development of the Trust Territory of the Pacific Islands; to the Committee on Interior and Insular Affairs.

By Mr. CHARLES H. WILSON (for himself and Mr. YATRON):

H.R. 18844. A bill to provide for drug abuse and drug dependency prevention, treatment, and rehabilitation; to the Committee on Interstate and Foreign Commerce.

By Mr. WOLFF:

H.R. 18845. A bill to authorize the Secretary of the Interior to establish the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. WYATT:

H.R. 18846. A bill to amend the Internal Revenue Code of 1954 to make it clear that independent truck dealers and distributors who install equipment or make minor alterations on tax-paid truck bodies and chassis are not to be subject to excise tax as manufacturers on account thereof; to the Committee on Ways and Means.

By Mr. McFALL (for himself, Mr. PATMAN, Mr. UDALL, Mr. WYATT, Mr. FRIEDEL, Mr. WALDIE, Mr. MORSE, Mr. ECKHARDT, Mr. MCKNEALLY, Mr. MATSUNAGA, Mr. SHRIVER, Mr. ULLMAN, Mr. CONTE, and Mr. BOLAND):

H.R. 18847. A bill to amend the Public Works Acceleration Act to make its benefits available to certain areas of extra high unemployment, to authorize additional funds for such act, and for other purposes; to the Committee on Public Works.

By Mr. QUIE:

H.R. 18848. A bill to prevent the assignment of draftees to active duty in combat areas without their consent; to the Committee on Armed Services.

By Mr. QUIE (for himself, Mr. AYRES, Mr. ERLENBORN, Mr. ESCH, Mr. DELLENBACK, Mr. SCHERLE, and Mr. STEIGER of Wisconsin):

H.R. 18849. A bill to amend and extend the Higher Education Act of 1965 and other acts dealing with higher education; to the Committee on Education and Labor.

By Mr. TUNNEY (for himself and Mr. VAN DEERLIN):

H.R. 18850. A bill to direct the Attorney General to establish quotas for the production in the United States of depressant, stimulant, and hallucinogenic drugs and to establish controls on the export of such drugs from the United States; to the Committee on Interstate and Foreign Commerce.

By Mr. SCHEUER:

H.J. Res. 1344. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

By Mr. STOKES:

H.J. Res. 1345. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

By Mr. FRASER (for himself and Mr. WHALEN):

H. Con. Res. 700. Concurrent resolution to establish a Joint Committee on Intelligence, and for other purposes; to the Committee on Rules.

By Mr. McCARTHY:

H. Con. Res. 701. Concurrent resolution on the conversion to a low-emission propulsion system for motor vehicles to replace the internal combustion engine; to the Committee on Interstate and Foreign Commerce.

By Mr. McCLOSKEY:

H. Con. Res. 702. Concurrent resolution on the conversion to a low-emission propulsion system for motor vehicles to replace the internal combustion engine; to the Committee on Interstate and Foreign Commerce.

By Mr. BROOMFIELD:

H. Res. 1176. Resolution to express the sense of the House with respect to troop deployment in Europe; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. MEEDS:

H.R. 18851. A bill for the relief of Mrs. Anita Lingho Tong; to the Committee on the Judiciary.

By Mr. RYAN:

H.R. 18852. A bill for the relief of Maximo Espinal; to the Committee on the Judiciary.

H.R. 18853. A bill for the relief of Guy Lubroth; to the Committee on the Judiciary.

By Mr. TEAGUE of California:

H.R. 18854. A bill for the relief of Jose De Jesus Robles; to the Committee on the Judiciary.

By Mr. WINN:

H.R. 18855. A bill for the relief of Usto E. Schulz; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

566. The SPEAKER presented a petition of the National Council of the YMCA, relative to abolition of the draft, which was referred to the Committee on Armed Services.

SENATE—*Thursday, August 6, 1970*

The Senate met at 10 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

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

Almighty God, from whom cometh every good and perfect gift, bestow upon all Members of the Senate the gifts of prudence, fortitude, and patience that in framing policy and enacting laws they may be guided by eternal truth and right, for the enhancement of the Nation and the advancement of Thy kingdom. Aware that the care of the many must ever rest with the few, keep them keen in mind, strong in heart, humble in the use of power that they may serve the common good of "One Nation, under God, indivisible, with liberty and justice for all."

Through Christ our Lord. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 6, 1970.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, August 5, 1970, be dispensed with.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of the remarks of the Senator from New York (Mr. GOODELL), there be a period for the transaction of routine morning business with a time limitation of 3 minutes in relation to statements therein.

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

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL MONDAY, AUGUST 10, 1970, AT 11 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate completes its business tomorrow, it stand in adjournment until 11 a.m. on Monday next.

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

ORDER FOR RECOGNITION OF SENATOR EAGLETON ON MONDAY, AUGUST 10, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on Monday morning next, August 10, 1970, after the disposition of the Journal, the Senator from Missouri (Mr. EAGLETON) be recognized for not to exceed 15 minutes.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Indiana (Mr. BAYH) is now recognized for 30 minutes.

Mr. NELSON. Mr. President, will the Senator from Indiana yield to me briefly?

Mr. BAYH. I am happy to yield to the Senator from Wisconsin.

SUBMISSION OF TWO AMENDMENTS TO THE CLEAN AIR ACT, S. 3229

AMENDMENTS NOS. 824 AND 825

Mr. NELSON. Mr. President, I submit two amendments to the Clean Air Act, S. 3229, and ask that they be printed and lie on the table.

The ACTING PRESIDENT pro tempore. Without objection, the two amendments will be printed and will lie on the table, as requested by the Senator from Wisconsin.

Mr. NELSON. Mr. President, the first amendment would permit the States to set automobile emission standards more stringent than those which would be set by the Federal Government under the bill. The second amendment would direct the Secretary of Health, Education, and Welfare to immediately begin testing alternatives to the automobile internal combustion engine. It requires further that for the 1975 model year, the test results shall become the basis for standards to be set by the Secretary on emissions from the automobile. Under the amendment, the Secretary, in addition to considering the test data showing the most satisfactory emission characteristics and satisfactory performance of the alternative engines, shall also base his judgment upon the ability of automobile manufacturers to improve the technology available at the time these standards are set.

Finally, Mr. President, I invite the attention of my colleagues to an article in this morning's Washington Post which reports that 15 States have filed suits in the Supreme Court to require automobile manufacturers to take steps to end the pollution from the automobile. 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:

AUTO MAKERS SUED OVER AIR POLLUTION

Fifteen states filed suits in the Supreme Court yesterday to force the big four automobile manufacturers to equip cars with better pollution control equipment and to provide pollution-free engines "at the earliest feasible date."

The states complained that for 17 years the major car builders conspired among themselves to squeeze out any competition for making and installing motor vehicle pollution control devices in violation of the Sherman Antitrust Act.

The suit asked the high court to:

Order the defendants to start a "crash program" to produce pollution control devices superior to those now installed and to develop a pollution-free engine as soon as possible.

Require the defendants to install at their own expense pollution control devices on all their cars sold during the past 17 years.

The suit was filed by the states of Washington, Illinois, Arizona, Colorado, Hawaii, Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Ohio, Rhode Island, Vermont and Virginia.

The defendants are General Motors, Ford, Chrysler, American Motors and the Automobile Manufacturers Association.

The states alleged in an information sheet accompanying the suit that "a direct relationship has been established between the contaiinants . . . in motor vehicle emissions and chronic respiratory diseases, carcinogens, liver and kidney disorders and a wide variety of tumors."

The states and their residents could never be paid back enough to undo the damage, the suit contended.

The plaintiffs said the best date for installation of pollution control devices would be "that date by which pollution-free engines would have been produced but for the conspiracy alleged in the complaint."

The plaintiffs said they brought the suit in the Supreme Court because "there is no other suitable forum . . . in which all plaintiff states can bring this single action and obtain adequate and timely relief."

The suit said it intended for pollution control equipment to encompass equipment designed to reduce pollutants through control of emissions from the exhaust system, the crank case, the carburetor, or the fuel tank.

As for the alleged conspiracy, the suit contended the big four agreed among themselves that all research and development of such equipment should be done on a noncompetitive basis. The automakers agreed to seek a joint appraisal of patents submitted to any one of them and agreed to a cross-licensing set-up in case any one were licensed, the suit contended.

The 15 states also alleged the automakers agree to set a specific date for installing the equipment and at least three times after that agreement decided to try to delay further the installation of the equipment.

S. 4191—INTRODUCTION OF A BILL—COMPREHENSIVE REVISION OF THE UNIFORM CODE OF MILITARY JUSTICE

Mr. BAYH. Mr. President, on July 1, I spoke on the floor of the Senate about the urgent need for reform of our system of military justice, and I outlined the reforms I believe are necessary. Today, I am introducing legislation embodying these reforms, the Military Justice Act of 1970, a comprehensive revision of the Uniform Code of Military Justice.

The ACTING PRESIDENT pro tempore. Without objection, the bill will be received and appropriately referred.

The bill (S. 4191) to protect the constitutional rights of those subject to the military justice system, to revise the Uniform Code of Military Justice, and for other purposes, introduced by Mr. BAYH, was received, read twice by its title, and referred to the Committee on Armed Services.

Mr. BAYH. Mr. President, the quality of the military justice system is perhaps more important today than ever before. The men now in uniform serve in an army which has changed substantially over the years. Most of these men will not see combat. Many of them live off post and serve in a military capacity only during normal working hours. In many ways there is an increased similarity between military service and skilled civilian occupational pursuits. We cannot afford to subject these men to a second-rate system of military justice.

Moreover, there are now nearly 4 million men under arms. Most of these men are young and impressionable, and some will be confronted with American justice for the first time while serving in the Armed Forces. The 1969 report of the Judge Advocate General of the U.S. Army noted that in the Army alone there were 76,320 courts-martial, 94 percent which resulted in convictions. If we are to preserve the integrity of our civilian system, we must see to it that these men return to civilian life with a view of criminal justice that recognizes the fundamental principles of fairness and human dignity. We must see to it that no man is convicted and confined, his life perhaps ruined, without having been accorded full procedural and substantive safeguards.

In light of the increasing importance of the military justice system, we must review its quality, and the fundamental question of its fairness.

The most serious shortcoming in our military justice system is the danger of undue command influence over courts-martial, which may impose numerous penalties, including dishonorable discharge, lengthy imprisonment, or even death. In courts-martial, the commander determines whether to prosecute, controls the court-martial procedure, and plays an integral role in the appellate process. He authorizes searches and arrests, convenes the court-martial, and decides whether the accused serviceman shall remain in pretrial confinement. He chooses the prosecuting attorney and, in some instances, the defense counsel. Finally, he chooses the men to serve as members of a court, the military equivalent of jurors, reviews the findings and sentence, and decides whether a sentence to confinement shall be deferred pending appeal.

