUNTEER BLOOD DONOR MONTH, JANUARY 1972

It gives me special pleasure to pay tribute to the generosity, compassion and selfless humaintarian service of those who have freely given blood to save another's life.

Theirs is an offering for which there is no substitute, and which annually helps restore to good health countless fellow citizens.

As I commend those who by their contribution have enriched the well-being of our society, I also encourage other citizens to follow their inspiring example.

RICHARD NIXON.

NEED FOR BLOOD DONATIONS IS UNCEASING—PLEASE GIVE

January is National Volunteer Blood Donor Month. Our hospitals in the United States now need 7,000,000 pints of blood a year for surgery and therapy.

It is important for reasons of safety, as well as medical costs that this blood come from voluntary unpaid donors who have no reason to misrepresent their medical histories.

And at least 80 per cent of the blood stored in blood banks throughout the nation is given voluntarily and without charge. These gifts of life represent a monetary saving to the American people of $100,000,000 a year in medical expenses, and this happy fact is all the more remarkable when it is considered that only three per cent of those qualified by age and health to give blood actually do so.

Anybody may need blood at any time. This truism is demonstrated dramatically every day and every hour.

If you are between 18 and 66 and in good health, you can salute National Volunteer Blood Donor Month by giving a pint of blood. Call the North Bay Blood Center in Vallejo, (643-2163), for an appointment. It will be painless and will require only a few minutes. You may save somebody's life.

Our member blood banks work unceasingly to conserve available blood supplies. Through the National Clearinghouse Program of the American Association of Blood Banks, more than 1,000,000 pints of blood have been borrowed and loaned between banks to provide blood of the right types, in the right amounts at the right place and time for those who need it.

Yet with all these measures, some commercialism does exist, but in America it does not dominate the field.

Inasmuch as blood is living tissue, and blood transfusions were the first human tissue transplants, blood should not be paid for by cash or by insurance.

If we allow such a system to prevail, we will subsequently see a price tag placed on human organs such as hearts and kidneys. The providing of blood is a service and it is tremendously important that this principle be preserved through voluntary blood donations, lest we see the human body "bartered and sold" to the highest bidder.

Money which now is being spent to buy blood or to pay donors should be channeled into research and improved services to patients.

Blood donors, beyond any doubt, hold the ultimate answer to the quality and quantity of our nation's blood lifelines.

Of 200 million Americans, more than half are eligible to be blood donors.

Thus there is no question that these 100 million and more can easily supply the 7,000,000 pints of blood we need annually. (A donor may give blood up to five times a year, and indeed, if many did not our blood reserves would be in even more perilous condition than they now are.)

To meet the increasing demand for blood, the volunteer donor concept can and must be preserved. This will be achieved only if we reach out further and convince more people of the importance of their being blood donors.

To accomplish this, we need a concerted nationwide effort of individuals and organizations involved in blood banking, as well as the cooperation of business, industry, labor unions, health professionals and the government.

Above all, blood banks must have continual and emphatic support from the communications media—and by and large they have been getting just that kind of support.

Over the years, millions of people have willingly given themselves to help others by making voluntary blood donations. Through their acts of giving blood, for patients close to them or for strangers in need, in war and peacetime, they have demonstrated in a very personal way a love for their fellow man.

Right now, the need for blood in hospitals is reaching toward record highs, while the number of persons able or willing to donate blood traditionally declines.

A great amount of elective surgery, often requiring many units of blood for transfusions is delayed each year until after the holiday season. At the same time, winter vacations and seasonal ills tend to reduce the number of potential donors.

Irwin Memorial Blood Bank which serves the North Bay area is urging all regular donors to attempt to make a blood donation in January and to help recruit new donors for their communities by encouraging a friend or neighbor to come along and give blood, too.

The friend or neighbor will find, as the donor did on that first occasion, that giving blood IS PAINLESS, and can be accomplished with an absolute minimum of discomfort.

Then the new donor can experience the joy of helping to save a life. And if a member of his family needs an emergency transfusion, he will be happy in the knowledge the blood is there because he had the foresight and the generosity to help.

Presindent Nixon has described blood donation as "among the noblest acts of personal generosity" and "a contribution to life and health for which there is no substitute."

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The period for the transaction of morning business has expired.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the unfinished business, which will be stated.

The legislative clerk read as follows:

A bill (S. 2515) to further promote equal employment opportunities for American workers.

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The pending amendment is No. 888, by the Senator from North Carolina (Mr. ERVIN), on which there is a time limitation of 2 hours, with 20 minutes on any amendment to that amendment, motions, points of order, or appeals.

Who yields time?

QUORUM CALLS—YEAS AND NAYS ORDERED

Mr. JAVITS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum, with the time to be charged equally against each side.

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

Mr. JAVITS. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ERVIN. Mr. President, I ask for the yeas and nays on amendment No. 888.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, with the same understanding as governed the previous quorum call.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ERVIN. Mr. President, I yield myself 20 minutes.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 20 minutes.

Mr. ERVIN. Mr. President, the distinguished Senator from Alabama and I have introduced an amendment which provides that the term "employee" as set forth in the original act of 1964 and as modified by the pending bill shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such person to advise him in respect to the exercise of the constitutional or legal powers of his office.

The Constitution was written to create a federal system of government. It was designed to allot to the Federal Government certain enumerated powers which would enable it to exercise the necessary functions of a central government for all the States and to reserve to the States all the powers of government. And certainly one of the powers of government that was reserved to the States by the 10th amendment was the power of a State to select its own officers and its own employees, because if the Federal judiciary could tell the State whom it can have for its officers and whom it can have for its employees, the Federal judiciary becomes the real ruler of the people of the State and really, in the ultimate analysis, imposes its will upon the State and its people.

Title VII of the Civil Rights Act of 1964 defines an employee as any person employed by an employer. That is the gist of the definition of "employee" in the original act, which is not disturbed in this particular respect by the bill.

The bill, by amending the definition of "employer" as set forth in the Civil Rights Act of 1964, declares that a State and the political subdivisions of a State shall constitute employers within the meaning of the act.

The definition of an employer is that an employer is an individual or concern which employs some individual to do something, usually for a salary or wages. And the definition of an employee under the act is an individual who is employed by an employer.

Manifestly the Governor of a State or the duly elected State officials, including the members of the State legislature, are employees of the State within the meaning of this bill in its present state. And the clerk of court of a county and the board of commissioners of a county, where they have a system of county government such as we have in North Carolina, and the sheriff of a county are the employees of the county, which is a political subdivision of the State.

In my mind it is a monstrous proposal that Federal judges should have to lay aside their judicial knitting in order to embark upon a course of action which is essentially supervising who shall be the officers and the employees of a State or of the political subdivision of a State.

Chief Justice Salmon P. Chase declared in the celebrated case of Texas against White that the Constitution and all of its provisions look to an indestructible Union composed of indestructible States. And I know of no way in which Congress can more effectively destroy the States than for Congress to vest in the Federal judiciary or in any other Federal department or agency, the power to select the officers and employees of the State and its political subdivisions.

In that case Chief Justice Chase defined what a State is. I think it might enable us to understand what is raised by this amendment by his definition of a State. In the case of Texas against White, Chief Justice Chase gave this definition as the definition of what a State is:

A state, in the ordinary sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such states, under a common constitution, which forms the distinct and greater political unit, which that Constitution designates as the United States, and makes of the people and states which compose it one people and one country.

The salient part of the definition is that a State is a community of free citizens. I would have to say that if Congress takes away from the community of free citizens the right to elect their own officials and select their own employees that those citizens cease to be free and become subjected to the control of the Federal Government.

I would not have been concerned so much about the question raised by this amendment had it not been for some recent decisions of the Supreme Court of the United States.

The Constitution expressly provides that Congress shall pass no bill of attainder and that the Federal Government, acting through any of its three departments, shall not deprive any person of his life, liberty, or property without due process of law.

Now, when the Federal Government deprives any people or any group of people of the right to elect their own officials and select their own employees, it is clearly depriving them of liberty within the purview of the due process clause.

We have had what to my mind constitute two monstrous decisions by the Supreme Court of the United States during these last years, in which the Supreme Court upheld provisions of the Voting Rights Act of 1965. That act was clearly a bill of attainder because it convicted States and their officials and their people of violating the 15th amendment without giving them any judicial trial; in other words, it was a congressional condemnation of guilt on the part of the State and its officials and its people. On that basis Congress suspended the undoubted constitutional powers of the State and its officials and its people to prescribe a literacy test as a qualification for voting.

Now, what is a bill of attainder? In this case it is a legislative declaration of guilt which inflicts punishment or denies rights to any designated individual or any individuals which can be identified. So we have here an exercise of what I have said illustrates how we have lost a substantial part of our national sanity because of the constant agitation about racial balance in this country.

Congress passed a bill of attainder condemning the States, which necessarily acted through their elected officials, of violating the 15th amendment. When the case of South Carolina against Katzenbach raised that point we had what I conceive to be a monstrous decision, namely, that the provision of the Constitution which forbids Congress to pass a bill of attainder does not apply to States, and since States can only act through their officers, and since States are nothing in the world but a community of individuals, this amounted to a holding that Congress can condemn all State officials and all the people of a State of violating the Constitution without affording them a judicial trial to determine their guilt.

To my mind, the men who drafted and ratified the provision of the Constitution which states Congress shall pass no bill of attainder intended to protect against bills of attainder all States and all human beings within the borders of the States, and all individuals which exercise governmental power on the part of States.

When Congress passed the Voting Rights Act of 1965, it convicted the States and their election officials of violating the 15th amendment by a formula which was cleverly designed to deprive of their constitutional rights seven Southern States, either in whole or in part, and to exclude from its coverage every other State of this Union. It did this by a formula of what they call the triggering device. It said that every State would be adjudged guilty of violating the 15th amendment if less than 50 percent of the people of voting age had failed to vote for a presidential candidate in the 1964 general election.

I respectfully submit that that provision, which raised a presumption, violated the due process clause of the fifth amendment. I say this because it has been held times without number that a legislative body violates the due process clause when it creates a presumption under which the fact presumed has no reasonable or rational relationship to the fact proved.

Now, mind you, this triggering device or formula by which this bill of attainder was inflicted upon the States and their people and their officials did not require that it be shown that the people who did not vote belonged to any particular race. It was on that basis that the Congress convicted these seven Southern States and parts of States of violating the 15th amendment, which provides that the right of any person to vote shall not be abridged or denied on account of race——

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

Mr. ERVIN. Mr. President, I yield myself 10 more minutes.

As far as the statute was concerned, every person who failed to vote could have been a white man, and yet it was passed on the theory that it showed that black people had been denied the right to vote in those States on account of their race. So there was no rational relationship between the facts certified by the Bureau of the Census and the certificate of the Attorney General, which, incidentally, where not reviewable in the courts, and the fact presumed.

If it had been applied to any individual—and it was applied to election officials and it was applied to all the people of the States as a basis for denying them their constitutional rights—it clearly would have been a violation of the due process clause of the fifth amendment.

Then, there is another principle of law under the due process clause of the fifth amendment, and that is, it violates that clause for the Congress to raise a presumption of guilt on the basis of facts for which the person presumed or the State presumed guilty was not responsible.

I say that those States were convicted by judicial declaration of guilt because in those particular States it was certified by the Bureau of the Census that less than 50 percent of the persons of voting age residing in those States had failed to vote for a presidential candidate in 1964. They were not found guilty on the basis of a certificate of the Attorney General or a finding of the Bureau of the Census that less than 50 percent of the persons of voting age residing in them were not registered.

Manifestly, under our system of government a State can register every person of voting age within its borders, but it has no way, under our laws, to compel him to go out and vote on election day. And so this presumption, for that reason, based on the certificates showing only that less than 50 percent of the persons of voting age in those seven States had not voted, constituted another violation of the due process clause.

That was called to the attention of the Supreme Court of the United States in South Carolina against Katzenbach. Mind you, the people affected by that act were the State election officials, who certainly were human beings, because we do not have robots for election officials in any of the States, and the people who were deprived of the power to exercise their constitutional rights under that bill were the people of the communities which constituted the States. The States themselves are comprised of individuals. A State does not exist apart from its individuals and its officials. All of its officials and all of its citizens are human beings and are persons. Yet the Supreme Court, in South Carolina against Katzenbach, laid down the monstrous position that the facts presumed had no rational relationship to the facts proved was not a protection to the States or the people or the election officials of those States because a State is not a person within the meaning of the due process clause of the fifth amendment.

That is a monstrous decision, because if that were true, Congress could pass a law, any day it wished to, abolishing the States, or condemning the officials of the State by a bill of attainder and sentencing them to death without trial and without an opportunity to be heard, without an opportunity to say a mumbling word in their behalf.

Oh, people say, Congress would not act in such an arbitrary manner as that. Well, I think the Congress acted in a very arbitrary manner when it passed the Voting Rights Act of 1965. I think it acted in an even more arbitrary manner when it amended that act and provided that those seven States or portions of the States should remain condemned by the judicial declaration of guilt, notwithstanding there had been an intervening presidential election and notwithstanding that they would have been freed from the operation of the act if the same formula had been applied to the election in 1968 as had been applied to the election in 1964.

In other words, Congress said to the seven Southern States, "Though you seek repentance, you cannot repent unless you continue to be something in the nature of a conquered province, which cannot exercise its constitutional rights and which cannot even pass a law having the remotest relationship to an election without first getting the permission of a Federal official, the Attorney General, or getting a decree from the one court on the face of the earth, the District Court of the District of Columbia, where they always have a panel of judges which would not acquit a Southern State of anything in a case having racial overtones, as has been proved in the case of the county of Gaston in my State, where everyone in North Carolina knows that there has been no discrimination against voting on account of race within the memory of any living human being.

There is another thing handed down in this decision of South Carolina against Katzenbach which I think is abhorrent to any federal system of government. The Supreme Court of the United States has held, in the case of Coyle, that every State in the Union is entitled to stand on equality with every other State of the Union, that the rights and the powers of all the States of the Union are equal. So when the contention was made by South Carolina, quite rightly, that the Voting Rights Act of 1965 made two different classes of States in this Union, and reduced the seven Southern States or portions of the seven Southern States to an inferior status and denied them the right to exercise constitutional powers which all the other States were permitted to exercise, the Supreme Court handed down another ruling which can only be described as monstrous. It held that the doctrine of the equality of the States applied only at the precise moment when a State was admitted to the Union, and that thereafter States could be made unequal in respect to their legal and constitutional rights and obligations.

The PRESIDING OFFICER. The Senator's additional 10 minutes have expired.

Mr. ERVIN. I yield myself 5 more minutes.

In other words, the Constitution, as interpreted in the case of South Carolina against Katzenbach, is adjudged, in effect, to provide that Congress has the

right to make as many different varieties of States as there are varieties of anxious people.

Well, I thought that decision was pretty bad, but that same act contained a provision that outlawed the literacy test of the State of New York, which required that any person, to be qualified to vote in any election, Federal or State, in New York, shoud be literate in the English language, and so, to enfranchise people who spoke Spanish who had come from Puerto Rico, Congress put an amendment in the Voting Rights Act of 1965 which nullified the State literacy test of New York, which had been adjudged valid by the courts, and which was shown by the case of Lassiter against Board of Electors of Northampton County, N.C., to be in perfect compliance with the equal protection clause of the 14th amendment.

Congress not only did that, but it established another law in place of the New York literacy test, which New York clearly had the right to establish under the equal protection clause of the 14th amendment because it applied in like manner to all the people in New York. The court held that Congress not only could nullify a valid law of the State, but that it could pass a law to take its place, which Congress was forbidden to pass by the second section of the first article, the first section of the second article, and the 17th amendment.

That was going pretty far. It takes a certain amount of judicial and intellectual gymnastics to reach such an absurd conclusion as that. The majority of the Court, however, reached it, and they reached it by a process of reasoning without parallel in the decisions of the Supreme Court, which was inconsistent with scores and scores of other Supreme Court decisions.

The Court reached the strange conclusion that when Congress undertook to exercise its power under section 5 of the 14th amendment to prevent a State from denying any person within its borders the equal protection of the laws, the Court lost its power—the Supreme Court of the United States lost its power—to determine whether the State law annulled by the act of Congress was a valid law within the purview of the equal protection clause of the 14th amendment, and that the only thing that the Supreme Court could do in that kind of a situation was to determine whether the act of Congress—whether consistent or inconsistent with the equal protection clause, whether or not forbidden by three other sections of the Constitution——

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

Mr. ERVIN. I yield myself 5 more minutes. Would have the effect, in the future, or preventing the State affected from violating the equal protection clause.

There was not a scintilla of testimony that Spanish-speaking people had been discriminated against intentionally under this law, but the court held that regardless of whether or not the New York literacy test was a valid law under the first section of the 14th amendment, the court would have to uphold that law because this would give the Puerto Ricans political power, and their political power would enable them to keep New York State thereafter from depriving them of the equal protection of the laws.

There are some very caustic comments on this decision by one of the greatest constitutional scholars in this country, Alexander M. Bickel, of Yale Law School. These remarks are set forth in the Supreme Court Review for 1966, on pages 95 through 101.

In referring to this decision of the Supreme Court, which was a decision by a divided court, Professor Bickel pointed out the fallacy of the argument that this would prevent New York from violating the equal protection clause in the future—the political power they gave to the Puerto Ricans, in violation of what had always been the correct interpretation of the equal protection clause of the 14th amendment. He says:

> The argument is superficially attractive. But suppose Congress decided that aliens or eighteen-year-olds or residents of New Jersey are being discriminated against in New York. The decision would be as plausible as the one concerning Spanish-speaking Puerto Ricans. Could Congress give these groups the vote? If Congress may freely bestow the vote as a means of curing other discriminations, which it fears may be practiced against groups deprived of the vote, essentially because of this deprivation and on the basis of no other evidence, then there is nothing left of state autonomy in setting qualifications for voting. The argument proves too much. The Court relied on Marshall's famous pronouncement: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." The Court duly emphasized appropriateness, and adaptation to a given end, but it de-emphasized altogether too much Marshall's caveat that the means chosen must also not be prohibited, and must "consist with the letter and spirit of the constitution."

Here, the Supreme Court used a quotation from John Marshall, and its use of this quotation from John Marshall's opinion must have caused John Marshall to turn over in his grave. I say this because John Marshall's judgment said the end must be legitimate. It was not legitimate for Congress to prescribe a literacy test in New York. He said:

> Not only must it be legitimate, but also, it must be within the scope of the Constitution.

What Congress did in outlawing the New York literacy test was outside the scope of the Constitution.

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

Mr. ERVIN. I yield myself 3 additional minutes.

Marshall said, in the third place, that the means chosen must not be prohibited. Yet, the means chosen by Congress in outlawing the literacy test did not come within the meaning of Chief Justice Marshall's statement, which was cited to uphold it, in three respects: The end was not legitimate, it was not within the scope of the Constitution, and it was forbidden by three separate provisions of the Constitution.