In addition to the danger presented by command influence, the military justice system denies a defendant other rights fundamental to a free society. He may be denied credit for time spent in confinement before trial. His military counsel may be precluded from seeking collateral relief. He must apply to the prosecuting counsel, rather than the independent military judge, for subpoenas.

These shortcomings must be remedied, and they must be remedied now. We ask our young men by the millions to give their time and their energies to strengthen our national defense. And we have asked them by the tens of thousands to give their lives on our behalf. I believe we can delay no longer in giving these men a first-class system of military justice.

The need for reform is urgent. But reform cannot be allowed to come in a piecemeal fashion. Individual, pathwork alterations might well suffice to plug some of the smaller gaps in the system. What is urgently needed, however, is a comprehensive revision of the uniform code, a reform which will make military justice conform as nearly as possible to the civil system we find in our State and Federal courts.

The legislation which I am introducing today is such a reform. It is a comprehensive revision of all parts of the Uniform Code of Military Justice dealing with courts-martial, from the moment of arrest to the final disposition of appeals and the completion of confinement. I believe that this proposal would insure every American serviceman the kind of speedy, fair and impartial judicial system to which he is entitled.

Mr. President, I would like briefly to explain the bill's major provisions and to give an example of how the revised

Code would apply to a typical court-martial proceeding from beginning to end.

First, the bill would eliminate all forms of command influence over the court martial process and proceedings. It would vest in a separate and independent Court Martial Command the crucial powers to convene courts-martial; to detail military judges, defense, and prosecuting attorneys; and to choose the members of the court—the jury.

Such an independent command is absolutely essential to a fair system.

The Uniform Code of Military Justice was a landmark reform and an important step forward in insuring the fundamental fairness of military justice and that code does contain a number of provisions designed to increase the rights of an accused serviceman by reducing the commander's influence over the court-martial procedure. Thus, the code prevents a commander from convening a court-martial if he has a "personal interest" in the case or if he is "the accuser," and prevents him from censuring, reprimanding, or admonishing any court member, law officer, or counsel with respect to the findings of a court or for the sentence imposed or in any manner attempting by unlawful means to influence the action of a court-martial or any member thereof. But we have not yet provided the full measure of protection required. As long as the commander makes all decisions, there is a continuing possibility of improper command influence, and the right to a fair and impartial trial remains in jeopardy.

The commander controls the whole court-martial process. He continues to have and to exercise the authority and responsibility to appoint a subordinate to conduct a preliminary investigation.

The officer appointed by the commander to conduct an investigation under article 32 is subject to all of the inherent pressures of a command whose legitimate concern is discipline. This procedure appears to be incompatible with the fundamental principle of civilian jurisprudence which provides that no person should be subjected to a criminal trial unless the prosecutor can demonstrate to an impartial magistrate or grand jury that there is probable cause to believe, first, that a crime has been committed and, second, that this crime was committed by the accused.

The recommendations of the officer conducting the article 32 investigation, as well as those of the commander's legal officer, are not binding upon the commander and are purely advisory. As a result, military law suffers from the absence of any binding legal decision as to the allocation of prosecutorial resources. The regard for efficient allocation of prosecutorial resources and the evenhanded administration of justice which characterize the typical U.S. attorney or State district attorney's office is, therefore, reduced in the military system.

In those instances where the accused is entitled to military legal counsel, the choice of those available to defend the accused remains generally in the hands of the commander. In addition, the commander chooses the counsel who prosecutes the case. The possession of this power to choose the defense counsel and the prosecutor gives the appearance of permitting the commander, by manipulating the choice of personnel, to control the outcome of the case.

Unlike the civilian system, where the accused is entitled to trial by a jury of his peers selected at random, the commander is empowered, virtually without limitation, to choose the members of a court-martial—those who serve in effect, as jurors. While an accused enlisted man is entitled to request that one-third of the court be composed of enlisted men, the selection of those enlisted men who are to serve in the event of such a request is in the hands of the commander. The practice of selecting only senior noncommissioned officers, who are considered more severe than commissioned officers, has been upheld by the Court of Military Appeals. And, while he is required to select those best qualified, there is nothing to preclude a commanding officer from selecting officers known by him to be particularly strict or notably hostile to certain types of alleged offenses. This entire system of selection gives the impression of a "hand picked" jury and is clearly incompatible with the history and theory of trial by jury.

The Uniform Code of Military Justice provides that military appeals are to be heard initially by the convening authority who ordered the trial in the first instance. Although in theory this procedure provides an additional level of appellate review, in practice it has become a time-consuming formality—in one case, the convening authority took no action for 10 months and thereby delayed judicial appeal for that period. And in most cases its results are foregone conclusions. Moreover, it encourages some courts-martial—even when instructed to disregard the commanding officer's review authority—to adjudge automatic maximum sentences so that the commander may reduce the sentence if he so desires. This is clearly an inappropriate and undesirable procedure.

The power to place a soldier in confinement pending trial is also in the hands of the commander. This system, which permits the commander to act virtually without supervision or review has the potential for arbitrary and vexatious action and gives the appearance of unfairness.

This independent Court Martial Command would take over the functions now performed by the commander. The Court Martial Command would be under the administrative supervision of the Judge Advocate General and would be divided into regional commands. It would have four divisions, prosecution, defense, judicial, and administration.

The prosecution division would function much as the U.S. Attorney's office functions in the Federal courts. It would receive complaints from any interested person, investigate them, and prefer charges only if it felt that there was sufficient evidence to convict the accused of the charges brought against him. But the determination of the prosecution division that the accused should be brought to trial would not be final. Just as in the civilian system, the accused would have to be brought before an independent judge—in this case a military judge. The judge would have to determine whether there was probable cause to hold the accused for trial.

After the preliminary hearing and the determination by the judge that the charges should not be dropped, the prosecution division would refer the case to a summary, special, or general court-martial, as it thought appropriate. The prosecution division would also be responsible for detailing trial counsel—the prosecutor—to courts-martial trials.

The judicial and defense divisions would be made responsible for detailing military judges and defense attorneys to courts-martial trials. The bill specifically provides that members of the judicial and defense divisions would be responsible only to the chiefs of their respective divisions, and to the Judge Advocate General. This provision assures that the prosecution division will not be able to influence the actions of the defense or judicial divisions. The performance of the members of the latter two divisions is to be rated by members of that division alone.

I might point out, Mr. President, that under present practice the commander on any military post is the one who looks at the record. He also is the one who determines job ratings and decides whether his men are promoted.

I was on the west coast yesterday. Just merely by chance, I was seated next to an eminent attorney of one of the larger cities. In the course of the luncheon conversation, we got around to the military justice system. It so happened that this man had served as defense counsel on one occasion and had been ordered by his commanding officer to take steps which he thought were entirely out of step with justice in a military case.

I do not want to prolong the story, but I think it is important to put this into the CONGRESSIONAL RECORD so that other individuals throughout the country that have had this experience might bring it to the attention of Congress. Then we will all realize the importance of this problem and breathe some fresh air into it through legislation so that we might really have justice in our military system.

The administration division would be made responsible for picking at random the members of the court, for such general administrative duties as are now performed by the trial counsel, and for detailing or employing court reporters and interpreters.

The establishment of this independent command, and the consequent abolition of the office of "convening authority," as that term is now used in the code, will eliminate any possibility or appearance that the commander, by manipulating the choice of personnel, could control the outcome of a particular case. In addition, the proposal will do much to preclude the institution of charges for what may appear to be arbitrary reasons, provide for the efficient allocation of prosecutorial resources, and insure the pro-

fessional drafting and processing of formal charges.

The establishment of this separate command will not jeopardize the maintenance of discipline. I think this is important. We need discipline in our armed forces. Any person, including the commander, would be entitled to refer charges to the prosecution division for possible trial. In addition, the commander will retain the nonjudicial punishment powers granted to him by article 15. Thus, the commander will be empowered to punish minor breaches of discipline by means of the power he now possesses, and he will be able to refer more serious offenses to the prosecution division.

Second. When a man is accused of a crime, all of the power and resources at the command of the State are brought to bear against him in an attempt to deprive him of his liberty against his will. To prevent the Government from using the resources at its disposal unjustly, significant control over the accusatory process and the trial proceedings must be granted to independent and impartial judges.

Although the Military Justice Act of 1968 created an independent military judiciary, military judges lack many of the powers which are necessary if they are to play a significant role in the military justice process. For example, military trial judges may lack the "all writs" power exercised by civilian judges, such as the power to issue writs of mandamus, prohibition, and coram nobis.

Unlike their civilian counterparts, military judges lack the ability to utilize the contempt power as a means of controlling those individuals outside the courtroom whose conduct constitutes a direct threat to courtroom discipline and to the right of the accused to a fair trial.

Accordingly, this bill would grant to military judges at the trial level the power to issue all writs necessary or appropriate in aid of their jurisdiction, as now provided in the All Writs Act. Military judges would also be given the power to punish for contempt, power which is now possessed by the Federal judiciary. Punishment would be limited to confinement for not more than 30 days or a fine not to exceed $100 or both.

This bill would also give powers over sentencing to the professional judges. At present, the Uniform Code empowers the members of a court-martial to adjudge sentences. The members of a court are not experienced judges. Due to the restrictions imposed by article 37 of the Code upon the type of instruction which members may receive, they often cannot and do not become familiar with the intricacies of the sentencing process. As a result, to quote the 1969 report of the Judge Advocate General:

> The sentences adjudged by court members run the gamut from being so severe as to hamper rehabilitation to being too light to permit effective rehabilitation or to have any deterrent effect.

Perhaps at this time, it would be appropriate to make two observations. I recommend to my colleagues in the Senate a careful perusal of this 1969 Judge Advocate General's report. I feel that this is a professional study by the Army's top lawyers of the system of military justice.

I do not agree with all of the conclusions in that report. I feel certain that the Judge Advocate General will not agree with all the recommendations I am making here today. But I think it is important for the Senate and the Congress and the country to know about the serious study that has been given to this problem.

Also, I would like to say a word of tribute for our colleague, the Senator from North Carolina. The Military Justice Act of 1968 was the most recent amendment to the Uniform Code of Military Justice.

That act is typical of the legislative record which has been compiled over the years by our colleague from North Carolina. I know of no Senator who has given more attention and study to the problems of servicemen confronted by our system of military justice than the Senator from North Carolina. I hope he will continue to do so and that he will direct attention to the proposals I have made today. I think the Senator from North Carolina, who is one of the true experts in this field, can help us make great strides toward the accomplishment of our goal.

In many civilian cases, if the court were to impose the minimum sentence provided by law for a defendant found guilty of the commission of an offense, the demands of justice and equity would not be served. Accordingly, in such cases, the sentencing authority, the judge, suspends the sentence. In the military system, cases which would justify suspension of the sentence also occur. However, the sentencing authority, the members of the court or the military judge, lack the power to suspend a sentence.

Under this bill the sentencing power, including the power to issue suspended sentences—but not including sentences of death—would be transferred to the military judge. The judge would only be allowed to impose a death sentence if the crime was one for which the Code specifically allows that penalty, and if the court-martial's members unanimously recommended that penalty. The final decision would be up to the judge, however. The recommendation would not be binding upon him. This change would place the power to sentence in the hands of the men who are in a position to develop the expertise required, in the words of the Army Judge Advocate General, to "strike a reasonable balance between the frequently competing factors of deterrence and rehabilitation." Moreover, it would bring military justice procedures into accord with the Federal civilian practice and the practice in the large majority of State courts.

Third. The proposed legislation would extend to servicemen certain basic rights now accorded their civilian counterparts.

The Uniform Code of Military Justice would be amended to provide for the appointment of a member of the defense division of the independent trial command upon request immediately following arrest. Procedurally, this would be accomplished at a formal hearing following arrest similar to the presentment required by rule 5 of the Federal Rules of Criminal Procedure.

The subpena power—the power to compel the attendance of witnesses and the production of documents—is made available to civilian defendants through an impartial third party, the trial judge, in order to prevent the State from presenting only the evidence most favorable to its attempt to prove the guilt of those it accuses of the commission of a crime. To accord accused servicemen the same protection, the bill which I introduce today will transfer the subpena power from the trial counsel—the prosecutor—where it now resides, to military trial judges and the requirement that expected testimony be revealed in advance would be abolished.

Under this bill, both prosecution and defense counsel would have to show that the subpena was necessary to an adequate presentation of their case. This provision would eliminate even the appearance that the prosecutor could abuse the subpena power by limiting the ability of the accused to effectively present his defense.

The Uniform Code of Military Justice provides that no serviceman may be tried for the same act both by court-martial and in a Federal court, regardless of which trial occurs first. However, the code does not prevent a serviceman from being tried for the same act in both military and State courts, thus leaving open the distinct possibility of equally severe double jeopardy.

The bill would extend to servicemen the complete protection accorded civilians against double jeopardy by prohibiting trial by court-martial after trial in a State court for the same act, and vice versa.

Under present law, the power to authorize the search of military persons or property on a military installation is exercised solely by the commanding officer. This officer may be the same individual who determines whether to prosecute, controls the court-martial procedure, and reviews the findings and sentence. It is true that the commander must have "probable cause" to authorize a search and that the standards established by the Court of Military Appeals have in some cases exceeded those applying to civilian courts. However, the probable cause need not be proven to an independent authority until the court-martial itself, and there are no affidavits or other evidence available as to the probable cause at the time the search is authorized.

In the civilian justice system, however, the power to authorize searches and to issue arrest warrants is vested in an independent magistrate. In order to make the military system conform to the civilian process, the bill would vest the power to issue search and arrest warrants in the military judges, and take it away from the commanding officer.

Under present law the only procedure for determining whether the accused should be held for trial is the investigation provided by article 32. This investigation is normally conducted by an officer who is subject to the influence of the commander pressing the charges.

Furthermore, this officer is usually not trained in the law and is therefore often incapable of adequately appraising the legal sufficiency of the evidence presented to him. For this practice, the bill would substitute an initial investigation by the prosecution division of the charges. If that division determined that there was enough evidence, it would bring the accused before a military judge. The judge would then determine whether there was probable cause to hold the accused for trial and set bail or its military equivalent. Furthermore, he would be given the power to summarily dismiss legally or factually insufficient charges. The accused would have to be brought before the judge within 24 hours after arrest.

The practical availability of collateral relief would also be affected by this bill. Unlike civilian attorneys, military defense lawyers may seek relief in Federal courts only if given permission to do so by their immediate legal superior, the staff judge advocate. Thus, an accused who has civilian defense counsel, who is not subject to this control, may seek necessary relief in the civilian courts while an accused who is represented by a military lawyer may be inhibited in the attempt to obtain the same relief.

This bill would empower military defense attorneys, at Government expense, to seek collateral relief for their clients in civilian courts when appropriate, and would thereby make the availability of this form of relief independent of the ability of the accused serviceman to employ civilian counsel.

Fourth. The right to trial by individuals selected at random, some of whom may possess attitudes and prior experience similar to those of the accused is a fundamental tenet of American jurisprudence. In accord with this principle, the bill I am introducing would establish a system of random selection for members of general and special courts-martial.

The Senator from Maryland (Mr TYDINGS), has proposed that for general courts-martial we should eliminate the requirement that two-thirds of the members be officers and establish a limited system of random selection of courts-martial members. I support this reform, but I believe it should be expanded and that it should include special as well as general courts-martial. Special courts-martial outnumber general courts-martial by more than 20 to 1, and they can give such serious—and permanent—punishment as bad conduct discharges. Furthermore, I believe that the random selection should be made from among all members of the command in a manner similar to the selection process followed in the Federal judicial system.

It is especially important that enlisted men be more adequately represented on courts-martial. For it is enlisted men who are being tried in these proceedings. The Army tried more than 68,000 men last year. Of those prosecuted, only 63 were officers, less than one-tenth of 1 percent. Given this great discrepancy in the number of officers and enlisted men who go to trial, it is essential that more enlisted men serve on the courts so that the accused can be judged by a jury of his peers.

I have no doubt that enlisted men could serve with honor on these courts-martial. This bill would require all members of the court to have served on active duty for a year or more. A high percentage of enlisted men possess a high school education and a substantial minority are college education—over 15 percent of those men who enlisted last year were college graduates. Thus, there should be little fear that the inclusion of enlisted men as members of courts-martial will result in the inclusion of men unqualified to serve as jurors. Moreover, the fact that the members will be selected at random will insure that the members of the courts-martial will reflect the different experiences and attitudes possessed by the various members of the community. Today's soldiers are part of a different kind of army, much of it engaged in a far different kind of conflict than we knew a generation ago. If they are to be tried for military crimes—and without in any way suggesting that the guilty be excused—they have the right to be judged by those fully familiar with the kind of army we have, the kind of war it is fighting.

Mr. President, I wish to reiterate that point. I think it is important to see that those who commit inexcusable military crimes are punished. But at the same time we must be certain that those who determine guilt or innocence be able to make that determination with full comprehension of the environment and ordeal of the accused at the time the crime was committed.

In addition, in order to make the military system of selecting court-martial members conform more closely to the civilian jury selection system, the number of peremptory challenges would be increased to three per side—and per accused in a joint trial—in a special court-martial empowered to adjudge a bad conduct discharge and six per side in a general court-martial—10 per side in a capital case. The number of peremptory challenges in a special court-martial not empowered to adjudge a bad conduct discharge will remain at one per side.

Mr. President, I think it important that a quick aside be interjected at this point. I know that no Member of the Senate would attach little significance to a sentence of a bad conduct discharge. I remember that when I was in the military such a discharge seemed the worst thing that could happen to me. But I really did not know how burdensome a bad conduct discharge could be until I came to the Senate and received petitions from constituents who had been given bad conduct discharges. It is a serious penalty—it goes with a young man until he is an old man, until the day he dies.

I think we need to make certain that we give adequate protections to those who have to face such a dreadful penalty.

Fifth. The power to confine a citizen against his will is surely one of the most significant powers possessed by the Government. This power ought to be exercised only under the most stringent conditions and only pursuant to the most rational and enlightened procedures. Accordingly, my proposed legislation contains a number of provisions designed to modernize military confinement and sentencing procedures and policies.

The powers to decide whether an accused serviceman should be subject to pretrial confinement and to deter sentence to confinement pending appeal would be transferred from commanding officers to the independent military judges. A presumption in favor of release, which would seem to present no threat to military discipline and which would enable the accused to perform military duties and to utilize the time to prepare his defense, would also be established.

Of course, that presumption could be overridden by the judges.

The judge's rulings would be appealable as interlocutory matters to the U.S. Court of Military Review.

If the military judge decided to confine the accused prior to trial or pending appeal, the accused, like nonmilitary criminal defendants, would be entitled to full credit toward any sentence eventually imposed.

I wonder how many of us realize that if a civilian is confined to jail prior to trial and then is found guilty, the time he has served, sometimes 6 months, sometimes 9 months, is applied to the penalty meted out by the court; but that is not true of the GI or naval officer who is thrown into the stockade or the brig. For some reason or another we have omitted the seemingly obvious point that the time spent in pretrial detention should be deducted from the punishment meted out after trial. I hope we can correct that injustice by adopting this provision of the proposed reform.

The legislation also provides that all those confined—including those awaiting trial or appeal—are to be permitted to participate in work, exercise and rehabilitation programs wherever adequate facilities are available.

Finally, the committee composed of judges of the U.S. Court of Military Appeals, the Judge Advocates General of the Armed Forces, and the General Counsel of the Department of Transportation—representing the Coast Guard—would be directed to study and suggest revisions in the current table of maximum punishments. This study would be conducted with a view toward identifying and correcting apparent inequities and establishing, if possible, subcategories based upon differences in elements of culpability. The study would also include an examination of the advisability of retaining the President's power to alter or suspend the table of maximum punishments as to particular geographical areas or to suspend the table for particular crimes. The committee would be directed to report to Congress within 1 year of the date of enactment of the bill.

Sixth. A somewhat antiquated appellate process creates unnecessary delays and imposes a heavy burden upon the judges of the Court of Military Appeals and other officials involved in the processing of appeals. My legislation is intended to improve this situation in several ways.

It would, as noted above, eliminate review by the convening authority. And as

a result cases which are now heard by the military courts only after a long delay for convening authority would now be appealed directly to the courts.

Furthermore, the Uniform Code of Military Justice would be amended to allow the Judge Advocate General of each service to review the findings and the sentence of a court-martial not reviewed by the Court of Military Review.

In addition, the bill would empower the Supreme Court of the United States to issue writs of certiorari to the Court of Military Appeals. The Court of Military Appeals is the highest court in the military justice system and its decisions often involve important questions of individual constitutional rights. The ultimate resolution of these important questions of constitutional law ought to be the responsibility of the court which is, in all other cases, considered to be the final arbiter of meaning of the Constitution. Review of military decisions by the Supreme Court should create no fear of granting the power of review to civilians outside of the military system because the Court of Military Review may be composed in part of civilians and since the Court of Military Appeals is, by law, composed only of civilians.

Finally, in order to allow the Court of Military Appeals to hear additional cases and to provide for continuity, the revised Uniform Code of Military Justice would increase the number of judges who sit on this court to nine and empower the court to sit in panels of three judges each. This will triple the time available for the court to deal with its heavy workload with no great increase in cost.

Seventh. There are four other aspects of the military justice system which perhaps should be modified. Rather than delay those reforms which can and should be enacted immediately, section 4 would direct a special committee composed of judges of the Court of Military Appeals, the Judge Advocates General of the Armed Forces, and the General Counsel of the Department of Transportation for the Coast Guard to study these problems and to recommend solutions within 1 year of the date of passage of the act.