Why do I lay emphasis upon these decisions? If bills of attainder can be passed against States, if States can be deprived of their people and their officials of their constitutional rights without due process of law, then any kind of bill Congress passes about States is perfectly valid. So Congress now can pass a bill like this one, that says that a Federal judge can remove a Governor from office—this is not what it says expressly, but what it means—or other elected official of a State or county from office, if that Federal judge finds that the voters of that State elected that Governor because they preferred a man of his race or a man of his religion or a man of his national origin or a person of his sex, rather than a person of some other race or religion or national origin or sex.

Having seen some of the decisions of some Federal judges in latter days—such as the decision of Judge Robert Merhige in Richmond, Va., a short time ago—I have lost my capacity to be surprised by a decision of a Federal judge.

For that reason, I offer this amendment, in collaboration with my good friend, the distinguished Senator from Alabama, to make certain that Federal judges cannot remove elected State and county officials from office or tell them whom they have to have as their selections to advise them with respect to their constitutional and legal responsibilities. To my mind, it would be intolerable for a Federal judge to say to the Governor of a State or to a board of county commissioners that they had to take a legal adviser selected by a Federal judge rather than one selected by themselves.

Mr. President, I ask unanimous consent that the discussion in the Supreme Court review of 1966 on the case of Katzenbach against Morgan and the dissenting opinion in that case be printed in the RECORD.

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

[No. 847. Argued April 18, 1966.—Decided June 13, 1966.*]

KATZENBACH, ATTORNEY GENERAL, ET AL. *v.* MORGAN ET UX.

APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Appellees, registered voters in New York City, brought this suit to challenge the constitutionality of § 4(e) of the Voting Rights Act of 1965 to the extent that the provision prohibits enforcement of the statutory requirement for literacy in English as applied to numerous New York City residents from Puerto Rico who, because of that requirement, had previously been denied the right to vote. Section 4(e) provides that no person who has completed the sixth grade in a public school, or an accredited private school, in Puerto Rico in which the language of instruction was other than English shall be disfranchised for inability to read or write English. A three-judge District Court granted appellees declaratory and injunctive relief, holding that in enacting § 4(e) Congress had exceeded its powers. *Held:* Section 4(e) is a proper exercise of the powers under § 5 of the Fourteenth Amendment, and by virtue of the Supremacy Clause, New York's English literacy requirement cannot be enforced to the extent it conflicts with § 4(e). Pp. 646–658.

Footnotes at end of article.

(a) Though the States have power to fix voting qualifications, they cannot do so contrary to the Fourteenth Amendment or any other constitutional provision. P. 647.

(b) Congress' power under § 5 of the Fourteenth Amendment to enact legislation prohibiting enforcement of a state law is not limited to situations where the state law has been adjudged to violate the provisions of the Amendment which Congress sought to enforce. It is therefore the Court's task here to determine, not whether New York's English literacy requirement as applied violates the Equal Protection Clause, but whether § 4(e)'s prohibition against that requirement is "appropriate legislation" to enforce the Clause. *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, distinguished. Pp. 648–650.

(c) Section 5 of the Fourteenth Amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining the need for and nature of legislation to secure Fourteenth Amendment guarantees. The test of *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, is to be applied to determine whether a congressional enactment is "appropriate legislation" under § 5 of the Fourteenth Amendment. Pp. 650–651.

(d) Section 4(e) was enacted to enforce the Equal Protection Clause as a measure to secure nondiscriminatory treatment by government for numerous Puerto Ricans residing in New York, both in the imposition of voting qualifications and the provision or administration of governmental services. Pp. 652–653.

(e) Congress had an adequate basis for deciding that § 4(e) was plainly adapted to that end. Pp. 653–656.

(f) Section 4(e) does not itself invidiously discriminate in violation of the Fifth Amendment for failure to extend relief to those educated in non-American flag schools. A reform measure such as § 4(e) is not invalid because Congress might have gone further than it did and did not eliminate all the evils at the same time. Pp. 656–658.

247 F. Supp. 196, reversed.

Solicitor General Marshall argued the cause for appellants in No. 847. With him on the brief were *Assistant Attorney General Doar, Ralph S. Spritzer, Louis F. Claiborne, St. John Barrett* and *Louis M. Kauder.*

J. Ree Rankin argued the cause for appellant in No. 877. With him on the brief were *Norman Redlich* and *Seymour B. Quel.*

Alfred Avins argued the cause and filed a brief for appellees in both cases.

Rafael Hernandez Colon, Attorney General, argued the cause and filed a brief for the Commonwealth of Puerto Rico, as *amicus curiae*, urging reversal.

Jean M. Coon, Assistant Attorney General, argued the cause for the State of New York, as *amicus curiae*, urging affirmance. With her on the brief were *Louis J. Lefkowitz*, Attorney General, and *Ruth Kessler Toch*, Acting Solicitor General.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

These cases concern the constitutionality of § 4(e) of the Voting Rights Act of 1965.[1] That law, in the respects pertinent in these cases, provides that no person who has successfully completed the sixth primary grade in a public school in, or a private school accredited by, the Commonwealth of Puerto Rico in which the language of instruction was other than English shall be denied the right to vote in any election because of his inability to read or write English. Appellees, registered voters in New York City, brought this suit to challenge the constitutionality of § 4(e) insofar as it *pro tanto* prohibits the enforcement of the election laws of New York[2] requiring an ability to read and write English as a condition of voting. Under these laws many of the several hundred thousand New York City residents who have migrated there from the Commonwealth of Puerto Rico had previously been denied the right to vote, and appellees attack § 4(e) insofar as it would enable many of these citizens to vote.[3] Pursuant to § 14(b) of the Voting Rights Act of 1965, appellees commenced this proceeding in the District Court for the District of Columbia seeking a declaration that § 4(e) is invalid and an injunction prohibiting appellants, the Attorney General of the United States and the New York City Board of Elections, from either enforcing or complying with § 4(e).[4] A three-judge district court was designated. 28 U.S.C. §§ 2282, 2284 (1964 ed.). Upon cross motions for summary judgment, that court, one judge dissenting, granted the declaratory and injunctive relief appellees sought. The court held that in enacting § 4(e) Congress exceeded the powers granted to it by the Constitution and therefore usurped powers reserved to the States by the Tenth Amendment. 247 F. Supp. 196. Appeals were taken directly to this Court, 28 U.S.C. §§ 1252, 1253 (1964 ed.), and we noted probable jurisdiction. 382 U.S. 1007. We reverse. We hold that, in the application challenged in these cases, § 4(e) is a proper exercise of the powers granted to Congress by § 5 of the Fourteenth Amendment[5] and that by force of the Supremacy Clause, Article VI, the New York English literacy requirement cannot be enforced to the extent that it is inconsistent with § 4(e).

Under the distribution of powers effected by the Constitution, the States establish qualifications for voting for state officers, and the qualifications established by the States for voting for members of the most numerous branch of the state legislature also determine who may vote for United States Representatives and Senators, Art. I, § 2; Seventeenth Amendment; *Ex parte Yarbrough*, 110 U.S. 651, 663. But, of course, the States have no power to grant or withhold the franchise on conditions that are forbidden by the Fourteenth Amendment, or any other provision of the Constitution. Such exercises of state power are no more immune to the limitations of the Fourteenth Amendment than any other state action. The Equal Protection Clause itself has been held to forbid some state laws that restrict the right to vote.[6]

The Attorney General of the State of New York argues that an exercise of congressional power under § 5 of the Fourteenth Amendment that prohibits the enforcement of a state law can only be sustained if the judicial branch determines that the state law is prohibited by the provisions of the Amendment that Congress sought to enforce. More specifically, he urges that § 4(e) cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by § 4(e) is forbidden by the Equal Protection Clause itself. We disagree. Neither the language nor history of § 5 supports such a construction.[7] As was said with regard to § 5 in *Ex parte Virginia*, 100 U.S. 339, 345, "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment.[8] It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional, or of merely informing the judgment of the judiciary by particularizing the "majestic generalities" of § 1 of the Amendment. See *Fay* v. *New York*, 332 U.S. 261, 282–284.

Thus our task in this case is not to determine whether the New York English literacy requirement as applied to deny the right to vote to a person who successfully completed the sixth grade in a Puerto Rican school violates the Equal Protection Clause. Accordingly, our decision in *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, sustaining the North Carolina English literacy requirement as not in all circumstances prohibited by the first sections of the Fourteenth and Fifteenth Amendments, is inapposite. Compare also *Guinn* v. *United States*, 238 U.S. 347, 366; *Camacho* v. *Doe*, 31 Misc. 2d 692, 221 N. Y. S. 2d 262 (1958), aff'd 7 N. Y. 2d 762, 163 N. E. 2d 140 (1959); *Camacho* v. *Rogers*, 199 F. Supp. 155 (D. C. S. D. N. Y. 1961). *Lassiter* did not present the question before us here: Without regard to whether the judiciary would find that the Equal Protection Clause itself nullifies New York's English literacy requirement as so applied, could Congress prohibit the enforcement of the state law by legislating under § 5 of the Fourteenth Amendment? In answering this question, our task is limited to determining whether such legislation is, as required by §5, appropriate legislation to enforce the Equal Protection Clause.

By including § 5 the draftsmen sought to grant to Congress, by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18.[9] The classic formulation of the reach of those powers was established by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421:

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

Ex parte Virginia, 100 U.S. at 345–346, decided 12 years after the adoption of the Fourteenth Amendment, held that congressional power under § 5 had this same broad scope:

"Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibtied, is brought within the domain of congressional power." *Strauder* v. *West Virginia*, 100 U.S. 303, 311; *Virginia* v. *Rives*, 100 U.S. 313, 318. Section 2 of the Fifteenth Amendment grants Congress a similar power to enforce by "appropriate legislation" the provisions of that amendment; and we recently held in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 326, that "[t]he basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States." That test was identified as the one formulated in *McCulloch* v. *Maryland*. See also *James Everard's Breweries* v. *Day*, 265 U.S. 545, 558–559 (Eighteenth Amendment). Thus the *McCulloch* v. *Maryland* standard is the measure of what constitutes "appropriate legislation" under § 5 of the Fourteenth Amendment. Correctly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment.

We therefore proceed to the consideration whether § 4(e) is "appropriate legislation" to enforce the Equal Protection Clause, that

Footnotes at end of article.

is, under the *McCulloch* v. *Maryland* standard, whether § 4(e) may be regarded as an enactment to enforce the Equal Protection Clause, whether it is "plainly adapted to that end" and whether it is not prohibited by but is consistent with "the letter and spirit of the constitution." [10]

There can be no doubt that § 4(e) may be regarded as an enactment to enforce the Equal Protection Clause. Congress explicitly declared that it enacted § 4(e) "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English." The persons referred to include those who have migrated from the Commonwealth of Puerto Rico to New York and who have been denied the right to vote because of their inability to read and write English, and the Fourteenth Amendment rights referred to include those emanating from the Equal Protection Clause. More specifically, § 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York non-discriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.

Section 4(e) may be readily seen as "plainly adapted" to furthering these aims of the Equal Protection Clause. The practical effect of § 4(e) is to prohibit New York from denying the right to vote to large segments of its Puerto Rican community. Congress has thus prohibited the State from denying to that community the right that is "preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370. This enhanced political power will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community.[11] Section 4(e) thereby enables the Puerto Rican minority better to obtain "perfect equality of civil rights and the equal protection of the laws." It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support § 4(e) in the application in question in this case. Any contrary conclusion would require us to be blind to the realities familiar to the legislators.[12]

The result is no different if we confine our inquiry to the question whether § 4(e) was merely legislation aimed at the elimination of an invidious discrimination in establishing voter qualifications. We are told that New York's English literacy requirement originated in the desire to provide an incentive for non-English speaking immigrants to learn the English language and in order to assure the intelligent exercise of the franchise. Yet Congress might well have questioned, in light of the many exemptions provided,[13] and some evidence suggesting that prejudice played a prominent role in the enactment of the requirement,[14] whether these were actually the interests being served. Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise.[15] Finally, Congress might well have concluded that as a means of furthering the intelligent exercise of the franchise, an ability to read or understand Spanish is as effective as ability to read English for those to whom Spanish-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs.[16] Since Congress undertook to legislate so as to preclude the enforcement of the state law, and did so in the context of a general appraisal of literacy requirements for voting, see *South Carolina v. Katzenbach, supra,* to which it brought a specially informed legislative competence,[17] it was Congress' prerogative to weigh these competing considerations. Here again, it is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause.

There remains the question whether the congressional remedies adopted in § 4(e) constitute means which are not prohibited by, but are consistent "with the letter and spirit of the constitution." The only respect in which appellees contend that § 4(e) fails in this regard is that the section itself works an invidious discrimination in violation of the Fifth Amendment by prohibiting the enforcement of the English literacy requirement only for those educated in American-flag schools (schools located within United States jurisdiction) in which the language of instruction was other than English, and not for those educated in schools beyond the territorial limits of the United States in which the language of instruction was also other than English. This is not a complaint that Congress, in enacting § 4(e), has unconstitutionally denied or diluted anyone's right to vote but rather that Congress violated the Constitution by not extending the relief effected in § 4(e) to those educated in non-American-flag schools. We need not pause to determine whether appellees have a sufficient personal interest to have § 4(e) invalidated on this ground, see generally *United States* v. *Raines*, 362 U.S. 17, since the argument, in our view, falls on the merits.

Section 4(e) does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law. Thus we need not decide whether a state literacy law conditioning the right to vote on achieving a certain level of education in an American-flag school (regardless of the language of instruction) discriminates invidiously against those educated in non-American-flag schools. We need only decide whether the challenged limitation on the relief effected in § 4(e) was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights, see n. 15, *supra,* is inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a "statute is not invalid under the Constitution because it might have gone farther than it did," *Roschen* v. *Ward*, 279 U.S. 337, 339, that a legislature need not "strike at all evils at the same time," *Semler* v. *Dental Examiners*, 294 U.S. 608, 610, and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.

Guided by these principles, we are satisfied that appellees' challenge to this limitation in § 4(e) is without merit. In the context of the case before us, the congressional choice to limit the relief effected in § 4(e) may, for example, reflect Congress' greater familiarity with the quality of instruction in American-flag schools,[18] a recognition of the unique historic relationship between the Congress and the Commonwealth of Puerto Rico,[19] an awareness of the Federal Government's acceptance of the desirability of the use of Spanish as the language of instruction in Commonwealth schools,[20] and the fact that Congress has fostered policies encouraging migration from the Commonwealth to the States.[21] We have no occasion to determine in this case whether such factors would justify a similar distinction embodied in a voting-qualification law that denied the franchise to persons educated in non-American-flag schools. We hold only that the limitation on relief effected in § 4(e) does not constitute a forbidden discrimination since these factors might well have been the basis for the decision of Congress to go "no farther than it did."

We therefore conclude that § 4(e), in the application challenged in this case, is appropriate legislation to enforce the Equal Protection Clause and that the judgment of the District Court must be and hereby is

Reversed.

Mr. JUSTICE DOUGLAS joins the Court's opinion except for the discussion, at pp. 656–658, of the question whether the congressional remedies adopted in § 4(e) constitute means which are not prohibited by, but are consistent with "the letter and spirit of the constitution." On that question, he reserves judgment until such time as it is presented by a member of the class against which that particular discrimination is directed.

MR. JUSTICE HARLAN, whom MR. JUSTICE STEWART joins, dissenting.*

Worthy as its purposes may be thought by many, I do not see how § 4(e) of the Voting Rights Act of 1965, 79 Stat. 439, 42 U.S.C. § 1973b(e) (1964 ed. Supp. I), can be sustained except at the sacrifice of fundamentals in the American constitutional system—the separation between the legislative and judicial function and the boundaries between federal and state political authority. By the same token I think that the validity of New York's literacy test, a question which the Court considers only in the context of the federal statute, must be upheld. It will conduce to analytical clarity if I discuss the second issue first.

FOOTNOTES

*Together with No. 877, *New York City Board of Elections* v. *Morgan et ux.*, also on appeal from the same court.

[1] The full text of § 4(e) is as follows:

"(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

"(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law

Footnotes at end of article.

provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English." 79 Stat. 439, 42 U.S.C. § 1937b(e) (1964 ed., Supp. I).

[2] Article II, § 1, of the New York Constitution provides, in pertinent part:

"Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

Section 150 of the New York Election Law provides, in pertinent part:

". . . In the case of a person who became entitled to vote in this state by attaining majority, by naturalizatiton or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A 'new voter,' within the meaning of this article, is a person who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight."

Section 168 of the New York Election Law provides, in pertinent part:

"1. The board of regents of the state of New York shall make provisions for the giving of literacy tests.

"2. . . . But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school is which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language or a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance."

Section 168 of the Election Law as it now reads was enacted while § 4(e) was under consideration in Congress. See 111 Cong. Rec. 19376–19377. The prior law required the successful completion of the eighth rather than the sixth grade in a school in which the language of instruction was English.

[3] This limitation on appellees' challenge to § 4(e), and thus on the scope of our inquiry, does not distort the primary intent of § 4(e). The measure was sponsored in the Senate by Senators Javits and Kennedy and in the House by Representatives Gilbert and Ryan, all of New York, for the explicit purpose of dealing with the disenfranchisement of large segments of the Puerto Rican population in New York. Throughout the congressional debate it was repeatedly acknowledged that § 4(e) had particular reference to the Puerto Rican population in New York. That situation was the almost exclusive subject of discussion. See 111 Cong. Rec. 11028, 11060–11074, 15666, 16235–16245, 16282–16283, 19192–19201, 19375–19378; see also Voting Rights, Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400, 89th Cong., 1st Sess., 100–101, 420–421, 508–517 (1965). The Solicitor General informs us in his brief to this Court, that in all probability the practical effort of § 4(e) will be limited to enfranchising those educated in Puerto Rican schools. He advises us that, aside from the schools in the Commonwealth of Puerto Rico, there are no public or parochial schools in the territorial limits of the United States in which the predominant language of instruction is other than English and which would have generally been attended by persons who are otherwise qualified to vote save for their lack of literacy in English.

[4] Section 14(b) provides, in pertinent part:

"No court other than the District Court for the District of Columbia . . . shall have jurisdiction to issue . . . any restraining order or temporary or permanent injunction against the . . . enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto." 79 Stat. 445, 42 U.S.C. § 1973*l*(b) (1964 ed., Supp. I).

The Attorney General of the United States was initially named as the sole defendant. The New York City Board of Elections was joined as a defendant after it publicly announced its intention to comply with § 4(e); it has taken the position in these proceedings that § 4(e) is a proper exercise of congressional power. The Attorney General of the State of New York has participated as *amicus curiae* in the proceedings below and in this Court, urging § 4(e) be declared unconstitutional. The United States was granted leave to intervene as a defendant, 28 U.S.C. § 2403 (1964 ed.); Fed. Rule Civ. Proc. 24(a).

[5] "SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

It is therefore unnecessary for us to consider whether § 4(e) could be sustained as an exercise of power under the Territorial Clause, Art. IV, § 3; see dissenting opinion of Judge McGowan below, 247 F. Supp., at 204; or as a measure to discharge certain treaty obligations of the United States, see Treaty of Paris of 1898, 30 Stat. 1754, 1759; United Nations Charter, Articles 55 and 56; Art. I, § 8, cl. 18. Nor need we consider whether § 4(e) could be sustained insofar as it relates to the election of federal officers as an exercise of congressional power under Art. I, § 4, see *Minor* v. *Happersett*, 21 Wall. 162, 171; *United States* v. *Classic*, 313 U.S. 299, 315; Literacy Tests and Voter Requirements in Federal and State Elections, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on S. 480, S. 2750, and S. 2979, 87th Cong., 2d Sess., 302, 306–311 (1962) (brief of the Attorney General); nor whether § 4(e) could be sustained, insofar as it relates to the election of state officers, as an exercise of congressional power to enforce the clause guaranteeing to each State a republican form of government, Art. IV, § 4; Art. I, § 8, cl. 18.

[6] *Harper* v. *Virginia Board of Elections*, 383 U.S. 663; *Carrington* v. *Rash*, 380 U. S. 89. See also *United States* v. *Mississippi*, 380 U. S. 128; *Louisiana* v. *United States*, 380 U. S. 145, 151; *Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45; *Pope* v. *Williams*, 193 U. S. 621, 632–634; *Minor* v. *Happersett*, 21 Wall. 162; cf. *Burns* v. *Richardson*, *ante*, p. 73, at 92; *Reynolds* v. *Sims*, 377 U. S. 533.

[7] For the historical evidence suggesting that the sponsors and supporters of the Amendment were primarily interested in augmenting the power of Congress, rather than the judiciary, see generally Frantz, Congressional Power to Enforce the Fourteenth Amendment Against Private Acts, 73 Yale L. J. 1353, 1356–1357; Harris, The Quest for Equality, 33–56 (1960); tenBroek, The Antislavery Origins of the Fourteenth Amendment 187–217 (1951).

[8] Senator Howard, in introducing the proposed Amendment to the Senate, described § 5 as "a direct affirmative delegation of power to Congress," and added:

"It casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith, and that no State infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it thus imposes upon Congress this power and this duty. It enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment." Cong. Globe, 39th Cong., 1st Sess., 2766, 2768 (1866).

This statement of § 5's purpose was not questioned by anyone in the course of the debate. Flack, The Adoption of the Fourteenth Amendment 138 (1908).

[9] In fact, earlier drafts of the proposed Amendment employed the "necessary and proper" terminology to describe the scope of congressional power under the Amendment. See tenBroek, The Antislavery Origins of the Fourteenth Amendment 187–190 (1951). The substitution of the "appropriate legislation" formula was never thought to have the effect of diminishing the scope of this congressional power. See, *e. g.*, Cong. Globe, 42d Cong., 1st Sess., App. 83 (Representative Bingham, a principal draftsman of the Amendment and the earlier proposals).

[10] Contrary to the suggestion of the dissent, *post*, p. 668, § 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees to the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be—as required by § 5—a measure "to enforce" the Equal Protection Clause since that clause of its own force prohibits such state laws.

[11] Cf. *James Everard's Breweries* v. *Day*, *supra*, which held that, under the Enforcement Clause of the Eighteenth Amendment, Congress could prohibit the prescription of intoxicating malt liquor for medicinal purposes even though the Amendment itself only prohibited the manufacture and sale of intoxicating liquors for beverage purposes. Cf. also the settled principle applied in the *Shreveport Case* (*Houston, E. & W. T. R. Co.* v. *United States*, 234 U.S. 342), and expressed in *United States* v. *Darby*, 312 U.S. 100, 118, that the power of Congress to regulate interstate commerce "extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end . . . ." Accord, *Atlanta Motel* v. *United States*, 379 U.S. 241, 258.

[12] See, *e. g.*, 111 Cong. Rec. 11061–11062, 11065–11066, 16240; Literacy Tests and Voter Requirements in Federal and State Elections, Senate Hearings, n. 5, *supra*, 507–508.

[13] The principal exemption complained of is that for persons who had been eligible to vote before January 1, 1922. See n. 2, *supra*.

[14] This evidence consists in part of statements made in the Constitutional Convention first considering the English literacy requirement, such as the following made by the sponsor of the measure: "More precious even than the forms of government are the mental qualities of our race. While those stand unimpaired, all is safe. They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the wholesale, but valuable and necessary infusion of Southern and Eastern European races. . . . The danger has begun. . . . We should check it." III New York State Constitutional Convention 3012 (Rev. Record 1916).

See also *id.*, at 3015–3017, 3021–3055. This evidence was reinforced by an understanding of the cultural milieu at the time of proposal and enactment, spanning a period from 1915 to 1921—not one of the enlightened eras of

our history. See generally Chafee, Free Speech in the United States 102, 237, 269–282 (1954 ed.). Congress was aware of this evidence. See, *e.g.*, Literacy Tests and Voter Requirements in Federal and State Elections, Senate Hearings, n. 5, *supra*, 507–513; Voting Rights, House Hearings, n. 3, *supra*, 508–513.

[15] Other States have found ways of assuring an intelligent exercise of the franchise short of total disenfranchisement of persons not literate in English. For example, in Hawaii, where literacy in either English or Hawaiian suffices, candidates' names may be printed in both languages, Hawaii Rev. Laws § 11–38 (1963 Supp.); New York itself already provides assistance for those exempt from the literacy requirement and are literate in no language, N.Y. Election Law § 169; and, of course, the problem of assuring the intelligent exercise of the franchise has been met by those States, more than 30 in number, that have no literacy requirement at all, see *e.g.*, Fla. Stat. Ann. §§ 97.061, 101.061 (1960) (form of personal assistance); New Mexico Stat. Ann. §§ 3–2–11, 3–3–13 (personal assistance for those literate in no language), §§ 3–3–7, 3–3–12, 3–2–41 (1953) (ballots and instructions authorized to be printed in English or Spanish). Section 4(e) does not preclude resort to these alternative methods of assuring the intelligent exercise of the franchise. True, the statute precludes, for a certain class, disenfranchisement and thus limits the States' choice of means of satisfying a purported state interest. But our cases have held that the States can be required to tailor carefully the means of satisfying a legitimate state interest when fundamental liberties and rights are threatened, see, *e.g.*, *Carrington* v. *Rash*, 380 U.S. 89, 96; *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 670; *Thomas* v. *Collins*, 323 U.S. 516, 529–530; *Thornhill* v. *Alabama*, 310 U.S. 88, 95–96; *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152–153, n. 4; *Meyer* v. *Nebraska*, 262 U.S. 390; and Congress is free to apply the same principle in the exercise of its powers.

[16] See, *e.g.*, 111 Cong. Rec. 11060–11061, 15666, 16235. The record in this case includes affidavits describing the nature of New York's two major Spanish-language newspapers, one daily and one weekly, and its three full-time Spanish-language radio stations and affidavits from those who have campaigned in Spanish-speaking areas.

[17] See, *e.g.*, 111 Cong. Rec. 11061 (Senator Long of Louisiana and Senator Young), 11064 (Senator Holland), drawing on their experience with voters literate in a language other than English. See also an affidavit from Representative Willis of Louisiana expressing the view that on the basis of his thirty years' personal experience in politics he has "formed a definite opinion that French-speaking voters who are illiterate in English generally have as clear a grasp of the issues and understanding of the candidates, as do people who read and write the English language."

[18] See, *e.g.*, 111 Cong. Rec. 11060–11061.

[19] See Magruder, The Commonwealth Status of Puerto Rico, 15 U. Pitt. L. Rev. 1 (1953).

[20] See, *e.g.*, 111 Cong. Rec. 11060–11061, 11066, 11073, 16235. See Osuna, A History of Education in Puerto Rico (1949).

[21] See, *e.g.*, 111 Cong. Rec. 16235; Voting Rights, House Hearings, n. 3, *supra*, 362. See also Jones Act of 1917, 39 Stat. 953, conferring United States citizenship on all citizens of Puerto Rico.

THE CARDONA CASE (No. 673)

This case presents a straightforward Equal Protection problem. Appellant, a resident and citizen of New York, sought to register to vote but was refused registration because she failed to meet the New York English literacy qualification respecting eligibility for the franchise.[1] She maintained that although she could not read or write English, she had been born and educated in Puerto Rico and was literate in Spanish. She alleges that New York's statute requiring satisfaction of an English literacy test is an arbitrary and irrational classification that violates the Equal Protection Clause at least as applied to someone who, like herself, is literate in Spanish.

Any analysis of this problem must begin with the established rule of law that the franchise is essentially a matter of state concern, *Minor* v. *Happersett*, 21 Wall. 162; *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, subject only to the overriding requirements of various federal constitutional provisions dealing with the franchise, *e.g.*, the Fifteenth, Seventeenth, Nineteenth, and Twenty-fourth Amendments,[2] and, as more recently decided, to the general principles of the Fourteenth Amendment. *Reynolds* v. *Sims*, 377 U.S. 533; *Carrington* v. *Rash*, 380 U.S. 89.

The Equal Protection Clause of the Fourteenth Amendment, which alone concerns us here, forbids a State from arbitrarily discriminating among different classes of persons. Of course it has always been recognized that nearly all legislation involves some sort of classification, and the equal protection test applied by this Court is a narrow one: a state enactment or practice may be struck down under the clause only if it cannot be justified as founded upon a rational and permissible state policy. See, *e.g.*, *Powell* v. *Pennsylvania*, 127 U.S. 678; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61; *Walters* v. *City of St. Louis*, 347 U.S. 231.

It is suggested that a different and broader equal protection standard applies in cases where "fundamental liberties and rights are threatened," see *ante*, p. 655, note 16; dissenting opinion of DOUGLAS, J., in *Cardona*, *post*, pp. 676–677, which would require a State to show a need greater than mere rational policy to justify classifications in this area. No such dual-level test has ever been articulated by this Court, and I do not believe that any such approach is consistent with the purposes of the Equal Protection Clause, with the overwhelming weight of authority, or with well-established principles of federalism which underlie the Equal Protection Clause.

Thus for me, applying the basic equal protection standard, the issue in this case is whether New York has shown that its English-language literacy test is reasonably designed to serve a legitimate state interest. I think that it has.

In 1959, in *Lassiter* v. *Northampton Election Bd.*, *supra*, this Court dealt with substantially the same question and resolved it unanimously in favor of the legitimacy of a state literacy qualification. There a North Carolina English literacy test was challenged. We held that there was "wide scope" for State qualifications of this sort. 360 U.S., at 51. Dealing with literacy tests generally, the Court there held:

"The ability to read and write . . . has some relation to standards designed to promote intelligent use of the ballot. . . . Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. . . . It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone* v. *Smith*, 159 Mass. 413–414, 34 N. E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards." 360 U.S., at 51–53.

I believe the same interests recounted in *Lassiter* indubitably point toward upholding the rationality of the New York voting test. It is true that the issue here is not so simply drawn between literacy *per se* and illiteracy. Appellant alleges that she is literate in Spanish, and that she studied American history and government in United States Spanish-speaking schools in Puerto Rico. She alleges further that she is "a regular reader of the New York City Spanish-language daily newspapers and other periodicals, which . . . provide proportionately more coverage of government and politics than do most English-language newspapers," and that she listens to Spanish-language radio broadcasts in New York which provide full treatment of governmental and political news. It is thus maintained that whatever may be the validity of literacy tests *per se* as a condition of voting, application of such a test to one literate in Spanish, in the context of the large and politically significant Spanish-speaking community in New York, serves no legitimate state interest, and is thus an arbitrary classification that violates the Equal Protection Clause.

Although to be sure there is a difference between a totally illiterate person and one who is literate in a foreign tongue, I do not believe that this added factor vitiates the constitutionality of the New York statute. Accepting appellant's allegations as true, it is nevertheless also true that the range of material available to a resident of New York literate only in Spanish is much more limited than what is available to an English-speaking resident, that the business of national, state, and local government is conducted in English, and that propositions, amendments, and offices for which candidates are running listed on the ballot are likewise in English. It is also true that most candidates, certainly those campaigning on a national or statewide level, make their speeches in English. New York may justifiably want its voters to be able to understand candidates directly, rather than through imprecise translations or summaries reported in a limited number of Spanish news media. It is noteworthy that the Federal Government requires literacy in English as a prerequisite to naturalization, 66 State. 239, 8 U.S.C. § 1423 (1964 ed.), attesting to the national view of its importance as a prerequisite to full integration into the American political community. Relevant too is the fact that the New York English test is not complex,[3] that it is fairly administered,[4] and that New York maintains free adult education classes which appellant and members of her class are encouraged to attend.[5] Given the State's legitimate concern with promoting and safeguarding the intelligent use of the ballot, and given also New York's long experience with the process of integrating non-English-speaking residents into the mainstream of American life, I do not see how it can be said that this qualification for suffrage is unconstitutional. I would uphold the validity of the New York statute, unless the federal statute prevents that result, the question to which I now turn.

II

THE MORGAN CASES (NOS. 847 AND 877)

These cases involve the same New York suffrage restriction discussed above, but the challenge here comes not in the form of a suit to enjoin enforcement of the state statute, but in a test of the constitutionality of a federal enactment which declares that "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from

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Footnotes at end of article.

conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language." Section 4(e) of the Voting Rights Act of 1965. Section 4(e) declares that anyone who has successfully completed six grades of schooling in an "American-flag" school, in which the primary language is not English, shall not be denied the right to vote because of an inability to satisfy an English literacy test.[6] Although the statute is framed in general terms, so far as has been shown it applies in actual effect only to citizens of Puerto Rican background, and the Court so treats it.

The pivotal question in this instance is what effect the added factor of a congressional enactment has on the straight equal protection argument dealt with above. The Court declares that since § 5 of the Fourteenth Amendment[7] gives to the Congress power to "enforce" the prohibitions of the Amendment by "appropriate" legislation, the test for judicial review of any congressional determination in this area is simply one of rationality; that is, in effect, was Congress acting rationally in declaring that the New York statute is irrational? Although § 5 most certainly does give to the Congress wide powers in the field of devising remedial legislation to effectuate the Amendment's prohibition on arbitrary state action, *Ex parte Virginia*, 100 U. S. 339, I believe the Court has confused the issue of how much enforcement power Congress possesses under § 5 with the distinct issue of what questions are appropriate for congressional determination and what questions are essentially judical in nature.

When recognized state violations of federal constitutional standards have occurred, Congress i of course empowered by § 5 to take appropriate remedial measures to redress and prevent the wrongs. See *Strauder* v. *West Virginia*, 100 U.S. 303, 310. But it is a judicial question whether the condition with which Congress has thus sought to deal is in truth an infringement of the Constitution, something that is the necessary prerequisite to bringing the § 5 power into play at all. Thus, in *Ex parte Virginia, supra*, involving a federal statute making it a federal crime to disqualify anyone from jury service because of race, the Court first held as a matter of constitutional law that "the Fourteenth Amendment secures, among other civil rights, to colored men, when charged with criminal offences against a State, an impartial jury trial, by jurors indifferently selected or chosen without discrimination against such jurors because of their color." 100 U.S., at 345. Only then did the Court hold that to enforce this prohibition upon state discrimination, Congress could enact a criminal statute of the type under consideration. See also *Clyatt* v. *United States*, 197 U.S. 207, sustaining the constitutionality of the antipeonage laws, 14 Stat. 546, now 42 U.S.C. § 1994 (1964 ed.) under the Enforcement Clause of the Thirteenth Amendment.

A more recent Fifteenth Amendment case also serves to illustrate this distinction. In *South Carolina* v. *Katzenbach*, 383 U.S. 301, decided earlier this Term, we held certain remedial sections of this Voting Rights Act of 1965 constitutional under the Fifteenth Amendment, which is directed against deprivations of the right to vote on account of race. In enacting those sections of the Voting Rights Act the Congress made a detailed investigation of various state practices that had been used to deprive Negroes of the franchise. See 383 U.S., at 308–315. In passing upon the remedial provisions, we reviewed first the "voluminous legislative history" as well as judicial precedents supporting the basic congressional finding that the clear commands of the Fifteenth Amendment had been infringed by various state subterfuges. See 393 U.S., at 309, 329–330, 333–334. Given the existence of the evil, we held the remedial steps taken by the legislature under the Enforcement Clause of the Fifteenth Amendment to be a justifiable exercise of congressional initiative.

Section 4(e), however, presents a significantly different type of congressional enactment. The question here is not whether the statute is appropriate remedial legislation to cure an established violation of a constitutional command, but whether there has in fact been an infringement of that constitutional command, that is, whether a particular state practice or, as here, a statute is so arbitrary or irrational as to offend the command of the Equal Protection Clause of the Fourteenth Amendment. That question is one for the judicial branch ultimately to determine. Were the rule otherwise, Congress would be able to qualify this Court's constitutional decisions under the fourteenth and Fifteenth Amendments, let alone those under other provisions of the Constitution, by resorting to congressional power under the Necessary and Proper Clause. In view of this Court's holding in *Lassiter, supra*, that an English literacy test is a permissible exercise of state supervision over its franchise, I do not think it is open to Congress to limit the effect of that decision as it has undertaken to do by § 4(e). In effect the Court reads § 5 of the Fourteenth Amendment as giving Congress the power to define the *substantive* scope of the Amendment. If that indeed be the true reach of § 5, then I do not see why Congress should not be able as well to exercise its § 5 "discretion" by enacting statutes so as in effect to dilute equal protection and due process decisions of this Court. In all such cases there is room for reasonable men to differ as to whether or not a denial of equal protection or due process has occurred, and the final decision is one of judgment. Until today this judgment has always been one for the judiciary to resolve.

I do not mean to suggest in what has been said that a legislative judgment of the type incorporated in § 4(e) is without any force whatsoever. Decisions on questions of equal protection and due process are based not on abstract logic, but on empirical foundations. To the extent "legislative facts" are relevant to a judicial determination, Congress is well equipped to investigate them, and such determinations are of course entitled to due respect.[8] In *South Carolina* v. *Katzenbach, supra*, such legislative findings were made to show that racial discrimination in voting was actually occurring. Similarly, in *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, and *Katzenbach* v. *McClung*, 379 U.S. 294, this Court upheld Title II of the Civil Rights Act of 1964 under the Commerce Clause. There again the congressional determination that racial discrimination in a clearly defined group of public accommodations did effectively impede interstate commerce was based on "voluminous testimony," 379 U.S., at 253, which had been put before the Congress and in the context of which it passed remedial legislation.

But no such factual data provide a legislative record supporting § 4(e)[9] by way of showing that Spanish-speaking citizens are fully as capable of making informed decisions in a New York election as are English-speaking citizens. Nor was there any showing whatever to support the Court's alternative argument that § 4(e) should be viewed as but a remedial measure designed to cure or assure against unconstitutional discrimination of other varieties, *e.g.*, in "public schools, public housing and law enforcement," *ante*, p. 652, to which Puerto Rican minorities might be subject in such communities as New York. There is simply no legislative record supporting such hypothesized discrimination of the sort we have hitherto insisted upon when congressional power is brought to bear on constitutionally reserved state concerns. See *Heart of Atlanta Motel, supra; South Carolina* v. *Katzenbach, supra*.