Specifically, the committee would be directed to study: First, the possibility of eliminating summary courts-martial; second, the desirability of transferring jurisdiction over some absence offenders to the Federal courts; third, methods, other than those I have outlined, of eliminating delays in the appellate process; and, fourth, methods of handling prisoners who complete the service of sentence to confinement prior to the completion of appellate review.

Mr. President, some critics of the military justice system so distrust the military's capability in this area that they would abolish or virtually abolish the power of the services to punish civilian-type felonies in time of peace. I have made the proposals which I have outlined above in the belief that the time for such drastic surgery has not yet arrived. Few civilian crimes are tried in the military courts. The special civilian committee for the study of the U.S. Army confinement system has estimated that of the prisoners placed in confinement by the military, at least 85 percent and perhaps as many as 90 percent are men who have either absented themselves without leave or deserted. These, of course, are crimes uniquely within the purview of the military courts. Another 3 to 5 percent are imprisoned for other military type offenses, such as disrespect of a superior officer, failure to obey a lawful order, and breaking restriction. While these figures do not include the number of men tried and acquitted or tried and not sentenced to confinement, it does appear that the total number of men who are processed by the military justice system for civilian offenses is very small. I believe that these men would be adequately protected if the reforms I have suggested were to be enacted into law.

Moreover, the Supreme Court and the Court of Military Appeals have decided that court-martial jurisdiction does not extend to civilian dependents or employees abroad in time of peace, whether they are accused of capital or noncapital offenses. In addition, the Supreme Court has decided that court-martial jurisdiction extends only to these individuals who are members of the armed services both at the time of the commission of the offense and at the time of trial. Finally, the Supreme Court, in the recent case of O'Callahan against Parker, has decided that members of the Armed Forces can be court-martialed for service-connected crimes only. Indeed, it is possible that the O'Callahan case will be clarified shortly by the Relford against Commandant, now pending in the Supreme Court. Under these circumstances, and with the hope of enactment of significant reforms, I do not believe that further curtailment of court-martial jurisdiction over civilian-type offenses is appropriate at this time.

However, I do believe that reform is necessary and desirable. The enactment of the Military Justice Act of 1966 clearly resulted in an improvement of our system of military justice. Experience has already revealed, however, that the enactment of this important legislation did not sufficiently reduce the effects of command influence—of justice by fiat—and did not succeed in guaranteeing to our men in uniform the same rights and safeguards provided their civilian counterparts. Greater reform is urgently required.

Military commanders should not be concerned that the more equitable system of justice created by my proposed legislation will serve to undercut the discipline which we all recognize as necessary to an effective armed force. Indeed, experience has taught us that inequitable laws spawn disrespect for the law, and disrespect in turn eventually leads to disobedience. Moreover, for relatively minor matters—matters of discipline rather than criminal law—the commander will retain the well-established powers of nonjudicial punishment granted to him by article 15 of the Uniform Code of Military Justice.

My proposals will not, I believe, greatly increase manpower requirements beyond the increases which have already occurred in order to implement the Military Justice Act of 1968. Rather, I believe that they will enable the Armed Forces to utilize present legally trained personnel more efficiently and effectively. Moreover, any desirable increase in personnel could be met by the enactment of legislation designed to improve the retention rate of experienced legal officers. On December 2, 1969, the House passed H.R. 4296, providing for professional pay for judge advocates. This bill and its counterpart, S. 2674, introduced by the Senator from Hawaii (Mr. INOUYE) is now pending before the Senate Armed Services Committee. The enactment of this legislation by the Senate would do much to solve the retention problem.

Mr. President, I believe that the legislation which I have introduced will help create a better system of military justice, a system which will not only bear scrutiny but which will invite admiration.

Mr. President, I hope that the Senate can give immediate attention to this matter. A I mentioned earlier, we have today an army of 4 million young men. Most of these young men are going to come in contact with military justice in one form or another while they are serving their country. If we are to create, at an early age, the respect for the law which these young men ought to take back into civilian life, I think it is imperative that we see that justice is justice, whether it is civilian or military. I recommend the consideration by our colleagues of this important piece of legislation as a way in which we can establish true justice in the military.

Mr. President, I ask unanimous consent to have the bill, a brief section-by-section explanation of the bill's major provisions, and a hypothetical case indicating how the bill would work printed at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. without objection, the bill and material, requested by the Senator from Indiana, will be printed in the RECORD.

The material ordered to be printed in the RECORD is as follows:

S. 4191

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 "Military Justice Act of 1970."

SEC. 2. Articles 1 through 76 and 138 of the Uniform Code of Military Justice are repealed, and the following sections are substituted in lieu thereof:

SUBCHAPTER I. GENERAL PROVISIONS

§ 801. Art. 1. Definitions

In this chapter:

(1) "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the

Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) "Commanding officer" included only commissioned officers.

(4) "Officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(6) "Cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) "Midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) "Military" refers to any or all of the armed forces.

(9) "Accuser" means a person who signs charges, any person who directs that charges nominally be signed by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) "Military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) "Law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

(12) "Legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) "Judge Advocate" means an officer of the Judge Advocate General's Corps of the Army or the Navy or an officer of the Air Force or the Marine Corps who is designated as a judge advocate.

(14) (Omitted)

(15) "Convening the court-martial" means ordering to the place of trial at the appointed time, those persons selected as potential court members pursuant to Article 25 for the trial of such cases as may be brought before them.

(16) "Court-Martial Command" means a separate and independent command established pursuant to Article 6a, located for administrative purposes in the office of the Judge Advocate General of each service, and subdivided into one or more Regional Commands.

(17) "Regional Command" means a subdivision of the Court-Martial Command with direct responsibility for the administration of military justice within such geographical jurisdiction as the Secretary concerned shall by regulation established.

(18) "Initial Appearance" means the taking of a person subject to this chapter before a military judge, pursuant to section 832 of this chapter.

§ 802. Art. 2. Persons subject to this chapter

The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court martial.

(8) Members of the Environmental Science Services Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The military judge may, as part of his sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudge, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

§ 805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

§ 806. Art 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, and Air Force and law specialists of the Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior member of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

§ 806a. Art. 6a. Courts-Martial Command

(a) There is established in the Office of the Judge Advocate General of each armed force an independent command known as the Courts-Martial Command. Such command shall function under the administrative supervision of the Judge Advocate General of the armed force concerned, and each such command shall be divided into four separate divisions as follows:

(1) judicial division;

(2) prosecution division;

(3) defense division; and

(4) administration division.

(b) The judicial division of any Courts-Martial Command shall be responsible, under such rules and regulations as the President may prescribe, for the detailing of military judges by military judges, including the detailing of such judges to courts-martial trials.

(c) The prosecution division of any Courts-Martial Command shall be responsible for detailing trial counsel and assistant trial counsel (when appropriate) to courts-martial trials; in addition to such other responsibilities as are set forth elsewhere in this chapter.

(d) The defense division of any Courts-Martial Command shall be responsible for detailing defense counsel and assistant defense counsel (when appropriate) to represent persons entitled to such representation under this chapter. Such military investigators as shall be required for the proper performance of its duties shall be assigned to the defense division of the Courts-Martial Command.

(e) The administrative division of any Courts-Martial Command shall be responsible for convening courts-martial, detailing or employing qualified court reporters for courts-martial trials and for any military commission or court of inquiry.

(f) The Judicial Division and the Defense Division shall be located in the Court-Martial Command for administrative and logistic purposes only. Members of these divisions shall be subject to the command

and control of the Chiefs of the respective divisions, and the Judge Advocate General of the appropriate armed force, only.

(g) Each Court-Martial Command shall be subdivided into one or more Regional Commands which shall have direct responsibility for the administration of military justice within its geographical area, as designated in appropriate regulations by the Secretary concerned.

SUBCHAPTER II. APPREHENSION AND RESTRAINT

§ 807. Art. 7. Arrest

(a) Arrest is the taking of a person into custody or otherwise impairing his freedom of locomotion in any significant way under the authority of this chapter.

(b) Any person authorized under regulations governing the armed forces to arrest persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person arrested committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to arrest persons subject to this chapter who take part therein.

§ 808. Art. 8. Arrest of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily arrest a deserter from the armed forces and deliver him into the custody of those forces.

§ 809. Art. 9. Imposition of restriction

(a) Restriction is the restraint of a person by an order, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) No person may be ordered into arrest or confinement except for probable cause.

§ 810. Art. 10. Restriction of persons charged with offenses

Any person subject to this chapter charged with an offense under this chapter shall be ordered into restriction or confinement only as provided in sections 815 and 832 of this chapter.

§ 811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a military judge pursuant to section 832 of this chapter.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

§ 812. Art. 12. Confinement with enemy prisoners prohibited

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

§ 813. Art. 13. Punishment prohibited before trial

Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than restriction or confinement upon the charges pending against him, nor shall the restriction or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

§ 814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

SUBCHAPTER III. NONJUDICIAL PUNISHMENT

§ 815. Art. 15. Commanding officer's nonjudicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. A commanding officer authorized to exercise the powers under this article may, if authorized by regulations, delegate such powers to a principal assistant.

(b) Subject to subsection (a) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) restriction to quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under subsection (b)(2)(A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest of any intermediate pay grade if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of restriction to quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whatever any of these punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)-(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) restriction to quarters to restriction to other specified limits;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) restriction to quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Department of Transportation for consideration and advice and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

SUBCHAPTER IV. COURT-MARTIAL JURISDICTION

§ 816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are

(1) general courts-martial, consisting of—

(A) a military judge and seven members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) special courts-martial consisting of—

(A) a military judge and three members; or

(B) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1) (B) so requests; and

(3) summary court-martial, consisting of one commissioned officer.

§ 817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

§ 818. Art. 18. Jurisdiction of general courts-martial

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16 (1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than six months, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. A bad-conduct discharge may not be adjudged unless a verbatim record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial.

§ 820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, "except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay. Summary Courts-Martial will be convened by, and officers detailed to be summary courts-martial by the Chief of the Administration Division of the Regional Command concerned whenever a case is referred to trial by Summary Court Martial by the prosecution division of the Regional Command concerned.

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

SUBCHAPTER V. COMPOSITION OF COURTS-MARTIAL

§ 822. Art. 22. Who may convene courts-martial

Courts-martial may be convened by the Chief of the Administration Division of the Regional Command or his designee within that division.

§ 823. Art. 23. (Omitted)

§ 824. Art. 24. (Omitted)

§ 825. Art. 25. Who may serve on courts-martial

(a) any member of the armed forces who has served on active duty for one year or more is eligible to serve on general and special courts-martial for the trial of persons who may lawfully be brought before such court for trial. Any commissioned officer may serve as a summary court-martial.

(b) Members of a general or special court-martial shall be selected on a random basis from among all those eligible persons permanently stationed within the geographical limits of the Regional Command convening the court-martial unless the Secretary concerned prescribes by regulation the selection of court members from geographical areas smaller than the limits of the Regional Command. Any such regulation shall be consistent with the principle of randomness. The selection of court members shall to the maximum extent practicable, follow the procedure prescribed for the selection of Federal juries.

(c) No member of an armed force is eligible to serve as a member of any court-martial when he is the accuser, a witness, or has acted as an investigating officer or as counsel in the same or a related case.

§ 826. Art. 26. Military Judges

(a) The Judicial Division of the appropriate Courts-Martial Command shall assign at least two military judges to each Regional Command for a period not less than six months. A military judge shall preside over each court-martial referred to him for trial by the Prosecution Division of the Regional Command. He shall—

(1) rule finally on all matters of law,

(2) rule finally on all motions, and

(3) except as otherwise provided in this chapter, decide all other questions raised at the trial of the accused.

In any case referred to him for trial, the military judge shall impose sentence on the

accused and shall have authority to suspend or remit any such sentence. In any case tried without a military judge, the senior ranking military judge within the Regional Command concerned shall have authority to suspend or remit any sentence imposed.

(b) A military judge may issue all writs necessary or appropriate in aid of his jurisdiction and agreeable to the usages and principles of law.

(c) No person other than the Judge Advocate General or his designee within the Judicial Division of the Courts-Martial Command of the armed force of which any military judge is a member shall prepare or review any report concerning the effectiveness, fitness, or efficiency of such military judge.

(d) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(e) No person is eligible to act as a military judge in a case if he is the accuser or a witness or has acted as investigating officer or a counsel in the same or a related case.

(f) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a) For each general and special court-martial, the Chief of the Prosecution Division of the Regional Command or his designee within that division shall detail a trial counsel, and the Chief of the Defense Division of the Regional Command or his designee within that division shall detail a defense counsel, and such assistants as the Chiefs or their designees shall deem appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for court-martial

(1) must be a judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard, who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

§ 828. Art. 28. (Omitted)

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the military judge for good cause.

(b) A general court-martial shall be composed of seven regular members and at least one alternate member, selected pursuant to § 825 of this chapter. If any regular member of a court-martial is absent, he shall be permanently replaced by an alternate member, providing that the alternate member had been present at all previous open sessions of the court-martial. If a seven-member quorum cannot be maintained pursuant to this article, a mistrial shall be declared, and the case shall be returned to the prosecution division of the Regional Command for such further proceedings as it may deem appropriate.

(c) A special court-martial shall be composed of three regular members and at least one alternate member selected pursuant to § 825 of this chapter. If any regular member of a special court-martial is absent, he shall be permanently replaced by an alternate member, providing that the alternate member had been present at all previous open sessions of the court-martial. If a three-member quorum cannot be maintained pursuant to this article, a mistrial shall be declared and the case shall be returned to the prosecution division of the Regional Command for such further proceedings as it may deem appropriate.

**(d) If the military judge of a court-martial is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816 (1) (B) or (2) (B) of this title (article 16 (1) (B) or (2) (B)), after the assignment of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

SUBCHAPTER VI. PRE-TRIAL PROCEDURE

§ 830. Art. 30. Charges and specifications

Charges and specifications shall be preferred in writing by the Chief of the prosecution division of the Regional Command or his designee within that division, if he has reasonable cause to believe that an offense has been committed by the person to be charged.

(1) Any person may refer to the prosecution division of the Regional Command any matter for the purpose of investigation or prosecution.

(2) The Chief of the prosecution division of the Regional Command or his designee within that division may, on his own initiative, cause any matter to be investigated with a view toward prosecution. Investigations with a view toward prosecution may be coordinated between the prosecution division of the Regional Command and any authorized investigative body.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

§ 832. Art. 32. Initial appearance; preliminary examination

(a) Within 24 hours after any person is arrested under the authority of this chapter, or within 24 hours after charges are preferred against any person under the authority of this chapter, whichever even occurs first, the accused person shall be taken before a military judge authorized by the Judicial Division of the appropriate Court-Martial Command to commit persons charged with offenses under this chapter. Any statement made by an accused person held in violation of this article shall be inadmissible in a trial by court-martial unless objection to such statement is affirmatively waived by the accused person at trial.

(b) Any person not charged with an offense punishable by this chapter within 24 hours after his arrest under the authority of this chapter shall be forthwith released until such time as charges are preferred.

(c) The military judge shall inform the accused of the charges against him, of his right to be represented by a civilian lawyer if provided by him, or a military lawyer of his own selection if such lawyer is reasonably available, or by a lawyer detailed by the defense division of the Regional Command, and of his right to have a preliminary examination. The military judge shall also inform the accused that he is not required to make a statement and that any statement made by him may be used against him. The military judge shall allow the accused reasonable time and opportunity to consult counsel and shall admit the accused to bail, in accordance with regulations prescribed by the Secretary concerned or may impose such restrictions on the accused in lieu of bail as he determines necessary to reasonably insure the presence of the accused for trial.

(d) Under the proceedings provided for in this section the accused shall not be called upon to plead. If the military judge determines that a specification does not state an offense punishable by this chapter, he shall dismiss the specification without prejudice. If the accused waives preliminary examination, the military judge shall forthwith refer the case to the prosecution division of the Regional Command for such further proceedings as it deems appropriate. If the accused does not waive preliminary examination, the military judge shall hear the evidence within a reasonable time. The accused may cross-examine witnesses against him, discover the evidence against him, and may introduce evidence in his own behalf. If from the evidence it appears to the military judge that there is probable cause to believe that an offense under this chapter has been committed and that the accused has committed it, the military judge shall forthwith hold him to answer in a court-martial otherwise the military judge shall discharge him. The military judge shall admit the accused to bail in accordance with regulations prescribed by the Secretary concerned or may impose such restrictions on the accused in lieu of bail as he determines necessary to reasonably insure the presence of the accused for trial. Denial of bail may be appealed in an interlocutory manner to the Court of Military Review. After concluding the proceeding the military judge shall transmit all papers in the proceeding, his findings, and any bail taken by him to the Regional Command.

§ 833. Art. 33. Forwarding of charges

(a) When any person has been charged with an offense under this chapter the charges against such person shall be forwarded by the military judge to the prosecution division of the Regional Command together with a summarized record of the preliminary examination, if one was held, and other allied papers, within eight days after the conclusion of the preliminary examination if one was held, or within five days after the initial appearance if preliminary examination was waived. The Chief of the

prosecution division or his designee within that division shall determine whether there is sufficient evidence to bring the accused to trial on such charges and whether such charges should be referred to a general, special or summary court-martial for trial.

(b) In any case in which the prosecution division determines that there is sufficient evidence to convict any person of the charges brought against him, it shall refer the case to trial by the appropriate level court-martial and shall promptly notify the administrative, judicial and defense divisions of the Regional Command, in addition to the accused and his civilian counsel, if any. The Administrative Division shall convene a court-martial pursuant to § 833 of this chapter as soon as practicable thereafter.

§ 834. Art. 34. Conforming the charges to the evidence

If the charges or specifications are not formally correct or do not conform to the substance of the evidence presented at the preliminary examination, if one was held, or in the allied papers, formal corrections, and such changes in the charges and specifications are needed to make them conform to the evidence may be made by the prosecution division of the Regional Command, provided that the change does not either change the nature of the offense charged or increase the severity of the punishment.

§ 835. Art. 35. Time of trial

In time of peace no person may, against his objection, be brought to trial or be required to participate by himself or counsel in a session called by the military judge under section 830(a) of this title (article 39(2)), in a general court-martial case within a period of five days after the initial appearance or in a special court-martial within a period of three days after the initial appearance.

SUBCHAPTER VII. TRIAL PROCEDURE

§ 836. Art. 36. President may prescribe rules

(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable and shall be reported to Congress.

§ 837. Art. 37. Unlawfully influencing action of court

(a) No person subject to this chapter may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case. The foregoing provisions of the subsection shall not apply with respect to (1) general-instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, of (2) to statements and instructions given in open court by the military judge or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial or appellate tribunal.

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States and shall be responsible for supervising the administration division of the Regional Command in its preparation of the record of the proceedings. All records of trial shall be prepared as expeditiously as possible.

(b) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel, if provided by him, or by military counsel of his own selection if reasonably available, or by counsel detailed by the defense division of the Regional Command. Should the accused have counsel of his own selection, the defense counsel and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the military defense counsel may, at any time, at government expense, seek such collateral relief as he deems necessary to protect the rights of the accused in any court having jurisdiction to grant such relief.

In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, as the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

§ 839. Art. 39. Sessions

(a) At any time after the case has been referred for trial by a general or special court-martial pursuant to § 838 of this chapter, the military judge may, subject to section 835 of this title (Art. 35), call the court into session without the presence of the members for the purpose of

(1) hearing and determning motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty, including motions to suppress evidence;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arrangment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the regular members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

§ 840. Art. 40. Continuances

The military judge may, for reasonable cause, grant a continuance to any party for such time, and as often as may appear to be just, at any time after a case has been referred to trial pursuant to § 83.

§ 841. Art. 41. Challenges

(a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel are each entitled to one preemptory challenge at any special court-martial trial if a bad conduct discharge may not be adjudged by the court at the trial; and each accused and the trial counsel are each entitled to three preemptory challenges at any special court-martial trial if a bad conduct discharge may be adjudged by the court. Each accused and the trial counsel are each entitled to six preemptory challenges at any general court-martial; except that each shall be entitled to ten preemptory challenges if the death penalty may be adjudged by the court. The military judge detailed to any court-martial trial may not be challenged except for cause.

§ 842. Art. 42. Oaths

Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner

of recording the same, and whether the oath shall be taken once for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned.

§ 843. Art. 43. Statute of limitations

(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919–932 of this title (articles 119–132) is not liable to be tried by court-martial if the offense was committed more than three years before charges are preferred pursuant to section 830 of this title.

(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the charges are preferred pursuant to section 830 of this title, or before the imposition of punishment under section 815 of this title.

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

§ 844. Art. 44. Former jeopardy

(a) (a) No person may, without his consent, be tried a second time for the same offense.

(2) No person may be tried by court-martial for any offense if he has been tried for substantially the same offense in any state court or in any court of the United States; and no person may be tried for any offense in any state court or any court of the United States if he has been tried for substantially the same offense by court-martial.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the military judge or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

§ 845. Art 45. Pleas of the accused

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjuged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence; search and seizure

(a) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be the same as that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions. All requests to compel witnesses to appear and testify and to compel the production of other evidence shall be submitted to the military judge. Subpoenas shall be signed by a military judge, and shall be issued upon a showing by either party that the witness or evidence is necessary to an adequate prosecution or defense. A refusal by a military judge to issue a subpoena shall be appealable as an interlocutory matter to the Court of Military Review of the service concerned.