Thus, we have here not a matter of giving deference to a congressional estimate, based on its determination of legislative facts, bearing upon the validity *vel non* of a statute, but rather what can at most be called a legislative announcement that Congress believes a state law to entail an unconstitutional deprivation of equal protection. Although this kind of declaration is of course entitled to the most respectful consideration, coming as it does from a concurrent branch and one that is knowledgeable in matters of popular political participation, I do not believe it lessens our responsibility to decide the fundamental issue of whether in fact the state enactment violates federal constitutional rights.

In assessing the deference we should give to this kind of congressional expression of policy, it is relevant that the judiciary has always given to congressional enactments a presumption of validity. *The Propeller Genesee Chief* v. *Fitzhugh*, 12 How. 443, 457–458. However, it is also a canon of judicial review that state statutes are given a similar presumption, *Butler* v. *Commonwealth*, 10 How. 402, 415. Whichever way this case is decided, one statute will be rendered inoperative in whole or in part, and although it has been suggested that this Court should give somewhat more deference to Congress than to a state legislature,[10] such a simple weighing of presumptions is hardly a satisfying way of resolving a matter that touches the distribution of state and federal power in an area so sensitive as that of the regulation of the franchise. Rather it should be recognized that while the Fourteenth Amendment is a "brooding omnipresence" over all state legislation, the substantive matters which it touches are all within the primary legislative competence of the States, Federal authority, legislative no less than judicial, does not intrude unless there has been a denial by state action of Fourteenth Amendment limitations, in this instance a denial of equal protection. At least in the area of primary state concern a state statute that passes constitutional muster under the judicial standard of rationality should not be permitted to be set at naught by a mere contrary congressional pronouncement unsupported by a legislative record justifying that conclusion.

To deny the effectiveness of this congressional enactment is not of course to disparage Congress' exertion of authority in the field of civil rights; it is simply to recognize that the Legislative Branch like the other branches of federal authority is subject to the governmental boundaries set by the Constitution. To hold, on this record, that § 4(e) overrides the New York literacy requirement seems to me tantamount to allowing the Fourteenth Amendment to swallow the State's constitutionally ordained primary authority in this field. For if Congress by what, as here, amounts to more *ipse dixit* can set that otherwise permissible requirement partially at naught I see no reason why it could not also substitute its judgment for that of the States in other fields of their exclusive primary competence as well.

I would affirm the judgments in each of these cases.[11]

FOOTNOTES

*[This opinion applies also to *Cardona* v. *Power, post*, p. 672.]

[1] The pertinent portions of the New York Constitution, Art. II, § 1, and statutory provisions are reproduced in the Court's opinion, *ante*, pp. 644–645, n. 2.

[2] The Fifteenth Amendment forbids denial or abridgment of the franchise "on account of race, color, or previous condition of servitude"; the Seventeenth deals with popular election of members of the Senate; the Nineteenth provides for equal suffrage for women; the Twenty-fourth outlaws the poll tax as a qualification for participation in federal elections.

[3] The test is described in McGovney, The American Suffrage Medley 63 (1949) as fol-

lows: "The examination is based upon prose compositions of about ten lines each, prepared by the personnel of the State Department of Education, designed to be of the level of reading in the sixth grade. . . . These are uniform for any single examination throughout the state. The examination is given by school authorities and graded by school superintendents or teachers under careful instructions from the central authority, to secure uniformity of grading as nearly as is possible." The 1943 test, submitted by the Attorney General of New York as representative, is reproduced below:

NEW YORK STATE REGENTS LITERACY TEST

(To be filled in by the candidate in ink)

Write your name here_____
First name Middle initial Last name
Write your address here_____
Write the date here_____
Month Day Year

Read this and then write the answers to the questions.

Read it as many times as you need to.

The legislative branch of the National Government is called the Congress of the United States. Congress makes the laws of the Nation. Congress is composed of two houses. The upper house is called the Senate and its members are called Senators. There are 96 Senators in the upper house, two from each State. Each United States Senator is elected for a term of six years. The lower house of Congress is known as the House of Representatives. The number of Representatives from each state is determined by the population of that state. At present there are 435 members of the House of Representatives. Each Representative is elected for a term of two years. Congress meets in the Capitol at Washington.

The answers to the following questions are to be taken from the above paragraph.

1 How many houses are there in Congress?

2. What does Congress do?

3 What is the lower house of Congress called?

4 How many members are there in the lower house?

5 How long is the term of office of a United States Senator?

6 How many Senators are there from each state?

7 For how long a period are members of the House of Representatives elected?

8 In what city does Congress meet?

[4] There is no allegation of discriminatory enforcement, and the method of examination, see n. 3, *supra*, makes unequal application virtually impossible. McGovney has noted, *op. cit. supra*, at 62, that "New York is the only state in the Union that both has a reasonable reading requirement and administers it in a manner that secures uniformity of application throughout the state and precludes discrimination, so far as is humanly possible." See *Camacho* v. *Rogers*, 199 F. Supp. 155, 159–160.

[5] See McKinney's Consolidated Laws of New York Ann., Education Law § 4605. See generally Handbook of Adult Education in the United States 455–465 (Knowles ed. 1960).

[6] The statute makes an exception to its sixth-grade rule so that where state law "provides that a different level of education is presumptive of literacy," the applicant must show that he has completed "an equivalent level of education" in the foreign-language United States school.

[7] Section 5 of the Fourteenth Amendment states that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

[8] See generally Karst, Legislative Facts in Constitutional Litigation, 1960 The Supreme Court Review 75 (Kurland ed.); Alfange, The Relevance of Legislative Facts in Constitutional Law, 114 U. Pa. L. Rev. 637 (1966).

[9] There were no committee hearings or reports referring to this section, which was introduced from the floor during debate on the full Voting Rights Act. See 111 Cong. Rec. 11027, 15666, 16234.

[10] See Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harv. L. Rev. 129, 154–155 (1893).

[11] A number of other arguments have been suggested to sustain the constitutionality of § 4(e). These are referred to in the Court's opinion, *ante*, pp. 646–647, n. 5. Since all of such arguments are rendered superfluous by the Court's decision and none of them is considered by the majority, I deem it unnecessary to deal with them save to say that in my opinion none of those contentions provides an adequate constitutional basis for sustaining the statute.

III. KATZENBACH V. MORGAN

The third case of the term to pass on the Voting Rights Act of 1965, *Katzenbach v. Morgan*,[70] upheld § 4(e), giving the right to vote to Spanish-speaking Puerto Ricans in New York. It was decided together with a companion case, *Cardona v. Power*,[71] which had arisen and been disposed of in the New York courts before the enactment of the Voting Rights Act of 1965. The Supreme Court vacated and remanded the *Cardona* case, without deciding the constitutionality under the Fourteenth Amendment of the requirement of the New York law that voters be literate in English. (Justices Douglas and Fortas, dissenting, would have held it unconstitutional.) [72] So § 4(e) of the Voting Rights Act, which forbids a state to condition the vote of a person educated in an American-flag school on his ability to read and understand the English language, came to judgment on the assumption that the constitutionality of literacy in English as a condition on the right to vote is an open question under the Fourteenth Amendment.

The Court, Mr. Justice Brennan writing, began by restating a point made in *South Carolina v. Katzenbach*, namely, that Congress is empowered by § 2 of the Fifteen Amendment and § 5 of the Fourteenth to enact legislation appropriate to those constitutional provisions. Such legislation may reach into the affairs of the states further and differently than the Amendments themselves, applied by the courts without the aid of implementing legislation, would necessarily do.[73] This much is obvious enough. But in enacting appropriate legislation, is it up to Congress to define the substance of what the legislation must be appropriate to? If something is not an action of a state denying or abridging the right of citizens of the United States to vote, on account of race, color, or previous condition of servitude, may Congress say that it is, and thus reach it by legislation? If something is not an irrational classification by a state, may Congress say that it is and that it violates the Equal Protection Clause, and thus reach it by legislation? Of course, Congress may amass evidence and add the weight of its views, and thus affect, and affect powerfully, the Court's judgment of the applicability of the Fifteenth and Fourteenth Amendments. But may Congress under those Amendments, any more than under, for example, the Commerce Clause, determine the allocation of functions between federal and state governments, and the extent of its own powers? May it determine, not what means are appropriate to the enforcement of the Fourteenth and Fifteenth Amendments, or to the discharge of the function conferred by the Commerce Clause, but the content of the Amendments and of that clause?

These questions did not arise in *South Carolina v. Katzenbach*, where only the appropriateness of the means chosen by Congress was at issue. But in *Katzenbach v. Morgan* the Court did answer these questions. For it rested its conclusion that § 4(e) is constitutional at least in part on a holding that § 5 of the Fourteenth Amendment empowered Congress to act, whether or not, in the judgment of the Court, the requirement of literacy in English may be regarded as a discrimination forbidden by the Equal Protection Clause. It was urged, said the Court, "that § 4(e) cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by § 4(e) is forbidden by the Equal Protection Clause itself. We disagree." [74] To the extent that the Court, in this branch of its decision, purported to rely on evidence of the intent of the framers of the Fourteenth Amendment, the sufficient reply that can be made is James A. Garfield's to John A. Bingham in the House, nearly a century ago. My colleague, said Garfield, "can make but he cannot unmake history." [75] Nothing is clearer about the history of the Fourteenth Amendment than that its framers rejected the option of an open-ended grant of power to Congress to meddle with conditions within the states so as to render them equal in accordance with its own notions. Rather the framers chose to write an amendment empowering Congress only to rectify inequalities put into effect by the states. Hence the power of Congress comes into play only when the precondition of a denial of equal protection of the laws by a state has been met. Congress' view that the precondition has been met should be persuasive, but it cannot be decisive. That is the history of the matter.[76] But perhaps the Court meant to override history in order to bring § 5 of the Fourteenth Amendment into harmony with some general premise of our constitutional system.

Yet, while Congress must be allowed the widest choice of means in the discharge of its function, the general premise of *Marbury v. Madison*,[77] and of *M'Culloch v. Maryland*,[78] also, is that Congress does not define the limits of its own powers. It belongs, rather, to the Court, exercising the function of judicial review, to do so. When it applies the dormant Commerce Clause to the states, or when it protects federal instrumentalities from taxation by the states, the Court acts as a surrogate of Congress, and Congress, therefore, has the last word.[79] In a few other areas—taxation and spending for the general welfare is one; exclusion of aliens has been thought to be another—the Court, finding no standards to guide the exercise of judicial review, has abandoned the function. But the function has not yet been abandoned across the board. Whatever, then, could be the reasons for abdicating judicial review in this area of the Fourteenth Amendment, where it has been traditionally dominant? Certainly no general presumption of our constitutional system counsels any such abdication.

There is a second branch to the Court's decision in *Katzenbach v. Morgan*, which is subtler and more interesting. Congress, said the Court, may not have considered the New York requirement of literacy in English as itself a violation of the Fourteenth Amendment. Rather Congress may have been concerned with evidence of discriminatory treatment of the Puerto Rican community at the hands of New York public agencies. The Court was able to adduce no evidence of such discrimination, either out of the materials that were before Congress or independently of those materials.[80] But perhaps, with some stretching, the presumption of constitutionality should make up for this lack of evi-

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Footnotes at end of article.

dence.[81] The argument then proceeds in this fashion. Instead of directly attacking the discrimination practiced against the Puerto Ricans, as it could plainly have done under the Fourteenth Amendment, Congress decided to reach it indirectly. It secured the vote for the Puerto Rican community, in the belief that its political power would then enable that community to ensure non-discriminatory treatment for itself. The vote is thus seen as a means of enforcing the Fourteenth Amendment, not as itself the end of the congressional action, and Congress is not in the position of having undertaken to determine the substance of Fourteenth Amendment rights. Congress is merely presumed to have established facts showing that those rights, as judicially defined, have been or may be denied, and of choosing a suitable remedy: [82]

"It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did."

The argument is superficially attractive. But suppose Congress decided that aliens or eighteen-year-olds or residents of New Jersey are being discriminated against in New York. The decision would be as plausible as the one concerning Spanish-speaking Puerto Ricans. Could Congress give these groups the vote? If Congress may freely bestow the vote as a means of curing other discriminations, which it fears may be practiced against groups deprived of the vote, essentially because of this deprivation and on the basis of no other evidence, then there is nothing left of state autonomy in setting qualifications for voting. The argument proves too much. The Court relied on Marshall's famous pronouncement: Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." [83] The Court duly emphasized appropriateness, and adaptation to a given end, but it deemphasized altogether too much Marshall's caveat that the means chosen must also not be prohibited, and must consist with the letter and spirit of the constitution." [84]

FOOTNOTES

[70] 384 U.S. 641 (1966).

[71] 384 U.S. 672 (1966).

[72] *Id.* at 675.

[73] See 383 U.S. at 325–27.

[74] 384 U.S. at 648.

[75] Quoted in Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1, 60, n. 115 (1955).

[76] See *id.* at 32–40; HARRIS, THE QUEST FOR EQUALITY 34–50 (1960). The argument in Frantz, *Congressional Power To Enforce the Fourteenth Amendment against Private Acts*, 73 YALE L.J. 1353 (1964), is not really to the contrary. See 73 YALE L.J. at 1358–59.

[77] 1 Cranch 137 (1803).

[78] 4 Wheat, 316 (1819).

[79] See Brown, *The Open Economy: Justice Frankfurter and the Position of the Judiciary*, 67 YALE L.J. 219, 221 (1957); FREUND, THE SUPREME COURT OF THE UNITED STATES, 92, 93 (1961). But in a letter to Senator Robert F. Kennedy, dated May 17, 1965, which the Senator relied on in the course of debate on § 4(e), Professor Freund wrote: "It would be agreed, for example, that if a State were to deny the franchise to Catholics or to a group of Protestants, the classification could be struck down by Congress or the courts under the 14th amendment's guarantee of equal protection of the laws. The courts do not have sole responsibility in this area. Just as Congress may give a lead to the courts under the Commerce Clause in prohibiting certain kinds of state regulation or taxation, and just as Congress may expressly prohibit certain forms of taxation of Federal instrumentalities, whether or not the courts have done so of their own acocrd, so in implementing the 14th and 15th amendments Congress may legislate through a declaration that certain forms of classification are unreasonable for purposes of the voting franchise." 111 CONG. REC. 11062, 89th Cong., 1st Sess. (May 20, 1965). But surely the analogy between the respective functions of the Court and the Congress in the areas of state taxation and regulation of interstate commerce and of state taxation of federal instrumentalities, on the one hand, and the area of the Fourteenth Amendment, on the other, is too readily drawn by Professor Freund in this letter.

[80] The only item of relevant evidence cited (but not quoted, or seven paraphrased) by the Court is the following letter received in 1962 by the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, and incorporated in the record of hearings the subcommittee held in the course of that year on literacy tests and other voter qualifications. The letter, dated at New York, April 16, 1962, is signed, Gene Crescenzi. It is short, and the gist of it needs to be quoted in full:

"The fact of disfranchisement of these citizens [Puerto Ricans in New York] operates to make them subject to all kinds of abuses and denials of the equal protection of the law. More serious than this, a fifth column type of activity has arisen in our governmental agencies and among elected public officials in respect to the disfranchised Puerto Ricans.

"In the week of January 2 to 9, 1962, the employees of Flower Hospital went on strike, they are mostly Puerto Ricans earning $35 to $40 per week, approximately 35 of these people were beaten and arrested. In this same week, the mayor of New York raised his wages $10,000. On January 17th the General Sessions Court announced that it would require probationers who don't speak English to learn English, as the lack of English was the cause of their problems. I could write volumes on the cruelty, brutality, murder, mayhem and general abuse delivered upon the disfranchised Spanish-speaking citizens in New York by the various agencies of our Government, all of which is directly due to their disfranchisement. Having no vote, they have no representation and no means of redress.

"The English literacy requirement is an instrument of racist policies of the State of New York, and it is used to circumvent the U.S. Constitution. It is more vicious in its application in the State of New York because it has driven its racist politicians underground, than in Southern States where segregation has long been a way of life and may be fought in the open in the American way." Literacy Tests and Voter Requirements in Federal and State Elections, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary on S. 480, S. 2750, and S. 2979, 87th Cong., 2d Sess. 507–08 (1962).

A statement in 1965 to a subcommittee of the House Committee on the Judiciary by Herman Badillo, a leading Puerto Rican politician and now Borough President of The Bronx, pleaded for passage of what was to become § 4(e), but nowhere charged discrimination in public services or by any public agencies in New York against Puerto Ricans. See Voting Rights, Hearings before Subcommittee No. 5 of the Committee on the Judiciary on H.R. 6400, House of Representatives, 89th Cong., 1st Sess. 508–17 (1965).

[81] The stretching, however, would be considerable. It would amount, to change the figure somewhat, to a leap from a presumption buttressed by data, even if data "offered not for the truth of the facts asserted but only to establish that responsible persons have made the assertion and hold the opinions which are disclosed," FREUND, ON UNDERSTANDING THE SUPREME COURT 88, and see also 87–89 (1951), to a presumption that makes up for the lack of any data at all—a presumption that, in a case such as the present one, puts the party attacking constitutionality to the task of proving a negative.

[82] 384 U.S. at 653.

[83] 4 Wheat. at 421.

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

Mr. ERVIN. I yield the floor.

Mr. WILLIAMS. Mr. President I suggest the absence of a quorum, on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. 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. WILLIAMS. I yield myself 5 minutes.

Mr. President, my understanding of the amendment offered by the Senator from North Carolina leads me to the conclusion that it has merit. As I understand it, I am certain it will be acceptable, but I would like to have it clarified to make sure that my understanding is accurate. First, State and local governments are now included under the bill as employers. The amendment would provide, for the purposes of the bill and for the basic law, that an elected individual is not an employee and, threfore, the law could not cover him. The next point is that the elected official would, in his position as an employer, not be covered and would be exempt in the employment of certain individuals.

Now we get to the inquiry of the Senator from New York (Mr. JAVITS) yesterday as the ambit of that employment by the elected official. But let me back up here to say that I certainly subscribe, and for many reasons, to the exclusion of the elected official at the State and local governing level. His test comes at the polls rather than under a law of this nature. I think that is certainly sufficient test as to propriety in the undertaking of his office, in view of the people that have the opportunity to select him for elected office. For another reason, I would think he should not be in a position to have unwarranted and irresponsible charges made against him. Again, his test would be at the polls.

The second degree relates to other people who are covered. That is basically the purpose of the amendment, to exempt from coverage those who are chosen by the Governor or the mayor or the county supervisor, whatever the elected official is, and who are in a close personal relationship and an immediate relationship

with him. Those who are his first line of advisers. Is that basically the purpose of the Senator's amendment?

Mr. ERVIN. I would say to my good friend from New Jersey that that is the purpose of the amendment. I feel that those elected officials who are legal advisers or who are personal assistants or legal advisers, as to how he should exercise his constitutional, legal rights and responsibilities, should also be exempt. That is the purpose of the amendment, yes.

Mr. WILLIAMS. That is my understanding. As to the degree, certainly it would cover those who are in a Governor's cabinet, his cabinet officers. They would be included in the group of personal assistants; is that not correct?