(b) (1) The authority to issue orders to conduct searches and seizures of persons and property subject to the provisions of this chapter in connection with any offense prohibited by this chapter may be exercised only by military judges in accordance with regulations promulgated by the President.

(2) No search or seizure of persons or property shall be ordered by any military judge except in writing upon probable cause supported by written affidavits and particularly describing the person or place to be searched or the person or thing to be seized.

(3) No other search or seizure is authorized, except as may be necessary to protect the life of a person making an arrest under the authority of this chapter, or to prevent the destruction of evidence.

§ 847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

(1) has been dûly subpenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid of tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on information in a United States district court or in a court of original criminal jurisdiction in any of the territories, Commonwealths, or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than $500, or imprisonment for not more than six months, or both.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military judge, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

§ 848. Art. 48. Contempts

(a) A summary court martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

(b) A military judge of a court-martial shall have power to punish by fine or imprisonment, at his discretion, such contempt of its authority, and none other, as—

(1) misbehavior of any person in his presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of the officers of the court-martial in their official transactions; and

(3) disobedience or resistance to the lawful writ, process, order, rule, decree, or command of the military judge.

(c) Punishment under this section may not exceed confinement for 30 days, or a fine of $100, or both.

§ 849. Art. 49. Depositions

(a) At any time after charges have been preferred as provided in § 830 of this chapter, any party may take oral or written depositions unless a military judge forbids it for good cause.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony

by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the Chief of the prosecution division of the Regional Command or his designee within that division directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

§ 850. Art. 50. Admissibility of records of courts of inquiry

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

§ 851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question is final and constitutes the ruling of the court. However, the military judge may change his ruling at any time during the trial. The military judge of any court-martial shall have authority, on motion of the accused or on his own motion, to order the entry of judgment of acquittal of any charge or specification against the accused after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such charge or specification.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offence and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

§ 852. Art. 52. Number of votes required

(a) (1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) No person may be sentenced to suffer death for an offense in this chapter expressly marked punishable by death except upon the recommendation of all the members of the court-martial. Such recommendation shall not be binding on the military judge.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for the finding.

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and the sentence, if it is a summary court-martial, to the parties as soon as determined.

§ 854. Art. 54. Record of trial

(a) Each general court-martial shall keep a separate record of the proceeding in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the President.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the President may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

SUBCHAPTER VIII. SENTENCES

§ 855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

§ 856. Art. 56. Maximum limits

The punishment which a court-martial may direct for any offense may not exceed such limits as the President may prescribe for that offense.

§ 857. Art. 57. Effective date of sentences

(a) Whenever a sentence of a court-martial as lawfully adjudged includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the Court of Military Review. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the military judge, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement. Any period during which the accused is held in confinement before or during trial shall be deducted from any period of confinement to which the accused is sentenced, unless the confinement of the accused during such period was imposed pursuant to the sentence of a previous court-martial trial. Such deduction shall be made by the commanding officer of the confinement facility wherein the accused's confinement is served.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(d) On application by an accused who is under sentence to confinement that has not been ordered executed, the military judge detailed to the trial of the accused may defer service of the sentence to confinement. Deferment shall be granted unless it affirmatively appears likely that the accused would flee to avoid confinement or would be a danger to the military or civilian community. Denial of deferment shall be accompanied by a written statement signed by the military judge detailing his reasons for such denial. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time for good cause by the military judge who granted it. A denial of the application of an accused for deferment of service of sentence pending appeal of his conviction may be appealed by the accused, as an interlocutory matter, to the Court of Military Review.

§ 858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated.

(b) The omission of the words "hard labor" from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment. Persons confined either before or after trial in penal or correctional institutions under control of the armed forces, or confined in any other facility under the control of the armed forces, shall be permitted to participate in work, regular physical exercise, and rehabilitation programs whenever facilities for such purposes will permit.

§ 858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) Unless otherwise provided in regulations to be prescribed by the Secretary con-

cerned, a court-martial sentence of an enlisted member in a pay grade above E–1, that includes—

(1) a dishonorable or bad-conduct discharge;

(2) confinement; or

(3) hard labor without confinement;

reduces that member to pay grade E-1, effective on the date the sentence is ordered executed.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a) (1), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

SUBCHAPTER IX. REVIEW OF COURTS-MARTIAL

§ 859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

§ 860. Art. 60 (Omitted)

§ 861. Art. 61 (Omitted)

§ 862. Art. 62. (Omitted)

§ 863. Art. 63 Rehearings

(a) If the Judge Advocate General or his designee, or the Court of Military Review disapproves the findings and sentence of a court-martial, the Chief of the prosecution division of the Regional Command in which the accused was originally tried may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. If the findings and sentence are disapproved and a rehearing is not ordered, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

§ 864. Art. 64. (Omitted)

§ 865. Art. 65. (Omitted)

§866. Art. 66. Review by Court of Military Review

(a) There is established in each service a Court of Military Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges, appointed by the Judge Advocate General of the service concerned. Each Court of Military Review shall be located for administrative purposes in the Office of the Judge Advocate General of the service concerned, but shall be otherwise independent of all other military command and control with respect to the performance of its judicial function. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Appellate military judges who are assigned to a Court of Military Review may be commissioned officers or civilians each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Military Review established by him. The chief judge shall determine on which panels of the court the appellate judge assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The administrative division of the Regional Command within which the accused was tried shall refer to a Court of Military Review the record in every case of trial by court-martial in which the sentence extends to death, dismissal of a commissioned officer, cadet, or midshipmen, dishonorable or bad-conduct discharge or confinement for one year or more.

(c) In a case referred to it, the Court of Military Review may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Court of Military Review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Court of Military Review shall prescribe rules of procedure for practice before it, and shall establish rules for the qualification of attorneys admitted to its bar.

(f) No judge of a Court of Military Review shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other judge of the same or another Court of Military Review, and effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces if qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces shall be retained on active duty.

(g) No judge of a Court of Military Review shall be eligible to review the record of any trial if such judge served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted or served as military judge, trial or defense counsel of such trial.

(h) Judges of a Court of Military Review shall be deemed military judges for the purpose of § 836(a) (2) of this chapter.

§ 867. Art. 67. Review by the Court of Military Appeals

(a) (1) There is a United States Court of Military Appeals established under article I of the Constitution of the United States and located for administrative purposes only in the Department of Defense. The court consists of nine judges appointed from civil life by the President, by and with the advice and consent of the Senate, for a term of fifteen years. The terms of office of all successors of the judges serving on the effective date of this Act shall expire fifteen years after the expiration of the terms for which their predecessors were appointed, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Not more than five of the judges of the court may be appointed from the same political party, nor is any person eligible for appointment to the court who is not a member of the bar of a Federal court or the highest court of a State. Each judge is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Court of Appeals, and is eligible for reappointment. The President shall designate from time to time one of the judges to act as chief judge. The chief judge of the court shall have precedence and preside at any session which he attends. The other judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The court may prescribe its own rules of procedure and determine the number of judges required to constitute a quorum. A vacancy in the court does not impair the right of the remaining judges to exercise the powers of the court.

(2) Judges of the United States Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, or for mental or physical disability, but for no other cause.

(3) If a judge of the United States Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals for the District of Columbia to fill the office for the period of disability.

(4) Any judge of the United States Court of Military Appeals who is receiving retired pay may become a senior judge, may occupy offices in a Federal building, may be provided with a staff assistant whose compensation shall not exceed the rate prescribed for GS–9 in the General Schedule under section 5332 of title 5, and, with his consent, may be called upon by the chief judge of said court to perform judicial duties with said court for any period or periods specified by such chief judge. A senior judge who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(b) The Court of Military Appeals shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Military Review, affects a general or flag officer or extends to death;

(2) all cases reviewed by a Court of Military Review which the Judge Advocate General sent to the Court of Military Appeals for review; and

(3) all cases reviewed by a Court of Military Review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review.

(c) The accused has 30 days from the time when he is notified of the decision of a Court of Military Review to petition the Court of Military Appeals for review. The

Court shall act upon such a petition within 30 days of the receipt thereof.

(d) In any case reviewed by it, the Court of Military Appeals may act only with respect to the findings and sentence as affirmed or set aside as incorrect in law by the Court of Military Review. In a case which the Judge Advocate General orders sent to the Court of Military Appeals, the action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals shall take action only with respect to matters of law.

(e) If the Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(f) After it has acted on a case, the Court of Military Appeals may return the record to the Court of Military Review for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall take action in accordance with that decision. If the court has ordered a rehearing, but the Judge Advocate General or his designee within the court-martial command finds a rehearing impracticable, he may dismiss the charges.

(g) The Court of Military Appeals and the Judge Advocates General shall meet annually to make the comprehensive survey of the operation of this chapter and report to the Secretary of Defense, the Secretaries of the military departments and the Secretary of Transportation the number and status of pending cases and any other matters considered appropriate.

(h) Whenever the court determines it necessary to expedite the business of the Court, it may divide itself into three separate panels each consisting of three judges.

§ 868. Art. 68 (Omitted)

§ 869. Art. 69. Review in the Office of the Judge Advocate General

Every record of trial by summary, special, or general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by section 866 of this title (article 66), shall be examined by the Judge Advocate General, or his designee. The Judge Advocate General, or his designee, may set aside the findings and sentence in any case and may in any such case, expect where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the Judge Advocate General, or his designee, sets aside the findings and sentence and does not order a rehearing, he should order that the charges be dismissed. If the Judge Advocate General, or his designee, so directs the record of trial in any such case shall be reviewed by a Court of Military Review in accordance with section 866 of this title (article 66), but in that event there shall be no further review by the Court of Military Appeals. Notwithstanding section 876 of this title (article 76) the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

§ 870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27 (b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Military Review or the Court of Military Appeals when directed to do so by the Judge Advocate General.

(c) Appellate defense counsel shall represent the accused before the Court of Military Review or the Court of Military Appeals—

(1) when he is requested to do so by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent a case to the Court of Military Appeals.

(d) The accused has the right to be represented before the Court of Military Appeals or the Court of Military Review by civilian counsel if provided by him.

(e) Appellate defense counsel may seek relief in any court, at government expense, if he deems such relief appropriate to safeguard the rights of an accused.

§ 871. Art. 71. Execution of sentence; suspension of sentence

(a) No court-martial sentence extending to death or involving a general or flag officer may be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

(b) No sentence extending to the dismissal of a commissioned officer (other than a general or flag officer), cadet, or midshipman may be executed until by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c) No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals.

(d) All other court-martial sentences, unless suspended or deferred, may be ordered executed by the chief of the prosecution division of the Regional Command within which the accused was tried.