Mr. ERVIN. That is what is intended by this amendment, plus his immediate legal advisers, because no Governor today can get along and discharge the many duties imposed upon him by his office without having someone to lean on for advice, counsel, and so forth.

Mr. WILLIAMS. But it is not the intention of the Senator's amendment to go to the employees of the personal advisers to the elected officials; is that not correct?

Mr. ERVIN. This amendment would not do that. That is not its intention. I would like to do that, but I do not think I could persuade the Senate to adopt an exclusion of that kind. It is not its purpose to go to the employees of the personal assistants or to the legal advisers.

Mr. WILLIAMS. Well, I am happy to hear that that is the intention. I accept that in principle and feel it would not be at variance with or in violation of the thrust, the scope, or the purposes of this legislation.

I shall yield in a moment to the Senator from New York (Mr. JAVITS), but first would like to say to the Senator from North Carolina, in order to make crystal clear what we have been discussing, that I would like to offer an amendment to do exactly what we have just been discussing, as an amendment to the Senator's amendment.

Mr. ERVIN. The Senator from New York has shown me what he proposes to do, and I would like to modify my amendment to include his suggestion, provided I can get unanimous consent to do so, since the yeas and nays on the amendment have already been ordered.

I would propose to accept the suggestion offered by the Senator from New Jersey and the Senator from New York for a change in the phraseology of my amendment so that the amendment would read as follows:

On page 33, insert the following between line 10 and line 11:

"(5) In subsection (f), change the period at the end of the subsection to a colon, and add thereafter the following words:

"'*Provided, however,* That the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be a personal assistant, or an immediate adviser in respect to the exercise of the constitutional or legal powers of the office.'"

Renumber section (5) as (6).

If that is agreeable to the Senator from New Jersey and the Senator from New York, I should like to modify my amendment accordingly.

Mr. JAVITS. Mr. President, I trust that it will be satisfactory and I join with the Senator from New Jersey (Mr. WILLIAMS) in the proposal. However, I want to be sure that we have no difference of opinion as to what it means.

I might tell the distinguished Senator from North Carolina (Mr. ERVIN) that I was not troubled by the word "constitutional" but by "legal powers,". He would be, as a lawyer, too. Because all that means is appertaining to the functions of his office—and all his powers are legal, of course, so we wanted to be sure of the ambit of "... any person chosen to be a personal assistant, or an immediate adviser. . . ."

If the Senator will bear with me for a moment, I should like to say, as we understand those difficulties, that I hope I will not be construed as being didactic. I do not mean that at all. That is, eight persons only, and not one more person—anything like that. We are talking about the order of magnitude. I have no desire to argue about the fine points of some particular appointment, but generally speaking we consider a personal assistant as being a secretary or, as I have, an administrative assistant, a legislative aide, and then a mayor may have four assistants.

So that is what we would understand a personal assistant to be. "A secretary," of course, is an accurate designation. He may have two or three secretaries. Important people have more than one.

The other thing, the immediate advisers, I was thinking more in terms of a cabinet, of a Governor who would call his commissioners a cabinet, or he may have a cabinet composed of three or four executive officials, or five or six, who would do the main and important things. That is what I would define those things expressly to mean.

What troubled me yesterday was the idea of getting down to the "nitty-gritty," as I explained to the Senator the "many assistants." When I was Attorney General, I employed 500 people. Of those 500 persons, perhaps on the outside 20 would be personal assistants or immediate advisers, but the other 480 would be persons who might be assistants in charge of a particular function, or something like that.

So, if we understand each other on that score, this is entirely satisfactory to me. Do I understand correctly, then, that we agree on this?

Mr. ERVIN. Yes. In other words, I think that the change that has been made makes it clear. I recognize that language sometimes is difficult to write, so that it may properly express the ideas intended to be expressed. However, the suggested change would, I think, express our objective in accordance with what the Senator would expect.

Mr. JAVITS. I thank the Senator.

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senator from Alabama and I be permitted to modify my amendment so as to conform with the change.

The PRESIDING OFFICER. Without objection, the amendment is accordingly modified.

Mr. ERVIN. Mr. President, I thank the Senator from New York and the Senator from New Jersey. I think this improves the bill.

Mr. WILLIAMS. Mr. President, I am glad that we have arrived at this harmonious and fair understanding of the matter.

Mr. President, I ask unanimous consent that the two sections following the amendment be renumbered to conform to the numbers that would follow.

The PRESIDING OFFICER. Does the Senator from New Jersey also ask unanimous consent that line 12 "Renumber section (5) as (6)", be deleted?

Mr. WILLIAMS. Yes.

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

Mr. WILLIAMS. Mr. President, I have no further comments. I yield back the remainder of my time.

Mr. ERVIN. 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. ERVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded and yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment, as modified, of the Senator from North Carolina and the Senator from Alabama. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. GAMBRELL) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Virginia (Mr. SPONG), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I further announce that, if present and voting, the Senator from South Dakota (Mr. MCGOVERN) would vote "nay."

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Iowa (Mr. HUGHES), and the Senator from Georgia (Mr. GAMBRELL), would each vote "yea."

Mr. SCOTT. I announce that the Senators from Vermont (Mr. AIKEN and Mr. STAFFORD), the Senators from Kentucky

(Mr. COOK and Mr. COOPER) and the Senator from Alaska (Mr. STEVENS) are absent to attend the meetings of the Canadian Interparliamentary Union.

The Senator from Oklahoma (Mr. BELLMON), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. PACKWOOD) and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

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

If present and voting, the Senator from Colorado (Mr. DOMINICK), and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 69, nays 2, as follows:

[No. 49 Leg.]

YEAS—69

Allen	Ellender	Nelson
Allott	Ervin	Pastore
Baker	Fannin	Pearson
Bayh	Fulbright	Pell
Beall	Goldwater	Percy
Bennett	Gurney	Proxmire
Bentsen	Hansen	Randolph
Bible	Hatfield	Ribicoff
Boggs	Hruska	Roth
Brock	Inouye	Saxbe
Brooke	Javits	Schweiker
Buckley	Jordan, N.C.	Scott
Burdick	Jordan, Idaho	Smith
Byrd, Va.	Long	Sparkman
Byrd, W. Va.	Mansfield	Stennis
Cannon	Mathias	Stevenson
Case	McClellan	Symington
Chiles	McGee	Taft
Cotton	McIntyre	Tower
Curtis	Metcalf	Tunney
Dole	Miller	Weicker
Eagleton	Mondale	Williams
Eastland	Montoya	Young

NAYS—2

Hart	Magnuson

NOT VOTING—29

Aiken	Gravel	Moss
Anderson	Griffin	Mundt
Bellmon	Harris	Muskie
Church	Hartke	Packwood
Cook	Hollings	Spong
Cooper	Hughes	Stafford
Cranston	Humphrey	Stevens
Dominick	Jackson	Talmadge
Fong	Kennedy	Thurmond
Gambrell	McGovern	

So the Ervin-Allen amendment (No. 888), as modified, was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 890

Mr. ALLEN. Mr. President, I call up amendment No. 890, which is offered by the distinguished Senator from North Carolina (Mr. ERVIN) and me, and I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 66, insert the following new section between lines 13 and 14:

"SEC. 13. The amendments made by this Act to title VII of the Civil Rights Act of 1964 shall not be applicable to the employees of States or the political subdivisions of States as long as Congress exempts its employees and the employees of its Members from them"

Renumber SEC. 13 as SEC. 14.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the understanding that the Senator from Alabama does not lose his right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, with the approval of the sponsor of the amendment and the manager of the bill, I ask unanimous consent that there be a time limitation of 2 hours on the pending amendment, the time to be equally divided, 1 hour each to the distinguished Senator from Alabama (Mr. ALLEN) and the distinguished chairman of the committee, the Senator from New Jersey (Mr. WILLIAMS).

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MANSFIELD. And on any amendment or motion thereto, a limitation of 20 minutes, the time to be equally divided in the same fashion.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ALLEN. Mr. President——

The PRESIDING OFFICER. Will the Senator from Alabama inform the Chair as to how much time he yields himself?

Mr. ALLEN. I yield myself such time as I may require.

The purpose of this amendment is to provide that the provisions of the bill, insofar as they affect the employees of States or political subdivisions of the States, shall not become applicable until the law is made to apply alike to Members of Congress and the employees of Members of Congress.

Under the existing law, the EEOC does not have jurisdiction over the employees of States, counties, cities, and the agencies of the States, counties, and cities; but under the bill as it now stands, the coverage by EEOC is to be extended to some 10 million employees of States, counties, and city governments.

However, the authors and proponents of the bill have seen fit to provide that in the provisions of the present bill, jurisdiction by the EEOC shall not extend to the employees of the Congress or to the employees of the Members of the House of Representatives or to the employees of the Members of the Senate.

Mr. President, it occurs to the junior Senator from Alabama that we should not put the employees of States, counties, and cities under the EEOC without at the same time making the provisions of the law applicable also to the employees of both Houses of Congress and the various offices of both Houses of Congress and the employees of the Members of both Houses.

If it so good for the States, why should it not be equally good for the employees of the Senate, employees of the House of Representatives, employees of the Members of the Senate, and employees of the Members of the House?

Mr. President, I do not feel that the law should be applicable to States, counties, and cities, and I feel that this is just another instance of the further encroachment by the Federal Government on the powers of local government.

If it is to be extended to States, counties, and cities, why should it not also be made applicable to all of us and the employees of both bodies? There must be some merit in the bill, since it is apparently supported by a majority of the Members of the Senate, as the votes on the various amendments would indicate.

So the purpose of this amendment would be to provide that so long as the employees of the House and Senate and of the Members of the two bodies are not covered by the bill, then the employees of States, counties, and cities shall not be covered. It puts them all on the same basis. It treats the Federal employees to which I have alluded on the same basis as State, county, and city employees.

So it would seem to the junior Senator from Alabama that this would indeed be an equitable amendment. It would be an amendment that would improve the bill. It still would not take it a good bill.

This agency was created in 1964 as an agency of conciliation, an agency that would seek to investigate and conciliate charges of discriminatory employment practices of various employers. I believe when it was originally enacted into law it provided that it would be applicable only to employers employing as many as 100 people. That number has gone down, under the provisions of the law, progressively to 75, then I believe to 50, and presently to 25.

Of course, the bill seeks to carry on with the creeping—or galloping, if you please—onward march of Federal bureaucracy, so that by now, under the provisions of the bill as it now stands, it provides coverage by the law of all employers in this country who employ as many as 15 persons.

So, Mr. President, it is going to bring many small businesses under the punitive provisions of this law for the first time. There are tens of thousands—in fact, millions—of employees who would be brought under the coverage of the law for the first time, if this bill should become law.

A company that employs as few as 15 employees is not one of the mammoth companies that many Members of Congress are seeking further to regulate from time to time.

They are small businesses. And, Mr. President, I submit that small businesses in this country are literally being driven to the wall by Federal bureaucracy redtape, by heavy taxes, by investigations, and by harassment, and I predict that there will be hundreds of small businesses that will close their doors and cease to engage in business as a result of the activities and the harassment by the so-called Equal Employment Opportunity Commission.

It has been indicated by the proponents of the bill that this is a bill that would

end or outlaw discrimination. That is hardly correct. It is already against the law to discriminate in employment practices. This measure does not change the basic law one bit. It does not make any action by an employer—or, if the bill should pass, a State, county, or city—a discriminatory practice unless it is already a discriminatory practice. It does not add to the definition of what is a discriminatory employment practice.

That law remains the same. It merely makes tens of millions of additional people subject to the provisions of this law. It brings in for the first time every educational institution in this country—every college, every university, every private school, every church-supported school. I assume every high school and every elementary school would be covered for the first time under the provisions of this bill if it should become a law. There are literally millions of such employees.

Mr. President, I would hate to turn the employment practices of a church-related school, or any school for that matter, over to the EEOC, to let them take over the employment practices of a college or a university. Where is academic freedom? If the EEOC is going to control the employment practices of our schools, how are such institutions to survive?

Mr. President, some effort is made to make an exception in the case of religious educational institutions insofar as such an institution is carrying on its religious activities. But, Mr. President, all activities of a church-supported school are not necessarily of a religious nature. They teach mathematics, philosophy, history, English, literature, science. But, Mr. President, under this bill, if the bill becomes law—and I hope it does not—the EEOC could control the selection by a church-related school of any person with regard to instruction in these other areas.

A church-supported school might like to have all of its faculty members of one religious denomination. That would not be permitted under the terms of the bill now pending before the Senate. It would be possible, as the distinguished Senator from North Carolina has pointed out, for the EEOC to require a Presbyterian church-related school to employ a Mohammedan for the purpose of teaching any subject other than religion. That would certainly be unfair to such a church-supported school. I point this out merely as one illustration of the hardships, the injustices, that would be possible under the act.

Mr. President, the Senate has been discussing the provisions of this bill for some days. I submit that some good has come out of the discussion. I do not know to what extent Members of the Senate have been informed, because there have not been too many present to hear the debate. I assume most Senators read the CONGRESSIONAL RECORD at the end of each day to see what did take place and what was said on the floor of the Senate.

But the discussion has been constructive. As the bill was originally introduced, it provided that the EEOC would have cease-and-desist powers. What does that mean? It means that in addition to being a conciliation agency, in addition to receiving complaints, investigating complaints, filing charges on those complaints with itself, trying those charges, and reaching decisions, it could then issue an order which would be enforceable, so that one Federal bureau would have the power to be the judge, the jury, the prosecutor, and I assume the enforcement officer, all rolled into one.

Several votes were taken on an amendment which would change that provision and require the EEOC, after receiving the complaints, investigating them I assume, and seeking to conciliate them, to go into the Federal court to prove its charges. The Senate on more than one occasion voted down that principle; but, Mr. President, the debate continued.

The purpose of any extended debate, I assume, is not merely to hold up the proceedings for the purpose of obstructionism. Far from it. The purpose of an extended debate that is worth engaging in is to alert the country about what is going on in the Senate, what is under consideration in the Senate, what the Senate is about to do, and to say, "Stop. You must not do that until the country is heard from." That is what happened with this debate. When the country began to be heard from, the amendment providing for court enforcement of decisions with regard to alleged discriminatory employment practices was adopted.

On two occasions, the Senate, in its wisdom, saw fit to vote down cloture motions which were filed for the purpose of ending the extended debate in the Senate; so the debate has continued. Mr. President, it is interesting to note the timing of a cloture motion. A cloture motion is always voted on, as Senators know, not the next day after filing, but the next day plus one, as the rule provides. By having that knowledge, the proponents of the cloture effort can control the time at which the cloture motion is voted on.

The last time we voted on cloture, the would-be Presidents in the Senate—and there are quite a number—were all absent but one. So this time it has been announced that the cloture motion is going to be filed not today, not yesterday, but tomorrow. What is the significance of that? The significance is that, not meeting Saturday, we would not vote Monday but would vote Tuesday. That will give the various presidential candidates, all of whom favor cutting off free debate in the Senate—every single one of them—an opportunity to be here in force on next Tuesday. Mark my words.

So, Mr. President, I am hopeful that cloture will be voted down next Tuesday. I commend the distinguished majority leader, the Senator from Montana (Mr. MANSFIELD), for his attitude with regard to this debate and commend him for his policies as he guides the Senate, because there could not be a fairer leader of the Senate than the distinguished Senator from Montana (Mr. MANSFIELD). He is going to vote for cloture the next time it comes up for a vote. But he announced that the next cloture vote is going to be the last cloture vote, and if cloture is not invoked, this bill is dead.

Mr. President, why take up the time of the Senate in conferring power on an agency that has not had this power for more than 7 years? It did not have that power when it was brought into being. It has never had that power. With as much as the U.S. Senate has to do why should we spend all that time discussing the measure? They already have some 32,000 cases on their docket. They estimate that they are going to have 45,000 more cases filed the next year, and they are falling behind all the time. Yet, they are reaching out to get more power and more jurisdiction. Although their original function was to seek to conciliate, it is now being turned into enforcement. Throw conciliation out the window. Let us enforce our will on those subject to our jurisdiction.

Mr. President, I am not surprised at this agency seeking more power. The distinguished Senator from New Jersey (Mr. WILLIAMS) said, in answer to a question I propounded to him some days ago, that within the next 2 or 3 years it is anticipated that the employees of the EEOC will double in number from the present 1,000 employees to 2,000.

I would hazard the opinion that that is probably a conservative estimate, that they are going to double in size in the next 2 or 3 years.

Here is an agency seeking to double in size, seeking to become more important, seeking to have more jurisdiction, seeking to have more power over the lives of our people; but here is an opportunity on the part of the Members of the U.S. Senate to call a halt at least one effort to double the size of a Federal agency. People complain to each of us, I am sure, about the high cost of government, about the fact that its administration exceeds its requests, and the debt limit is raised to $480 billion, that we will soon go up to that, that we operated for the past 3 years with a total deficit of around $83 billion. But here we have an opportunity to stop at least one Federal agency in its tracks, to stop the mushrooming of one agency. We do not get that opportunity very often. These agencies just expand, expand, and expand and become a law unto themselves. They enjoy an autonomy of their own seemingly beyond the power even of the highest in the executive departments.

So, Mr. President, we must stand firm when this Commission comes before the Senate again. We will not be taking any power away from the EEOC but will be leaving it where it has been for the past 7 years. I assume they feel they have been doing a good job, because they have never failed to come in each year to ask for appropriations to carry on their work—more money each time, of course.

So, Mr. President, if we can hold firm on the next cloture motion vote, we can defeat the bill and leave the EEOC where it has always been, as a conciliation agency as between employers and employees in covered lines of business and industry.

Mr. President, I ask unanimous consent that I may yield the floor at this time to the distinguished Senator from Arkansas (Mr. FULBRIGHT) for not to exceed 30 minutes and that that time not be

charged against the time that has been allotted to me on this amendment.

The PRESIDING OFFICER (Mr. WEICKER). Is there objection to the request of the Senator from Alabama?

Mr. BYRD of West Virginia. Mr. President, reserving the right to object—and I do not intend to object—I believe I understand correctly that the distinguished manager of the bill will yield time to the Senator from Arkansas (Mr. FULBRIGHT).

Mr. WILLIAMS. Mr. President, I know the importance of the statement the Senator from Arkansas (Mr. FULBRIGHT) is about to make. I believe it is important that it be made and I am yielding such time as he needs from the time remaining to me on this amendment now pending before the Senate.

Mr. ALLEN. I thank the Senator from New Jersey.

Mr. FULBRIGHT. I thank the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from Arkansas (Mr. FULBRIGHT) is recognized for 30 minutes.

BUSING

Mr. FULBRIGHT. Mr. President, the article published in the Washington Post of February 16 by Mr. William Raspberry, entitled "Massive Busing: A Waste," is one of the most thoughtful and perceptive comments about this very troublesome problem that I have seen. There is no one better qualified to discuss this subject than Mr. Raspberry, and I commend his comments to all my colleagues and ask unanimous consent to have the article printed in the RECORD.

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

MASSIVE BUSING: A WASTE

(By William Raspberry)

If this weren't an election year, it just might be possible to do something rational about school integration and busing.

But not only is it an election year; it is also a year in which all sorts of people, in all parts of the country and of all political persuasions are expressing their strong misgivings about the prospects of massive busing for the purpose of racial integration of public schools.

And with that kind of mandate, you can count on the politicians to see their duty—and overdo it. Already presidential candidate Jackson is pushing "freedom of choice." Haven't we heard that one before?

Others are talking up constitutional amendment.

It's a bit of an embarrassment, all things considered, but I happen to agree with Vice President Agnew on this one. I agree with him that massive busing solely for purposes of racial integration is a waste. And I agree with his opposition to a constitutional amendment as the way to end the waste.

The artificial separation of people, in schools or out, based on their race is wrong. It is, for one thing, psychologically destructive of the minority members who are separated out.

But to send black children chasing to hell and gone behind white children is also wrong and psychologically destructive. It reinforces in white children whatever racial superiority feelings they may harbor, and it says to black children that they are somehow improved by the presence of white schoolmates.

My favorite nightmare is of all the white people in the country moving to Alaska, and all the black children in the country following them in an endless line of buses.

Integration is a noble goal. But there comes a time when thoughtful men wonder with Joseph Alsop: "Is it really worth it?"

If white people, either because they wish to avoid contact with black people or for any other reason, choose to move far from where most black people live, how can it make sense—in terms of education or common sense—to send black kids chasing after them?

At some point, it becomes obvious that there must be a cheaper way to achieve the goal which is the education of our children.

But even the goal gets confused. Some of the advocates of massive busing, it seems to me, are being guided by the wrong ideal.

They start off with the assumption that in melting-pot America, racial integration is a good thing. But they take the melting pot metaphor altogether too literally, and it becomes their goal to make every classroom of every school (and every block of every neighborhood) an accurate cross-section of the makeup of the total population.

They would like to put us all into that metaphorical melting pot and ladle out enough portions of homogenized American to fill every schoolroom, workroom and living room in the country.

Well, what's so ideal about mathematically precise distribution of human beings? What's so inherently evil about a block in which all the homeowners (or a classroom in which all the pupils) happen to be black? Or white?

This is no brief for a return to the lie of separate but equal. It is an appeal for rational priorities, a plea that we make the test of a school whether it does what schools are supposed to do—educate our children.

It is both evil and illegal to say to a child: You cannot attend this school because it is a white school. But how much better is it to say: You must attend this school because it is integrated and we need you for racial balance?

The ideal is a situation in which race is irrelevant to assignment. Preoccupation with mathematical precision, unfortunately, is not the way to achieve that idea.

But no constitutional amendments, please. The effort that route would require would be bound to make too many of us feel that we were solving the problem of education in a pluralistic society. It would in fact solve nothing at all, except to return us to where we were the day before yesterday.

The Vice President was right again when he said:

"I think that there is almost a Pavlovian reaction. Whenever a subject becomes highly controversial, you must turn to a constitutional amendment. I think these things are capable of being handled within the normal statutory framework and constitutional framework of our existing Constitution."

But only if we deal with the situation and stop looking for new ways to run.

RADIO FREE EUROPE AND RADIO LIBERTY

Mr. FULBRIGHT. Mr. President, I ask unanimous consent to have printed in the RECORD an article published in this morning's Washington Post, written by Rowland Evans and Robert Novak, entitled, "Fulbright the Jammer."

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

FULBRIGHT THE JAMMER

(By Rowland Evans and Robert Novak)

The inexorable campaign of Sen. J. W. Fulbright to cast U.S. foreign policy in his own image has almost strangled the broadcasts beamed into Communist Eastern Europe by Radio Free Europe and Radio Liberty.

Operating from his power base as chairman of the Senate Foreign Relations Committee, Fulbright is within days of cutting off, at least temporarily, vital U.S. government subsidies for the two programs. Unless Congress acts before next Tuesday, Feb. 22, the money stops.

Congressional sentiment for the broadcasts is so overwhelming that it seems improbable Fulbright will ultimately succeed. But he has come perilously close to doing what two decades of Moscow's electronic jamming could not do: End nongovernmental communications between the United States and some 200 million residents of the Soviet Union and 100 million in five other Communist countries.

But the two programs, ostensibly financed with individual American contributions, have been secretly subsidized by the Central Intelligence Agency. Even after this was disclosed in 1967, the Johnson administration and then the Nixon administration dawdled about changing this clumsy arrangement.

Finally, a year ago, Sen. Clifford Case of New Jersey forced action by demanding an end to the CIA subsidy. Belatedly, the administration proposed overt government financing. Since then, Fulbright has doggedly slowed down legislation. For instance, last summer he urged delay until the Library of Congress Congressional Research Service could study whether "it is in the public interest to provide additional tax dollars for the two radios."

Despite Fulbright's efforts, the Senate and House by the end of November had passed separate bills financing the programs (at between $35 million and $38 million a year.) But a Jan. 26 Senate-House conference to resolve the two bills—its first and only session—met icy opposition from Fulbright.

By Jan. 26, the Library of Congress draft reports were available. Fulbright was not pleased. They warmly praised the two programs and recommended continued U.S. financing. Fulbright's staffers asked the Library of Congress researchers to rework their papers. Meanwhile, other members of the Senate-House conference were unaware of the favorable reports.

Those voluminous reports explain precisely why Eastern Europe experts are concerned by Fulbright's action. Radio Free Europe, says one report, "contributes substantially to preserve the reservoir of good will toward the U.S." by the Eastern Europeans. "In some cases, regimes have grudgingly adopted some features desired by their publics and supported by Radio Free Europe."

The other Library of Congress report suggests "Radio Liberty encourages detente, amelioration of international differences through negotiations, strengthening of the United Nations as an instrument of peace and creation of a world system based on the rule of law."

But both reports agree (in language eagerly underlined by Fulbright's staffers) that the broadcasts are deeply resented by the Communist governments concerned. To Fulbright and his allies, East-West detente is a matter for government-to-government negotiation, not for a non-government information service directed to Eastern Europe's masses.

Accordingly, if the programs are continued, Fulbright wants them under tight State Department regulation (though this is criticized in the Library of Congress reports). But he would really prefer their death. A compromise proposed by House and Senate staffers, putting the two programs provisionally under State Department control, has been ignored by Fulbright.

Whether Fulbright can kill the broadcasts may depend on the two other Senate Democratic conferees: Frank Church of Idaho and Stuart Symington of Missouri. Church is

adamant against Radio Free Europe but friendly toward Radio Liberty (because, mainly, of its concern for Soviet Jews). Symington tends to agree with Fulbright but adds he has an open mind. Neither, however, was informed about or has been aware of the favorable Library of Congress reports. Chairman Fulbright the jammer has seen to that.

Mr. FULBRIGHT. Mr. President, in view of this Evans-Novak column, I wish to make the following points preliminary to my prepared statement.

First, the column helps maintain the deception that Radio Free Europe and Radio Liberty provide "nongovernmental communications" between the United States and Eastern Europe and the Soviet Union. The fact is that these Radios are first and foremost an instrument of U.S. foreign policy, an instrument which has been funded covertly to the tune of almost half a billion dollars. Current Government funding for the Radios approximates the total annual expenditure on each of the following programs: The "Voice of America," the "Educational and Cultural Exchange" program, and the Public Broadcasting Corporation.

Second, if the Radios are as important as the column claims, why are not our NATO allies interested in putting up some of the money to support them? On the other hand, some of our Western European "friends" make substantial profits from these radios. Spain, for example, gets about $285,000 annually in licensing fees. If these radio operations are continued, Portugal will get approximately $700,000 in licensing fees over the next 10 years.

Congress knew nothing about these arrangements, so far as I know. I did not know about them and I do not believe any of the members of the Foreign Relations Committee knew about them.

Three, the contention that the draft studies prepared by the Library of Congress were withheld just does not hold water. The availability of the studies was made known to all the Senate conferees on January 21 about a week before the conference or about 1 month ago. Also, the staff people from the House were briefed before the conference by the Library of Congress researchers.

Four, on this same point, the columnists themselves were certainly less than candid, because Mr. Novak was given access to the studies by the committee staff—that is, the staff of the Committee on Foreign Relations—and he spent about an hour going over them in one of the committee offices. This point clearly undermines his contention of any effort to withhold the studies.

The column simply represents an effort by the administration and some of its friends in the House to keep this old cold war program on the books, despite the fact that neither the American public nor the Governments of Western Europe are willing to support such a continuation.

Mr. President, I also invite attention to a part of the report on the bill, S. 18, reported from the Committee on Foreign Relations last year and later enacted into law, regarding some of the aspects of how the financing of Radio Free Europe is handled.

When I asked for information about the private contributors to Radio Free Europe, I received a letter dated July 16, 1971, signed by Mr. William P. Durkee, president of Free Europe, Inc.—this is on page 11 of the committee report, calendar 313, No. 92–319, July 30, 1971—and in that letter the last sentence reads as follows:

> While I hope the above information satisfies your request, I am prepared to show you on a confidential basis the actual list of corporate contributors for FY 1970 and so far in FY 1971.
>
> Yours sincerely,
>
> WILLIAM P. DURKEE.

It is quite interesting, this aspect of the so-called private program of broadcasting of the truth to Eastern Europe, because it indicates that the managers of the program are not willing to come clean with the American public.

Mr. President, one of the more troublesome issues which the Committee on Foreign Relations has wrestled with during the past year is the question of public funding for Radio Free Europe and Radio Liberty. As a result of the committee's consideration of this issue, I have developed some very decided views on the Radios and their activities, and I would like to share these views with my colleagues.

Senators will recall that these were the Radios financed by "dimes from schoolchildren" or so we were told over the years. As it turned out, however, the "dimes," amounting to hundreds of millions of dollars, really came from the Central Intelligence Agency and were part of a fraud to dupe the taxpayers of the United States as well as the people of Eastern Europe into believing that the Radios were private organizations, dependent solely on private contributions.

Mr. President, the history of these radios, particularly the covert funding and policy direction of them, provides, I think, an example—a good example—of how and why people lose faith in their Government and their elected officials. Fundamentally, this is a matter of credibility and the public's expectations that its Government is so structured that the "big lie" cannot be perpetuated indefinitely; that the separation of powers is a real safeguard, if not an immediate one; and that our system of checks and balances does, over a period of time at least, work much as the Founding Fathers said it would.

The case of Radio Free Europe and Radio Liberty indicates, I suppose, that given a long enough perod of time, the checks and balances are there; the separation of powers does exist; and the "big lie" can be exposed.

While this case "proves" all of these things, I cannot help but think that it has, nevertheless, taken an exceptionally heavy toll in the people's faith and credibility in their Government—a faith and credibility already overtaxed by U–2 flights that we did not know anything about; by an invasion at the Bay of Pigs that we were not involved in; by Tonkin Gulf incidents that we were innocent of; and the list goes on and on: In South Vietnam we have learned about Korean soldiers being paid by the U.S. Government at much higher rates than U.S. soldiers; in Laos we have learned about CIA personnel dressed up in AID clothing; and in Cambodia we have learned about U.S. military advisers being transformed into "military equipment delivery teams."

But through all of this—through all of the deception and the falsehoods heaped on the American public—there was Radio Free Europe, keeping the "truth alive behind the Iron Curtain." Yes, despite the numbing realization of having been led down the primrose path on any number of major public issues—the American public was told that it could point with pride to Radio Free Europe as a bastion of truth and freedom—a symbol, although perhaps a fading one, of America's dedication to the dictum: "Know the truth and it shall make you free." And even if it was becoming more and more difficult to get the truth from our own Government here in the United States, the American public was assured that Radio Free Europe was at the ramparts fighting the deception and half-truths foisted upon the captive peoples of Eastern Europe by their governments. If we could not keep truth alive here, then at least we could keep it alive and well over there.

Who could ask for a nobler gesture.

Here was the American public, itself, fighting a rear guard action but willing, nevertheless, according to the public appeals, to take on the additional burden of making sure that Radio Free Europe broadcasts continued to penetrate the Iron Curtain with truth, freedom, and justice.

And then, like awaking from an Orwellian dream, we learned one fine day that Radio Free Europe has also failed us; that it, too, was a product of the Government's arcane imagination; that it, too, was a product of the U–2, Bay of Pigs, and Tonkin Gulf mentality; and that it, too, was a product of the Government's willingness to deceive the American public.

In other words Radio Free Europe and Radio Liberty were simply part of a pattern—a pattern of falsehood and deception; a pattern of fraud and deceit; a pattern of conspiracy to mislead not only the American people but anybody else who was willing to listen and follow.

But like most sordid episodes this, too, has a bright spot: The American public—the man in the street, the one who was proselytized year after year to support Radio Free Europe—he was never persuaded of the value or virtue of these Radio operations. With some of the information that has now come to light, we know that private contributions, which, in fact, were mostly from our giant corporations, provided only a fraction—about 15 percent—of the amount needed to fund Radio Free Europe's operations.

Mr. President, if I might digress a moment, this is obviously the reason why the organization running Radio Free Europe refused to supply for the public record the list of contributors, the larger contributors, the corporate contributors to this activity.

I cannot imagine any valid reason for keeping such information confidential or secret. But, as I have read to the Senate from the letter in the committee's report,

the President of Free Europe, Inc., declined to give it to me except on a classified or secret basis.

This genuine lack of popular interest and support indicates that the public, in its collective wisdom, knew that the promises made by the Radios were really beyond their scope and power; that despite their best intentions and noble causes, truth and freedom are indigenous and subjective issues and cannot be transferred from one people to another no matter how righteous the motivation, no matter how unselfish the purpose.

But, Mr. President, despite the public's "benign neglect" of the Radios or because of it, one administration after another—Democratic and Republican alike—have over the last 20 years funded the Radios to the tune of almost one-half billion dollars. The covert funding has, in turn, been accompanied by policy controls and monitoring arrangements so as to insure compliance with official policy guidelines.

All of this indicates, beyond question, that the Radios still constitute an integral part of our foreign policy toward Eastern Europe and the Soviet Union. And if the amount spent annually on this program is any guide to its importance—then this is the most important program conducted by the U.S. Government in its relations with these nations. Indeed, the $36.2 million requested for this fiscal year is not far below the total Voice of America budget of $44 million, and it approximates the entire educational and cultural exchange program of $40 million.

But unlike these other programs, Radio Free Europe and Radio Liberty are never joined in the administration's discussion of its policy toward Eastern Europe and the Soviet Union. The reason is fairly straightforward and it really boils down to this: The administration wants an unofficial voice of the U.S. Government broadcasting within officially established guidelines to these Communist countries. The reason for this is as Assistant Secretary of State Hillenbrand told the committee on May 24, 1971:

> Official government radios must take care to avoid the charge of interference in the internal affairs of other nations.

The implication, of course, is that "unofficial" radios, like Radio Free Europe and Radio Liberty, are not subject to the same diplomatic considerations or limitations; that they can do the "kind of job" that a VOA or BBC cannot do; that they can broadcast what the government wants to say unofficially without being held officially responsible for it.

Regardless of the label attached to the Radios, the fact is this activity, even if it entails nothing more than "straight news reporting," raises a number of foreign policy issues not the least of which is the extent of our meddling in the internal political affairs of other countries by means of directing and supporting broadcasting activities in behalf of political refugees.

If this activity is based on a viable policy, then perhaps some consideration ought to be given to establishing a "Radio Free Greece," or a "Radio Free China" or perhaps a "Radio Free Brazil." The governments of these countries enjoy a rather dubious reputation of strict censorship—as do any number of other countries. And, yet, so far as I am aware, the executive branch does not fund similar broadcasting arrangements geared to "getting the truth through" to the citizens of these countries. In these cases, the administration is content with Voice of America broadcasts.

If this is so, then why is the administration not content with VOA broadcasts to Eastern Europe and the Soviet Union? Why the additional need for Radio Free Europe and Radio Liberty—a need which costs the taxpayers more than $35 million per year?

Mr. President, if the need for these Radio operations is as clear cut as administration officials claim, why is there not some recognition of it on the part of our NATO allies, who after all, are much closer to the situation than we are? Being so much closer to the "firing line," one would think they would be eager to support both Radio Free Europe and Radio Liberty. But, of course, they are not; nor is there any indication that they can be talked into putting up some money to support these Radios.

Such an attitude on the part of our Western European allies ought to tell us something about our own policy; namely, that the Radios are an anachronism and that we ought to have the courage to recognize they have outlived any usefulness they may have once had. The American public recognizes this; so do the Western Europeans. The time has come for our Government to recognize it too.

Mr. President, I submit these Radios should be given an opportunity to take their rightful place in the graveyard of cold war relics.

Mr. President, this morning along with a number of other Members of this body and the other body I was briefed by the President of the United States just prior to his departure for a visit to Peking, a visit which I certainly hope will be fruitful, of which I approve, and which I think is fully justified by current conditions in the world at large.

The President plans to go to Moscow, I believe, in May of this year. It would seem to me that any reasonable interpretation of both of these trips is that the President hopes to be able to normalize or improve, if I may describe it as such, our relations with both of these large and powerful countries.

On the other hand, it seems to me that activities such as Radio Liberty and Radio Free Europe are contrary to the President's purposes in making both of these trips. This reminds me a bit of the trip that President Eisenhower took to Paris to meet with the head of the Russian Government at the time, Mr. Khrushchev, a trip which not only anticipated a cordial meeting and conference in Paris but also a subsequent visit to Moscow by President Eisenhower.

Unfortunately, the U–2 incident occurred at that time and it broke up the conference in Paris and nullified plans for the trip to Moscow. As a result, I think that our relations with Russia were set back a number of years.

It was commonly believed then that there was a lack of coordination within the executive branch itself; in other words, while the President was aware of the general program of surveillance, he did not anticipate that this particular flight would take place at that particular time and expose him to the possibility of such a failure.

In this case it seems to me that continuation of these radio programs should be coordinated with the President's other programs of making these trips and his efforts at improving our relations in general with the Communist nations.

There are other aspects of our policy that I might mention in passing. One of my objections to the establishment of a base in Bahrein is that it, too, could well be interpreted by the Russians as a move which is inconsistent with efforts to improve relations. We do not have a naval base in the Indian Ocean; if we put one there undoubtedly the Russians will feel that they will have to match it and put in a similar base or perhaps one that is larger, so the escalation starts all over again.

We are presently negotiating with the Russians in what are called the SALT talks, which have been going on for 3 years. We had a briefing yesterday by the Director of the Arms Control Agency. He is hopeful something can be worked out. There has been no agreement so far but they are still hopeful that one can be reached.

It seems to me that we ought to give some consideration to how these matters look from the other side. While we profess to be ready, willing, and anxious, desirous at least, of making an agreement to stop this outrageous, expensive escalation of our arms, at the same time we are doing other things which indicate we are escalating our efforts, as in the Bahrein case, and I may say, in some other places. We recently recommended a vast commitment of funds for a base in the Azores. I do not know that there is any significance in this connection, but it was a base created during World War II, primarily for military purposes. I think it is an obsolete base now. But it is one little incident that does not quite add up to being consistent with a genuine effort, a genuine desire to effectuate better relations with Russia, particularly, and only incidentally to China.