(e) In cases reviewed by the Court of Military Review, no sentence may be ordered executed until 30 days have elapsed from the date the decision of that court was served on the accused.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, a military judge shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the military judge who conducted the hearing shall be sent to the prosecution division of the Regional Command for further action. If the suspension is vacated by that division, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871(c) of this title (article 71(3)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by a military judge pursuant to such regulations as the Secretary concerned may promulgate.

(d) A death sentence may not be suspended.

§ 873. Art. 73. Petition for a new trial

At any time within two years after affirmance of a court-martial sentence by the Court of Military Review, or if review by the court were not held, by the Judge Advocate General or his designee, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a peti-

tion for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74), and the authority of the President.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the Judge Advocate General of the armed force of which the officer against whom it is made is a member. The Judge Advocate General shall examine into the complaint and is authorized to take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

SEC. 3. Chapter 81 of title 28 of the United States Code is amended by adding at the end thereof the following section:

§ 1259. Court of Military Appeals; certiorari

Cases in the United States Court of Military Appeals may be reviewed by the Supreme Court by writ of certiorari.

SEC. 4. (a) There is hereby established a special committee to be composed of the judges of the United States Court of Military Appeals, the Judge Advocates General of the Armed Forces, and the General Counsel of the Department of Transportation. The committee shall conduct a thorough study with respect to—

(1) the table of maximum punishments prescribed by the President for offenses punishable under chapter 47 of title 10, United States Code, with a view to (A) recommending improvements therein, (B) identifying and recommending corrective actions for apparent inequities in such table, and (C) recommending the establishment of subcategories of offenses, where appropriate, based upon differences in degree of seriousness of the offenses;

(2) the advisability of legislation which would limit the authority of the President to alter or suspend the table of maximum punishments as to particular geographical areas and to suspend the table with respect to particular offenses;

(3) the desirability of eliminating summary courts-martial from the military justice system;

(4) the desirability of transferring to the district courts of the United States jurisdiction of certain cases involving desertion and other unauthorized absences from the armed forces;

(5) further means of improving and eliminating undue delays in the appellate process of military justice; and

(6) appropriate action in the case of any prisoner who has completed serving his sentence prior to the completion of appellate review of his case.

(b) The committee shall submit a written report of the results of its study to the President and to the Congress, together with such recommendations as it deems appropriate, not later than one year after the date of enactment of this Act.

SEC. 5. The provisions of this Act shall become effective on the first day of the —— calendar month following the month in which this Act is enacted, except that section 4 shall become effective upon enactment.

THE MILITARY JUSTICE ACT OF 1970: SECTION-BY-SECTION ANALYSIS OF MAJOR PROVISIONS

Section 1. The Act may be cited as the "Military Justice Act of 1970."

Section 2. The Uniform Code of Military Justice would be recodified with the following changes:

ARTICLE 1

Section 9. Technical changes would be made to reflect the fact that charges are brought by the Prosecuting Division of the Courts Martial Command and no longer need be sworn to.

Sections 15–18. New definitions of "convening a court-martial," (see Article 22), "Court Martial Command," (see Article 6a), "Regional Command," and "presentment," (see Article 32), would be added.

ARTICLE 4

Technical changes would be made to reflect the fact that military judges now impose sentence in general and special courts-martial.

ARTICLE 6A

The Act would add a new Article 6a to the Code establishing an independent trial command within each of the armed forces. This Courts-Martial Command would be composed of four divisions: Judicial, Prosecution, Defense, and Administration, and would function under the administrative supervision of the Judge Advocate General of the armed force concerned. The Prosecution Division would be responsible for determining whether or not there is sufficient evidence to convict any person of the charges brought against him, for bringing the accused before a military judge for preliminary hearing (art. 32), and for referring the case to trial. (art. 33). It would also be responsible for detailing trial counsel to courts-martial trials (art. 6a). The Judicial and Defense divisions would be made responsible for the detailing of military judges and defense attorneys to courts-martial trials. Both of these divisions would be independent of all local control and any other control apart from their own division and the service Judge Advocate General. The Administrative Division would convene the court-martial pursuant to art. 1, sec. 15, and art. 25, and would be made responsible for the performance of such general administrative duties as are now performed by the trial counsel and for detailing or employing court reporters and interpreters. The Defense Division would be empowered to utilize such military investigators as shall be required.

ARTICLE 7

Apprehension would be redesignated arrest, in conformity with the common law designation of that term.

ARTICLE 9

Restraint would be redesignated as restriction, in conformity with the changes in article 7.

ARTICLE 10

Would be amended to provide for pretrial confinement only in accordance with the new procedure established by article 32 of the Act.

ARTICLE 11

Technical changes would be made to conform with the procedure of article 32.

ARTICLE 15

Amended to reflect the fact that the Act would eliminate the general court-martial jurisdiction of certain commanding officers.

ARTICLE 16

General courts-martial would consist of a military judge, or a military judge and seven members. Special courts-martial would consist of a military judge, or a military judge and three members. Special courts martial without military judges would be abolished.

ARTICLE 17

A technical amendment would reflect the fact that review by the convening authority has been eliminated.

ARTICLE 19

Technical amendments would conform to changes in article 16, requiring a military judge at all general and special courts-martial.

ARTICLE 20

A technical amendment would conform this article to the new procedure whereby a case is referred to trial by the Prosecution Division of the Regional Command. (see art. 33).

ARTICLE 22

Technical change would be made to conform to the new definition of convening a court martial, which is only an administrative task (see art. 1, sec. 15).

ARTICLE 23, 24

Articles 23 and 24 of The Code would be repealed. This would be made necessary by the establishment of The Courts-Martial Command and the change in the convening procedure.

ARTICLE 25

Would be amended so as to provide for a system of random selection of members of special and general courts-martial. The random selection system would be established by regulation by the Secretary concerned and would, to the maximum extent practicable, follow the procedure prescribed for the selection of Federal juries.

ARTICLE 26

Would be amended to reflect the fact that military judges would be detailed by the Judicial Division of the Courts-Martial Command and not by the authority authorized by present law to convene courts-martial. In addition, the Article would expand the powers of military judges so that they would be empowered to impose sentences. The judge could not impose the death penalty except upon the unanimous recommendation of the court-martial. Military judges could also suspend sentences and issue all writs necessary or appropriate in carrying out the functions within their jurisdiction.

Article 26 would also be amended to reflect the fact that military judges would be rated for effectiveness, fitness or efficiency of performance as military judges only by the Judge Advocate General or his designee.

ARTICLE 27

Would be amended to provide for the assignment of trial counsel and defense counsel by the Prosecution and Defense divisions respectively of the new Courts-Martial Command.

The qualifications for trial and defense counsel would apply to both special and general courts-martial.

ARTICLE 28

Would be repealed as unnecessary due to the creation of an Administration Division within the Courts-Martial Command.

ARTICLE 29

Would be amended to reflect the fact that the convening authority no longer controls trials. It would also establish procedures for trials in which a quorum of the court is not maintained.

ARTICLE 30

Would be amended so that only the Chief of the Prosecution Division could prefer charges. He could take such action only if he had reasonable cause to believe that the accused committed the offense in question. This would make the military system much like the present federal system.

The Prosecution Division also would receive and investigate charges.

ARTICLE 32

Would be amended to provide for a pretrial procedure similar to that established by

Rule 5 of the Federal Rules of Criminal Procedure. It would also require such an initial appearance before a judge within 24 hours of arrest or within 24 hours after charges are preferred.

ARTICLE 33

Would be amended to reflect the transfer of the power to decide to hold a court-martial to the Prosecution Division of the Courts-Martial Command, and to set up time limits for the forwarding of charges.

ARTICLE 34

A new article 34 would be substituted, dealing with the conformity of the charges to the evidence and reflecting current case law.

ARTICLE 35

Technical changes would be made to conform with the requirement of Article 32 that the accused be informed of the charges against him at the initial appearance.

ARTICLE 37

Technical changes would be made to reflect the fact that the courts-martial are no longer convened by the commanding officer.

ARTICLE 38

Would reflect the fact that the Administration Division would prepare trial records.

Article 38 would also be amended so as to permit military defense counsel, at government expense, to seek such collateral relief as he deems necessary to protect the rights of the accused in any court having jurisdiction to grant such relief.

ARTICLES 39, 40

Articles 39 and 40 would be amended to conform to changes in articles 16 and 33.

ARTICLE 41

Article 41(b) would be amended to increase the number of peremptory challenges to members of a court-martial. At any special court-martial empowered to adjudge a bad conduct discharge, each accused and the trial counsel would be entitled to three peremptory challenges. At any general court-martial not empowered to adjudge the death penalty, the trial counsel and each accused would be entitled to six peremptory challenges. At any general court-martial empowered to adjudge the death penalty, each accused and the trial counsel would be entitled to ten peremptory challenges.

ARTICLE 42

Would be amended to make it clear that the Secretary concerned would prescribe regulations requiring oaths by all civilian and military personnel to be taken only once.

ARTICLE 43

Would be technically amended to conform to article 30's provisions for preferring charges.

ARTICLE 44

Would be amended to prevent trial for the same act by court-martial and in a State court regardless of which trial occurs first.

ARTICLE 45

Would be changed to allow a plea of guilty, which has been approved by a military judge, to be entered immediately without vote. The requirement that such a procedure be permitted by the regulations of the Secretary concerned would be eliminated.

ARTICLE 46

Would be amended to vest the subpoena power and the power to authorize searches and seizures in the military judiciary under appropriate standards. The refusal of a military judge to issue a subpoena would be appealable as an interlocutory matter to the Court of Military Review.

ARTICLE 48

Would be amended to vest the power to punish for contempt in the military trial judiciary. Military trial judges would be granted the power to punish only: (1) the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice; (2) misbehavior of any of the officers of the court-martial in their official transactions; and (3) the disobedience or resistance to the lawful writ, process, order, rule, decree, or command of the military judge of the court-martial. Punishment would be limited to confinement for not more than 30 days or a fine not to exceed $100 or both.

ARTICLE 49

Article 49 would be amended to reflect the elimination of the convening authority's power over a court-martial.

ARTICLE 51

This would be in part a technical amendment designed to reflect the transfer of the sentencing authority from the members of a court-martial to the military judge, and, in part, a substantive amendment to grant to military trial judges the power to enter a directed verdict of acquittal if the evidence is insufficient to sustain a particular charge or specification.

ARTICLE 52

Article 52(b) would be amended to require the unanimous recommendation of all members of a court-martial after conviction, before a judge could impose the death sentence for any offense specifically made punishable by death under the Code.

Article 52(c) would be amended to eliminate the references to tie votes, since they would no longer be possible. (see article 16).

ARTICLE 53

Would be technically changed to reflect the fact that military judges now impose sentences in all but summary courts-martial.

ARTICLE 54

Would be amended to eliminate special treatment for general and flag officers.

ARTICLE 57

Article 57(b) would be amended to grant the accused credit towards a sentence for the time spent in pretrial confinement. Under present law he is not granted credit for this time.