I would think that continuation of Radio Free Europe and Radio Liberty would be interpreted by the other side, by the people we are negotiating with in SALT, as inconsistent with our desire for agreement. This is simple, human psychology. If on the one hand, Mr. President, you profess that you wish to improve relations, and on the other hand you do a thing inconsistent with improving relations, I think it raises doubt about the sincerity of your effort with regard to negotiations and improving relations.

Any one of these cases may not be sufficiently important to break up negotiations, but accumulatively, if they are all put together I submit they can make a pretty good case of justifying a certain skepticism, at least about our intentions.

Finally, in view of the enormous deficit

in the Federal budget of over $40 billion this year, it is an inexcusable waste of money to keep pouring this kind of money into these radio programs. These programs were started at the height of the cold war when Stalin was in power and when, as we have subsequently warned, he was quite unreasonable with his own people. I could see that at that time and under those conditions there may have been some justification for this kind of program, but that time is passed. And I think of the difference in attitude of our own President between what his public statements indicated in 1951 and 1953 and what he has been saying recently; what he said this morning, and what he probably will be saying in the next 2 weeks. He has changed his attitude. I congratulate him for it. I approve it.

In view of this, is there any reason to insist upon continuing these activities which I believe to be fundamentally inconsistent with the purposes of the President?

I think it would help the position of the President in whatever his negotiations may be with the Russians if this one irritant to our relations were removed. It certainly could not hurt, and the least one could say would be that it would save the American taxpayers at least $35 million a year, which is no small amount. I very much hope this program can be stopped.

I will end by saying the situation is that this program is now operating under a continuing resolution. I for one, and some of my colleagues, have not been willing to give it a new lease on life. I hope it will come to an end; I feel it should come to an end—it should be liquidated—if an authorization is not enacted. It is possible that a continuing resolution will be approved. I shall oppose such an extension. If the program is to continue, just for this fiscal year, it ought to be done according to authorizing legislation enacted into law.

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

The PRESIDING OFFICER. On whose time will the quorum call be taken?

Mr. FULBRIGHT. Mr. President, I was yielded such time as I needed by the Senator from New Jersey. May I not ask for a quorum call on the time he yielded to me?

The PRESIDING OFFICER. The Senator has 2 minutes remaining under the time yielded.

Mr. FULBRIGHT. It was my understanding the Senator from New Jersey would yield me such time as I desired up to the remaining time on the pending amendment.

The PRESIDING OFFICER. The Senator yields that time for the purpose of a quorum call?

Mr. FULBRIGHT. Yes.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

Mr. WILLIAMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WILLIAMS. What is the time remaining?

The PRESIDING OFFICER. The Senator from New Jersey has 20 minutes remaining, and the Senator from Alabama has 27 minutes.

Mr. WILLIAMS. Mr. President, I note that a great deal of the time in debate used by the Senator from Alabama following the calling up of this amendment has dealt with his broad general disagreement with the legislation before us, and then, in greater detail, with specific parts of the legislation that is before us and has been before us here in the Senate for the entire period since the Senate reconvened for this session of Congress.

As I heard the Senator's statement, a great deal of it dealt with the inclusion within the provisions of this bill of employers of 15 or more, or labor unions with 15 or more members. This, of course, was a figure arrived at after debate, after discussion, after conciliation, and indeed after negotiation which raised the number from 8 to 15. The figure 8 was in the bill as it was brought to the Senate, and after this period of debate and conciliation, we arrived at the figure of 15, which was overwhelmingly approved by the Senate.

The other part of the legislation the Senator dealt with was the coverage of State and local government employees. There is no need to revisit that debate now, because that, too, was fully debated and an amendment offered, and agreed to, and again by an overwhelming vote in the Senate the coverage of employees of State and local governments was retained.

I say the vote was overwhelming. It was overwhelming in a great degree. The vote as 59 to 16 to resist the effort to delete that coverage from the bill before us. But this debate thus far has been a revisitation of the bill generally and these areas specifically.

I think perhaps there is some suggestion in the amendment of the Senator from Alabama—though he did not deal with this to any degree—of seeking comparability between the Federal Government and the State governments. I would point out to the distinguished Senator from Alabama that we do cover State employees and municipal employees, and we in this legislation do cover Federal employees.

There are exemptions. If we are looking towards comparability, I would just say to the Senator from Alabama that by action here this afternoon, and in the clearest way, on an amendment offered by the Senator from North Carolina, joined in, I believe, by the Senator from Alabama, which was debated and discussed, in agreement on the purposes, the Senator from New York and I offered an acceptable amendment to that amendment, and as a result of that, we have agreed that the elected State Senators in all of the States from Alabama to Wyoming are not covered in their selection of their personal advisers.

I suggest that what the Senator is saying is that what has been applied to the State Senators in Alabama should not apply to the U.S. Senator from Alabama. For the life of me, I cannot see why this inconsistency is built into the proffered amendment of the Senator from Alabama.

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

Mr. WILLIAMS. I have been reminded that my time is running short, and I am happy to yield to the Senator from New York.

Mr. JAVITS. I thank my colleague. I shall not take very long.

Mr. President, there are two reasons why this amendment should be defeated. The first is that we voted on the question of exempting or retaining under this bill employees of State and local governments, and the Senate, by a vote, I believe, of 59 to 16, voted to keep them in the bill. At that time, the condition of the bill was exactly what it is now with respect to congressional employees. So that is the first reason. The Senate has decisively passed upon that issue.

Second, Mr. President, and very importantly, we have just agreed to an amendment which would exempt personal assistants or immediate advisers of State legislators, and we went to great pains to define that. In general, the employment of assistants to Members of Congress or Members of the Senate would fall, in the main, perhaps not entirely but in the main, within this kind of definition.

Under those circumstances, Mr. President, it would be anomalous to now turn the clock back and reverse our earlier vote.

For those reasons, Mr. President, we believe this is just another way of trying to reargue the issue which has already been decided so decisively by the Senate, to wit, the inclusion of employees of State and local units of government, and that therefore the amendment should be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, yielding myself just 1 more minute, just to make one point clear, it is to be noted that those employees of Congress or congressional agencies, in the competitive service, as it is called, which would include employees of the General Accounting Office and the Printing Office, and perhaps some other housekeeping employees, are included within the ambit of the bill as it now stands.

So it seems to me that the network of issues now has been worked out entirely through the amendment last decided, that of Senator ERVIN, and through the decision of the Senate to keep in the State and local employees.

For those reasons, the amendment should be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. I yield 5 minutes to the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, this amendment is entirely different from the amendment which has just been adopted. Amendment No. 888, which has been adopted, applies only to the elected officials of States and political subdivisions of States and to their personal advisers. This amendment applies to Members of Congress. This would provide that the provisions of these amendments shall not apply to any State or local employees as long as Congress exempts employees of Congress and the employees of Members of Congress from the coverage of this bill.

I mentioned several days ago, with great reluctance, that I find, as I travel to and fro across the country, that people are losing a great deal of confidence—I use that word for lack of a better word—in Congress, because Congress passes laws that apply to other men but will not make the laws applicable to themselves.

Under this bill, the Congress of the United States would be exempt from the coverage of this bill. When Congress persists in exempting itself from the coverage of this bill, it is emulating the doctor who prescribed medicine for his patients but would not take it himself. This amendment would say that what is sauce for the State goose is sauce for congressional gander. It would say that no State employees at any level shall be brought under the coverage of this bill until "Doctor" Congress takes the same medicine that he is trying to prescribe for the States and local subdivisions of government.

I think the Senate should adopt this amendment and show that what it thinks is good for the State goose is also good for the congressional gander.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. I yield back the remainder of my time.

Mr. WILLIAMS. I yield back the remainder of my time.

Mr. ALLEN. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

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

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

All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Alabama. On this question the yeas and the nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from ALASKA (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Utah (Mr. MOSS), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from Virginia (Mr. SPONG), the Senator from Georgia (Mr. TALMADGE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Idaho (Mr. CHURCH) are absent on official business.

I further announce that, if present and voting, the Senator from South Dakota (Mr. MCGOVERN) and the Senator from Washington (Mr. JACKSON) would each vote "nay."

Mr. SCOTT. I announce that the Senators from Vermont (Mr. AIKEN and Mr. STAFFORD), the Senators from Kentucky (Mr. COOK and Mr. COOPER), and the Senator from Alaska (Mr. STEVENS) are absent to attend the meetings of the Canadian Interparliamentary Union.

The Senator from Oklahoma (Mr. BELLMON), the Senator from New York (Mr. BUCKLEY), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. PACKWOOD), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

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

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from Colorado (Mr. DOMINICK). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Colorado would vote "nay."

The result was announced—yeas 21, nays 44, as follows:

[No. 50 Leg.]

YEAS—21

Allen	Ellender	Hruska
Baker	Ervin	Long
Bennett	Fannin	McClellan
Brock	Fulbright	Sparkman
Byrd, Va.	Gambrell	Stennis
Cotton	Gurney	Tower
Curtis	Hansen	Young

NAYS—44

Allott	Javits	Proxmire
Beall	Jordan, Idaho	Randolph
Bentsen	Magnuson	Ribicoff
Bible	Mansfield	Roth
Boggs	Mathias	Saxbe
Brooke	McGee	Schweiker
Burdick	McIntyre	Scott
Byrd, W. Va.	Miller	Smith
Cannon	Mondale	Stevenson
Case	Montoya	Symington
Chiles	Nelson	Taft
Dole	Pastore	Tunney
Eagleton	Pearson	Weicker
Hatfield	Pell	Williams
Inouye	Percy	

NOT VOTING—35

Aiken	Goldwater	McGovern
Anderson	Gravel	Metcalf
Bayh	Griffin	Moss
Bellmon	Harris	Mundt
Buckley	Hart	Muskie
Church	Hartke	Packwood
Cook	Hollings	Spong
Cooper	Hughes	Stafford
Cranston	Humphrey	Stevens
Dominick	Jackson	Talmadge
Eastland	Jordan, N.C.	Thurmond
Fong	Kennedy	

So Mr. ALLEN's amendment (No. 890) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. FANNIN). The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, I yield to the Senator from Virginia (Mr. BYRD), except that before I yield, I would like to observe that the last vote was very interesting. It shows that Dr. Congress is not willing to take the medicine which Dr. Congress prescribes to the people of this Nation. In other words, what is sauce for the State and local officials is not sauce for the congressional gander.

DEMONSTRATION BY CITIZENS OF RICHMOND AND HENRICO AND CHESTERFIELD COUNTIES AGAINST BUSING

Mr. BYRD of Virginia. Mr. President, I invite the attention of the Senate to a very unusual action today—3,261 automobiles left the Richmond, Va. fairgrounds for Washington.

The figure I cite, of 3,261 automobiles, was given to my office by the Henrico County police, who state that each car had 3 or 4 persons in it. That means more than 10,000 individuals from Richmond and Chesterfield and Henrico Counties came to Washington through the snowstorm today as a peaceful means of communicating to their Government their deep concern for compulsory busing that has been inflicted on their schoolchildren.

Just think of that—3,261 cars left Richmond this morning and drove to Washington. There was no disturbance. They drove through the city with a relatively small sign on the car with one word written on the sign. There was a photograph, a picture, or a drawing of a school and the one word, "Help."

All of those people wanted some help from their Government in Washington. Some 140 to 160 of these approximately 10,000 people met in the House of Representatives.

They also went individually in smaller groups to call on Members of the House of Representatives to try to acquaint them with the very grave and very serious situation which afflicts the people of Henrico and Chesterfield Counties and the city of Richmond.

I made a brief talk to this group in the House Caucus Room. They are outstanding citizens of the Richmond area. The entire matter was handled with re-

straint. All of these people with whom I came in contact are responsible citizens—most of them parents—who are deeply concerned that a Federal court decision is forcing the compulsory busing of children from the city of Richmond into the counties of Henrico and Chesterfield and the compulsory busing of children from the counties of Henrico and Chesterfield into the city of Richmond.

Those are large areas. They are large geographically. They are large in population. Henrico County has a population of 180,000. Chesterfield County has a population of 120,000. The city of Richmond has a population of 260,000.

A Federal judge, with one stroke of the pen, cut across the lines of two independent counties and one independent city. By a decree this judge established one school board for those three communities and directed that there be a vast amount of busing, affecting 78,000 schoolchildren, for one purpose and one purpose alone—to achieve an artificial racial balance.

Mr. President, leaving the busing question aside, this decision of the Federal district judge, Judge Merhige, seems to me to strike a severe blow at local government.

A Federal court has set itself up as a super school board and a super legislature.

If that decision stands, most certainly there will be demands from the same groups that other county and city lines be struck down, and the next step would be the crossing of State lines.

I feel that this action on the part of the 10,000 people of the city of Richmond, the county of Henrico, and the county of Chesterfield who came to Washington today is democracy in action. I am proud that I have the responsibility to represent those people and I am proud of the way they handled themselves, with dignity and restraint.

All they seek is to have Congress realize the gravity of the problem and what is being done to the school systems and to the young people of our country by these extremely unreasonable actions and demands on the part of a few Federal judges.

Yes, Mr. President, I am convinced that this action by the 10,000 people of the city of Richmond, and the counties of Henrico and Chesterfield is democracy in action. I hope they set an example for people all over the United States, for those people who feel it is unreasonable to take children away from their own home communities and bus those children across vast areas merely for the sake of achieving so-called artificial racial balance.

I submit that is not in the best interest of anyone. It is not in the best interest of any race, it is not in the best interest of the children, and it is not in the best interest of the country.

As I see it, what we want to do in this country is to build up everybody. We want quality education. We want a good education for all of our people. I submit they are not going to get a good education when we have the extremes to which many Federal judges all over the Nation are going.

I think Congress and the President, acting together, can settle this problem. I was pleased yesterday when both the Republican leader and the Democratic leader said the Senate should face up to this grave question. I hope the Senate will face up to this grave question.

It could be done by legislation, and that would be the best way; but with the temper of the courts, and with so many courts refusing to pay any attention to legislation passed by Congress, I feel the only effective way is to develop and pass an effective constitutional amendment, whereby the people themselves will be speaking.

I submit that such a constitutional amendment can be passed. It can be passed if the President will get strongly and firmly behind it, and if the leaders in Congress will get strongly behind it. The best way to assure passage of such an amendment to the Constitution is for the people themselves, the individual citizens, to come to Washington and make their views known on this great question.

I commend the people of Henrico County, Chesterfield County, and the city of Richmond for practicing democracy in action by coming to Washington and petitioning their Government to give some consideration to our educational processes and to the children of our Nation.

Mr. ERVIN. Mr. President, will the Senator yield for questions?

Mr. BYRD of Virginia. I yield to the Senator from North Carolina.

Mr. ERVIN. Does it not require the outlay of vast amounts of money merely to transport 78,000 children to and fro in the area covered by the judge's order?

Mr. BYRD of Virginia. It will cost a great deal of money. I do not have the exact figure but it will cost a great deal of money. The city of Norfolk is faced with the same prospect now. There is no money for mass transportation of students and I do not know how they are going to adjust the tax rates between these two counties and the one city, all of which are independent entities.

The Senator is correct; it is going to cost a great deal of money and that will come away from paying schoolteachers and running an efficient, high quality school system.

Mr. ERVIN. So here we have a Federal judge who has no power under the Constitution of the United States to impose taxes upon the people of the city of Richmond and the counties of Chesterfield and Henrico, entering an order which would require for its consummation the levying of vast amounts of taxes.

Mr. BYRD of Virginia. The Senator is correct. The three communities have entirely different tax scales. I am sorry I do not have the figures in my mind. I am taking this from memory, and I may be slightly incorrect, but I believe in one county the true tax rate is about 95 cents per $100, the true tax rate in another community is about $1.88, and the third area is somewhere in between.

Mr. President, what are you going to do now? Are you going to say to the one community with a tax rate of 95 cents that they have to double their taxes or are you going to tell the community with the tax rate of $1.88 that they must halve the amount of money?

It seems to me we are getting into all sorts of problems and it seems to me that those problems do not belong in the hands of a judge but in the hands of the local people.

Mr. ERVIN. I would say to the Senator from Virginia from a lifetime of studying law, and especially constitutional law, that in my judgment there is no principle in the Constitution which gives a Federal district judge the power to wipe out county and city lines established by one of the sovereign States of America, and no power to create school districts.

I assure the Senator from Virginia that the Senator from North Carolina admires the fact that the Senator from Virginia always acts to protect the freedom of his constituents, and the Senator from North Carolina will join him in every possible effort to see that the school children of Richmond and Henrico County and Chesterfield County are freed from this unspeakable judicial tyranny.

Mr. BYRD of Virginia. I am very grateful to the Senator from North Carolina. I wish to ask a question of the Senator from North Carolina. I wish to add that the Senate generally recognizes the Senator from North Carolina as being the ablest and most learned constitutional lawyer in Congress.

Has there been any other court decision in the Senator's recollection where a Federal judge has cut through independent county lines, independent cities and counties, and by the stroke of a pen merged the school systems into one gigantic system?

Mr. ERVIN. I am happy to say that thus far I have heard of no decision which is in any way comparable to the decision imposed upon the city of Richmond and the counties of Henrico and Chesterfield in Virginia.

I do not believe a Federal judge has the right to overrule the decision of a sovereign American State and make laws altering the boundaries of political subdivisions of a State.

Mr. BYRD of Virginia. So this is a landmark decision, one which is far-reaching and one which the Senator from North Carolina and the Senator from Virginia, at least, think is a dangerous one in its potentialities, and one which, if not reversed, could lead, it seems to me, to a greater erosion—we have already had a great erosion—of the liberties of the individual citizen and continue to a greater extent the erosion of the rights and responsibilities of the localities.

Mr. ERVIN. There is no doubt in my mind that Congress has the absolute power to take from all district judges in the United States the capacity to exercise such unbridled power as was exercised in this particular case.

The third article to the Constitution provides that Congress may establish courts inferior to the Supreme Court. There is a multitude of decisions of the Supreme Court which lay down the sound doctrine that Congress has complete jurisdiction of all courts inferior to the Supreme Court and can define their jurisdiction and can limit their jurisdiction

and can take jurisdiction away from them.

Furthermore, the Constitution gives the Supreme Court some original jurisdiction of a very small extent. Section 2 of article III of the Constitution says in part:

> In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned—

That is, in all cases in which jurisdiction could possibly be given to a Federal court—

> the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

I believe that the men who drafted and ratified this great instrument put those words in the Constitution for the purpose of enabling Congress to keep the Federal courts within the constitutional field.

Undoubtedly, under the Constitution the Supreme Court can prevent violations of the Constitution by the Congress or by the President. And Congress and the President are not the only ones who violate the Constitution. The courts violate the Constitution, and I know of no case where they have violated the Constitution more flagrantly than in the equal protection clause of the 14th amendment, under which this tyrannical order was entered.

That clause states that:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

It is very simple. It merely means that no State shall treat in a different manner persons similarly situated. All of these children were similarly situated with respect to their neighborhood schools. This order says, in effect, that the children in each one of the two counties and the city of Richmond in each school district must be divided into two classes. One class will be allowed to attend their neighborhood schools, and the other will be denied the right to attend their neighborhood schools.

That is an obvious violation of the equal protection clause, because the court order requires the school authorities of the city of Richmond and of the two counties concerned to treat in a different manner children similarly situated.

So that is one violation of the equal protection clause.

The other violation is that the Supreme Court held, in the case of Brown versus Board of Education of Topeka, the famous school desegregation case, that the equal protection clause forbids a State to exclude a child from any school on account of his color.

When the court ordered the school boards of Richmond and the two counties to divide the children into two classes and deny one class of children the right to attend neighborhood schools, it told the school boards that they must bus some of these children to schools in other areas merely because of their race. That is nothing in the world but requiring the local school authorities to violate the equal protection clause by denying, on account of their race, the children who are ordered to be bused the right to attend their neighborhood schools.

We have some monstrous decisions of the courts. I respect court decisions when they are respectable, but court decisions that do not conform to the Constitution are not respectable and are not worthy of respect.

We have the decision of the Supreme Court in the Swann case which holds, in substance, that when a school board violates the equal protection clause of the 14th amendment, the Federal court would require the school board not only to continue to violate the equal protection clause but to violate the equal protection clause in a more massive manner by assigning every child in the school system solely by virtue of the child's race. That is a contradiction of the equal protection clause.

Mr. BYRD of Virginia. It certainly looks that way to the Senator from Virginia.

Mr. ERVIN. I would say the Supreme Court has held many times that the Congress has the undoubted power to limit in any manner it seems fit the jurisdiction of inferior courts, which includes the district courts. Also, it has held in innumerable cases that it has the power to regulate as it sees fit the appellate jurisdiction of the Supreme Court.

I, for one, expect to support a constitutional amendment to put an end to these unspeakable bureaucratic and judicial tyrannies, and also to support a statute which will give immediate relief by taking away the jurisdiction of the courts and of the Federal Government to order busing children merely to integrate their bodies, and not for the purpose of enlightening their minds.

Mr. BYRD of Virginia. I shall follow the leadership of the distinguished Senator from North Carolina in that regard.

Mr. President, a very thoughtful letter, addressed to the President of the United States, was brought to Washington today from Richmond and Henrico and Chesterfield Counties. It was signed by Ryland Y. Bailey, president of the George Wythe High School PTA, chairman, Richmond Federation of Concerned Citizens and Parents.

I ask unanimous consent that the text of the letter by the president of the George Wythe High School PTA be published at this point in the RECORD.

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

FOR THE PERSONAL ATTENTION OF THE PRESIDENT OF THE UNITED STATES OF AMERICA, THE HONORABLE RICHARD M. NIXON

FEBRUARY 17, 1972.

MR. PRESIDENT: As residents and parents living in the City of Richmond we ask your help in ending the ridiculous disruptive conditions which exist in Richmond Public Schools as a result of Federal Court orders which now require the "forced busing" of approximately 21,000 students in a system with a 43,000 enrollment.

In August 1970 middle and high school students were required to be "forced bused" to and from opposite sides of the city from satellite zones and other ridiculous gerrymandered areas to meet certain racial percentages in each school. However, these percentages were not achieved because last year approximately 3,500 students left the Richmond public school system. Throughout the year there was chaos and disruption in the schools. Armed school guards were employed to monitor hallways and school grounds for the first time in the history of the Richmond system.

This school year first graders and above were required to be bused as far as seven miles across town during the busy traffic hour so that certain racial percentages could be achieved in each elementary school but these percentages have not been achieved either because an additional 4,500 students left the public school system in 1971.

So far this year incidents are continuing, along with resentments and frustrations. Now it is obvious that the quality of education has suffered drastic deterioration. I have talked with numerous teachers and administrators who are heartsick over existing conditions. Many of the best teachers have taken early retirement, others are anxiously waiting until they can qualify for it.

The health, happiness and safety of untold numbers of people has been affected by "forced busing" in Richmond. Many have been forced to seek medical help in overcoming worry and frustration, as well as aid for injuries. Numerous families have moved to different neighborhoods outside the city. Others have moved out of the metropolitan area and a few families have moved to other countries. We think the existing conditions impose an intorerable oppression upon Richmond people. The proposed consolidated system which has been ordered would impose an even more intolerable oppression upon many Richmond people, especially black people because thousands of them would be bused long distances out of the city.

Freedom to choose certainly is recognized as being an inherent right granted by the national Constitution. Under a freedom-of-choice plan the Richmond Public School System was recognized as being one of the best public school systems in the nation. Under Freedom-of-choice any student could go to any school of his choice but he did have to provide his own transportation to get there. Under freedom-of-choice there were predominantly white schools but no all white schools. There were some all black schools, but the overall system was rated among the best in the nation.

To restore order and justice and the application of common sense in the operation of the Richmond Public School System and to regain the quality and the standard of education which we have lost in Richmond, we specifically ask your support of a constitutional amendment (H. J. Res. 620) which will neutralize this oppressive order so that the free will of all the people may prevail. We also ask your support of Senator Byrd's proposed constitutional amendment which would require regular review of all Federal Judges and Supreme Court Justices.

There is no easy solution to problems which exist; however, we believe the neighborhood school concept is a key factor. Under freedom-of-choice we know that most people chose to send their children to the closest neighborhood school. We also believe there will always be a relatively few persons who will want their children to go to school away from their neighborhood. For these children we think this choice should be permitted and methods developed for providing reasonable transportation.

Also, if there are neighborhood schools where certain educational problems exist, we think qualified teachers should be recruited at a premium salary, if necessary, to meet this challenge and deal with it in the school.

One elementary school teacher who taught in a white or predominantly white classroom for many years, but in a predominantly black classroom in 1970–71 told me in the late spring of 1971 that she felt

she had spent a successful teaching year; much more so than she would have if her class had been racially balanced.

The point of all this being Mr. President that in our opinion "forced busing" and racial balance is not necessary to achieve quality education or good human relations. In fact our experience so far indicates the opposite is true; however, a good public school system must have strong public support to continue providing quality education. To retain strong public support, we think a public school system must be operated under a neighborhood school concept with a program of quality education for every child and a freedom-of-choice option for those children who want to go to school away from their neighborhood.

Please give us all the help you can in correcting the very unpleasant school situation which exists in our city as a result of Federal Court orders.

RYLAND Y. BAILEY,
President, George Wythe High School P.T.A. Chairman, Richmond Federation of Concerned Citizens & Parents.

Mr. MANSFIELD. Mr. President, will the Senator from North Carolina yield to me without losing his right to the floor?

Mr. ERVIN. I yield.

DESIGNATION OF CERTAIN WILDERNESS AREA, WYOMING

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 166.

The PRESIDING OFFICER (Mr. FANNIN) laid before the Senate the amendment of the House of Representatives to the bill (S. 166) to designate the Stratified Primitive Area as a part of the Washakie wilderness, heretofore known as the South Absaroka wilderness, Shoshone National Forest, in the State of Wyoming, and for other purposes, which was to strike out all after the enacting clause and insert:

That, in accordance with subsection 3(b) of the Wilderness Act of September 3, 1964 (78 Stat. 891), the area classified as the Stratified Primitive Area, with the proposed additions thereto and deletions therefrom, comprising an area of approximately two hundred and thirty-eight thousand acres as generally depicted on a map entitled "Washakie Wilderness—Proposed," dated June 15, 1967, revised October 1, 1971, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture, is hereby designated for addition to and as part of the area heretofore known as the South Absaroka Wilderness, which is hereby renamed as the Washakie Wilderness.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and a legal description of the Washakie Wilderness with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Stratified Primitive Area addition to the Washakie Wilderness shall be administered as a part of the Washakie Wilderness by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. The previous classification of the Stratified Primitive Area is hereby abolished.

Mr. MANSFIELD. Mr. President, I move that the Senate disagree to the amendment of the House of Representatives and request a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. BIBLE, Mr. CHURCH, Mr. METCALF, Mr. HANSEN, and Mr. HATFIELD conferees on the part of the Senate.

LEAVE OF ABSENCE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may be granted official leave by the Senate for tomorrow to attend a funeral.

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate resumed the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

AMENDMENT NO. 809

Mr. ERVIN. Mr. President, on behalf of the distinguished Senator from Alabama and myself, I call up amendment No. 809.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 33, line 24, strike out the word "religious".

Mr. ERVIN. This amendment would make section 702 of the Civil Rights Act of 1964, as amended at the bottom of page 33 of this bill, read as follows:

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

In other words, the amendment would exempt religious corporations, associations, and societies from the application of this act insofar as the right to employ people of any religion they see fit is concerned. That is the only effect of this amendment.

In other words, this amendment is to take the political hands of Caesar off of the institutions of God, where they have no place to be.

I do not care to debate this amendment this afternoon. I thought perhaps, since it is snowing so hard and it will be difficult for employees of the Senate and others to get home, if the majority leader will pardon the suggestion, that this would be an appropriate time to quit for the day.

Mr. MANSFIELD. Mr. President, I agree with the distinguished Senator. 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. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR RECOGNITION OF SENATOR MOSS ON MONDAY, FEBRUARY 21, 1972

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, following the reading of George Washington's Farewell Address, the distinguished Senator from Utah (Mr. Moss) be recognized for not to exceed 15 minutes.

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

CONSIDERATION OF UNFINISHED BUSINESS ON TUESDAY

Mr. BYRD of West Virginia. Mr President, I ask unanimous consent that on Tuesday next, at the conclusion of the period for the transaction of routine morning business, the Chair lay before the Senate the unfinished business.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum. I assume this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, I shall state the program for tomorrow.

The Senate will convene at 11 a.m. After the two leaders, or their designees, have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Senators CHILES, PEARSON, and MONDALE.

At the conclusion of the unanimous-consent orders recognizing Senators, there will be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Chair will lay before the Senate the unfinished business.

The pending questions at that time will be on the adoption of the amendment offered by the distinguished senior Senator from North Carolina (Mr. ERVIN), amendment No. 809. There is no time limitation agreement thereon. The yeas and nays have not been ordered thereon. It is highly unlikely that any rollcall vote will occur on tomorrow.

The distinguished manager of the bill, the Senator from New Jersey (Mr. WILLIAMS), intends tomorrow to present a motion to invoke cloture on the pending bill.

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 a.m. tomorrow.

The motion was agreed to; and at 4:51 p.m. the Senate adjourned until tomorrow, Friday, February 18, 1972, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate February 17, 1972:

DEPARTMENT OF JUSTICE

William K. Schaphorst, of Nebraska, to be U.S. attorney for the district of Nebraska for the term of 4 years vice Richard A. Dier, resigned.

FARM CREDIT ADMINISTRATION

The following named persons to be members of the Federal Farm Credit Board, Farm Credit Administration, for terms expiring March 31, 1978:

Melvin E. Sims, of Illinois, vice R. D. Pennewell, term expiring.

E. Riddell Lage, of Oregon, vice A. Lars Nelson, deceased.

IN THE MARINE CORPS

The following named (Naval Reserve Officers' Training Corps) graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Adkins, Arthur A.
Arndt, Gary A.
Armstrong, Brain S.
Ashley, William G.
Bailey, Gilbert W., II
Behal, Eugene F.
Blackiston, Dallas O. II
Blackledge, Matthew W.
Blice, Anthony D.
Borgert, Gregory D.
Brothers, Bruce H.
Brown, Franz K.
Brown, Patrick J.
Buettner, John M.
Bussiere, James A.
Canetti, Christopher S.
Carter, Wilfred
Case, Stephen A.
Carmichael, David L.
Chinn, Wendell C.
Conway, Kevin J.
Cooper, Michael
Covert, David C.
Creech, Walter M.
Culler, William S.
Cygan, Michael T.
Denison, Alan G.
Dunsmore, Billy D.
Efird, William P.
Ehler, Thomas C.
Endres, Alex
Engelen, Richard L.
Farley, Peter B.
Finley, Riley P.
Foursha, Sammy L.
Gale, Michael L.
Gallagher, Patrick F.
Garrett, Patrick M.
Gido, Paul A.
Giles, Lawrence J.
Gion, Clifford J.
Graber, Patrick M.
Graham, Gerold W.
Griffin, Harry P., Jr.
Haffey, William J.
Hamil, David C.
Hammil, William
Hamner, Philip L.
Harrington, Robert J.
Hawkes, Kenneth G.
Hedin, Michael
Heine, Joseph P.
Heldenbrand, Martin L.
Hodson, Douglas D.
Hoffman, James C.
Hinkle, David E.
Holton, Thomas A.
Hoover, Paul C.
Huff, William T.
Hutchinson, Michael J.
Jorgens, William J.
Kline, Gerald J.
Krout, Wayne E.
Leather, Ramsey B.
Lenke, Thomas C.
MacInnis, James
Mack, Stephen
MacKenzie-Graham, Donald B.
Mather, Michael W.
Marzullo, Gary B.
Mizell, Donald
Murray, Thomas W. Jr.
Nelson, Ronald F.
Norman, Dennis E.
O'Brien, Daniel L.
O'Brien, Philip J.
O'Boyle, Michael W.
O'Boyle, Patrick D.
Odekerken, Joseph H.
Orlando, James V., III
Pennington, Troy D.
Peterson, Christopher D.
Rambow, William E.
Regan, Joseph S.
Reid, Charles D.
Richardson, Edmond T.
Richardson, Mark D.
Russell, Gregory
Routson, Samuel J.
Schneider, Robert L.
Schutt, Jerry O.
Sigler, William M., III
Skaggs, Robert W.
Smith, Stanley R.
Spurgeon, Marca
Steel, John E.
Stevens, Roland E.
Strautman, Randolph B.
Strong, John E.
Sudholt, Michael G.
Sundkist, Terrance C.
Tarrant, Kenneth W.
Thiem, Carl W.
Turcich, John A.
Twardy, Ronald D.
Vargas, Frank A., III
Vincent, Kenneth A.
Waters, Charles R.
West, Randall B.
Wester, John A., Jr.
Wheeler, James R.
Williams, Herlis A.
Wilson, Gregory V.
Woodson, Michael S.
Zeimetz, Joseph M.
Zinn, Andrew D.
Zhookoff, George E.

The following-named U.S. Naval Academy graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Accursi, Leo L.
Barr, Michael J.
Besaw, Gary A.
Blair, Lawrence J., Jr.
Bodine, Barry L.
Borderud, Scott R.
Brandon, Robert A.
Burnette, Edwin A.
Butler, Dean E.
Byers, Michael J.
Byrd, Robert S.
Caldwell, William B., Jr.
Cardi, Cesare
Carl, David H.
Chard, Steven D.
Clark, Michael J.
Cooper, Whylen G.
Crump, Walter L., Jr.
Curtis, Robert C.
Davis, Calvin R.
Daymude, John R.
Decker, Raymond J., Jr.
Delbridge, Robert W., Jr.
Donohue, Paul F.
Edinger, Arthur E.
Edwards, William R.
Fanning, Larry G.
Fayle, Patrick A.
Fisher, Stephen T.
Fox, Robert C.
Frawley, Richard J.
Frazier, Douglas N.
Gaumer, John R., Jr.
George, Charles E.
Gibson, Frank L.
Glover, Joe H.
Groves, William L.
Guilliams, Ronald G.
Haden, Gerald L.
Hawthorne, Daniel G.
Henry, Patrick T.
Hickey, James T.
Howard, Arthur J., Jr.
Jatho, Edgard W., Jr.
Johnson, Dallas, W.
Johnson, Johnnie
Johnston, John J.
Jones, Nelson M.
Jones, Thomas D.
Keaser, Lloyd W.
Kenney, Robert E.
Klein, Edward M.
Knapp, William L.
Konopa, Steven J.
Kratochvil, David A.
Lamberth, Gregory D.
Lee, Robert E.
Lewis, Donald C.
Linhart, Richard J., Jr.
Lundblad, Michael T.
Marshall, Robert A.
Martin, Paul W.
Mason, Matthew T., II
McClowry, Thomas P.
McFarland, John S.
McLaughlin, Steven M.
McLeod, John W.
McMillan, Julius A.
Meserve, Richard P.
Mitchell, Thomas P.
Mooney, John T.
Moore, William J., Jr.
Morrell, Richard W., II
Moss, Scott F.
Mu, Richard A.
Murray, David W.
Newhart, Harold P.
Nichols, Frank W.
Norris, Sheldon J.
Noto, Clayton W.
Nugent, John A.
Padden, Thomas J., III
Perrott, Edward J.
Peterson, George L.
Petrusch, Charles E., II
Phillips, Joe D.
Polly, Richard K.
Popper, Michael K.
Porterfield, Richard B.
Rucks, Charles H.
Schaub, Kenneth E.
Schickner, Mark C.
Schuler, Thomas M.
Schultz, Randolph L.
Sessa, Vincent A.
Sexton, John L.
Seybert, Jerry M.
Shoger, Thomas C.
Sluder, James M., III
Smith, Brad S.
Smith, Edward M.
Smith, Gary E.
Smith, Randall E.
Solecki, Peter K.
Stefek, Thomas G.
Stephens, Blake R.
Stevens, Scott H.
Summers, Steven D.
Taylor, John R., III
Thorne, Lloyd M.
Thornton, John D.
Tindall, Julius S.
Upton, John G.
Vizzier, Joseph M.
Walther, Larry E.
Wehrle, Robert A. W.
Wheeler, Michael J.
Wilkerson, John A.
Wry, Steven C.
Zimmerman, Robert R.

The following named (Navy enlisted scientific education program) graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Dvoskin, Stanley F.
Horn, James A., Jr.
Keislake, Keith L.
Miller, Charles W.
Myers, Richard M.
Stephens, Cortez D.
Thornton, John M.
Tucker, George T.
Watkins, Ray F.
Webber, Alfred W.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 17, 1972:

U.S. DISTRICT COURTS

Wilbur D. Owens, Jr., of Georgia, to be a U.S. district judge for the Middle District of Georgia.

DEPARTMENT OF JUSTICE

Wilbur H. Dillahunty, of Arkansas, to be U.S. attorney for the eastern district of Arkansas for the term of 4 years.

William D. Keller, of California, to be U.S. attorney for the Central District of California for the term of 4 years.

Harold Hill Titus, Jr., of Washington, D.C., to be U.S. attorney for the District of Columbia for the term of 4 years.

Ermen J. Pallanck, of Connecticut, to be U.S. marshal for the District of Connecticut for the term of 4 years.

EXTENSIONS OF REMARKS

THE BAY IS DYING

HON. JEROME R. WALDIE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 1972

Mr. WALDIE. Mr. Speaker, we in the Congress are all aware of the tremendous pressures to absolve the Nation of one of its principal problems—water pollution. The legislation about to be reported out of the House Committee on Public Works is a monument to that concern.

It is vital to the best interests of the Nation that the Congress gives to the President a bill that is realistic, tough, and enforceable.

I would think that the bill we act on in the next few weeks will have all those qualities.

Mr. Speaker, one of the greatest bodies of water in the Nation, San Francisco Bay, will be a direct beneficiary of that bill. I call the attention of my colleagues to a recent newspaper article written by Jeanne Peak in the Valley Pioneer, Danville, Calif., in which the threats to San Francisco Bay are described and one