Article 57(d) would be amended to reflect the transfer of the power to defer sentence pending appeal to the military trial judge. This power is now vested in the convening authority. A denial of an application for the deferral of sentence would be appealable, as an interlocutory matter, to the Court of Military Review.

ARTICLE 58

Would be amended so as to provide that persons confined prior to trial or pending appeal would be entitled to participate in work, regular physical exercise, and rehabilitation programs wherever facilities for such purposes will permit.

ARTICLES 60–62

Articles 60, 61, and 62 would be repealed because the power of initial review would be removed from the convening authority.

ARTICLE 63

Would be technically amended to reflect the transfer of the power of initial review from the convening authority to the Court of Military Review or the Judge Advocate General. (See articles 66, 69).

ARTICLES 64, 65

Articles 64 and 65 would be deleted, to reflect the transfer of the power of initial review out of the convening authority.

ARTICLE 66

Would be amended to reflect the termination of the review power of the convening authority and to insure the independence of the Court of Military Review. The Court would also be allowed to establish its own rules of practice.

ARTICLE 67

Would be amended to provide for the expansion of the Court of Military Appeals from three judges to nine and to empower the court to sit in panels of three. Would also be technically amended to reflect the transfer of the power of review and of the power to convene a court-martial from the commanding officer.

ARTICLE 68

Would be omitted, reflecting allocation of responsibility to the Regional Command rather than branch offices.

ARTICLE 69

Would be amended to provide a form of appellate review by the Judge Advocate General or his designee of summary, special, or general courts-martial resulting in conviction and sentence which are not automatically reviewable by a Court of Military Review pursuant to article 66. The Judge Advocate General or his designee would be empowered to set aside the findings and sentence, order a rehearing, direct the dismissal of the charges, or to direct review by a Court of Military Review.

ARTICLE 70

Would be amended to make it clear that appellate counsel may seek relief in civilian courts at government expense.

ARTICLE 71

Would be amended to defer execution of sentences for 30 days, if the case is reviewed by the Court of Military Review.

ARTICLE 72

The procedures for the vacation of a suspended sentence would be modified. Prior to the vacation of the suspension of a special court-martial sentence which as approved included a bad-conduct discharge or of any general court-martial sentence a hearing would be conducted by a military judge not by, as under present law, the officer exercising special court-martial jurisdiction over the probationer. The record of the hearing and the recommendations of the judge who conducted the hearing would be forwarded for decision to the prosecution division of the Regional Command, and not, as under present law, to the officer exercising general court-martial jurisdiction over the probationer. All other suspended sentences could be vacated only by a military judge detailed for that purpose and not, as under present law, by any authority competent to convene a court of the kind that imposed the sentence.

ARTICLE 73

Would be amended to reflect the changes in review procedures.

ARTICLE 138

Would be modified to provide that complaints of wrongs are to be forwarded to the Judge Advocate General for action, rather than to the general court-martial convening authority as provided by existing law.

Section 3: This section would give the Supreme Court jurisdiction to review decisions of the Court of Military Appeals by writ of certiorari.

Section 4: The Act would establish a special committee composed of the judges of the United States Court of Military Appeals, the Judge Advocates General of the Armed Forces and the General Counsel of the Department of Transportation to study the following: (1) the table of maximum punishments prescribed by the President pursuant to the authority granted to him by the Code with a view to recommending improvements, identifying and recommending corrective action for apparent inequities, and recommending the establishing of subcategories of offenses, where appropriate, based upon differences in degree of seriousness of the offenses; (2) the advisability of legisla-

tion which would limit the authority of the President to alter or suspend the table of maximum punishments as to particular geographical areas and to suspend the table with respect to particular offenses; (3) the desirability of eliminating summary courts-martial from the military justice system; (4) the desirability of transferring to the district courts of the United States jurisdiction over certain cases involving desertion and other unauthorized absences from the armed forces; (5) further means of improving and eliminating undue delays in the appellate process of military justice; (6) the appropriate action in the case of any prisoner who has completed serving his sentence prior to the completion of appellate review of his case. The committee would be directed to report to Congress and to the President within one year of the date of enactment of the Act.

Section 5: This section would establish the effective date of the Act.

HOW THE NEW CODE WILL WORK

In order to illustrate how the new Code will work, let us take a hypothetical example of a soldier arrested for a crime, and let us follow him through the court-martial procedure as I have proposed it.

Suppose that Private Jones were arrested (Art. 7(a)) by the military policeman late at night for committing a crime on-post. The arresting MP immediately notified a representative of the Prosecution Division of the local Regional Court Martial Command, and the investigation was immediately coordinated between investigative and legal personnel (Art. 30(a). Private Jones declined to make a statement about the offense (Art. 31), but had likewise declined to exercise his right to the presence of a lawyer.

Within 24 hours of Jones' arrest, the military police brought him before a local independent military judge (Art. 32(a)), who advised him of his rights, including his right to have a preliminary examination (Art. 32 (c)), set bail pursuant to regulations, and appointed free counsel from the Defense Division. The Judicial and Defense divisions of the Regional Command are independent of all local control, and indeed of any control in the Court Martial Command except within their own division (Art. 6a(f)). In addition, the judge required that Jones be formally charged by the Prosecution Division at that time and examined the charge to see that it stated an offense. If Jones had not been charged within 24 hours after arrest, he would have been ordered released until he was charged (Art. 32(b)).

Jones requested that counsel be appointed for him, and after consultation with counsel he decided to request a preliminary hearing (Art. 32(d)). The judge set this hearing for two weeks hence, and instructed Jones' counsel that if he needed it, he could request a continuance in order to prepare his case (Art. 40). The judge also ordered that Jones be restricted to his company area. Since this restriction was not particularly onerous, Jones decided not appeal it to the Court of Military Review as an interlocutory matter.

Two weeks later, a preliminary hearing was held before the same judge who presided at the presentment. The government was represented by a lawyer from the Prosecution Division, and the defense was represented by a lawyer from the Defense Division (the same lawyer who had been advising Jones all along (Art. 6a(c)(d)). A summarized record of the proceedings was made by a court reporter assigned by the Administration Division of the Regional Command (Art. 6a(3)). At this hearing, Jones had a right to confront his accusers, to cross examine witnesses against him, and "to discover the evidence against him" (Art. 32(d)). He also had the right to present evidence in his own behalf.

When the hearing was over, the judge found that there was probable cause to believe that Jones committed the crime charged and so within 8 days, the judge transmitted the case, including the summarized record, to the Prosecution Division of the Regional Command for trial (Art. 33(a)). The prosecution division decided that there was sufficient evidence upon which to prosecute, and that a general court-martial was the appropriate level trial, and so it "referred" the case to trial by a general court martial, and notified all parties concerned (Art. 33 (b)). Likewise, it notified the Administration Division to "convene" a court-martial, that is, to order members of the armed forces within its geographical jurisdiction to appear at the appointed time for a court martial (Art. 1(15)). This selection was made on a random basis, and was done without regard to rank (Art. 25(b)).

In the meantime, Jones had been arbitrarily picked up from his company area, and he was being held incommunicado in the post stockade. His military counsel filed a petition for a writ of habeas corpus with the local military judge, but it was denied without reason (Art. 26(a)(2)). An appeal to the Court of Military Review and to the Court of Military Appeals likewise failed (Art. 66 (i)). Since the trial date was approaching and Jones' lawyer needed to talk to him, the military counsel then filed a petition for a writ of habeas corpus and for injunctive relief in the local federal district court (Art. 38(c)). There, after a hearing, Jones was ordered released.

A search warrant had been obtained earlier in this case by a request from the prosecution division to a military judge (Art. 46 (b)), supported with a written affidavit from a military policeman making out probable cause to search, and partciularly describing the thing to be seized and the place to be searched (Art. 46(b)(2)).

Before trial, Jones had an opportunity to present to the military judge motions, to suppress the evidence obtained by this search and other motions to suppress, and the judge ruled on them (Art. 39(a)(1). Also, Jones requested that the military judge subpoena his mother from the next county to appear as a character witness for him. The judge found the request reasonably necessary to insure an adequate defense, and so he signed the subpoena (Art. (46(a)). If she failed to appear, the judge could have punished her for contempt. (Art. 48(b)(3)).

When the trial began, Jones had a right to challenge six jurors preemptorily, as did the government (Art. 41(a)). The judge ruled finally on all challenges for cause. Since enough court members had been summoned to appear by the Administration Division, seven jurors plus one alternate were selected.

Upon conviction, the judge heard evidence in extenuation and mitigation, and passed sentence on Jones (Art. 26(a)(1)). At this time, Jones asked the judge to defer his sentence to confinement pending appellate review, but the judge denied the request (Art. 57(a)). The judge, however, accompanies his denial with a written statement pointing out that in his opinion, Jones would likely flee to avoid confinement, because he has previously been convicted of an absence offense (Art. 57(a)). Jones, counsel appealed this determination as an interlocutory matter to the Court of Military Review (Art. 57(d)), and since the judge's determination was reasonable, the appeal was denied.

During all the time Jones was in confinement, he was able to take part in rehabilitative programs conducted by the stockade (Art. 58(B)), and all time spent in confinement following his arrest was deducted from the sentence eventually imposed (Art. 57(b)).

The record of trial was expeditiously prepared by the Administration Division of the Regional Command under the supervision of the Trial counsel (Art. 38(a)), and when completed, was forwarded without further review at this level directly to the Court of Military Review (Art. 66(b)).

The Court of Military Review functioned as an intermediate level military court, statutorily independent of command control with respect to its judicial functions (Art. 66(a)), and having the power to issue all writs, (Art. 66(i)), to review matters of fact and law, and to review the appropriateness of the sentence. When the case was appealed automatically to this court, appellate counsel assigned to the Office of the Judge Advocate General were appointed to represent Jones, upon his request (Art. 70).

When the Court of Military Review affirmed Jones' conviction, Jones had a right to appeal further to the Court of Military Appeals, since his original sentence included a punitive discharge, or confinement for a year or more (Art. 67). Pending that appeal, Jones' sentence was not executed (Art. 71(c)). A panel of three judges from the nine-member Court of Military Appeals (Art. 67) also affirmed Jones' conviction.

If Jones and his counsel had considered that a significant constitutional issue was still unsatisfactorily resolved in his case, they could have petitioned for a writ of certiorari to the Supreme Court (28 USC § 1259), and Jones could have been represented before that court by appointed military counsel (Art. 70(e)).

SUMMARY OF MAJOR REFORMS CONTAINED IN THE PROPOSED MILITARY JUSTICE ACT OF 1970

The proposed legislation would:

(1) Establish an independent courts-martial command composed of four divisions: defense, prosecution, judicial, and administration, thereby removing defense and prosecuting attorneys from the control of the accused's commanding officer.

(2) Grant a number of important powers to military judges:

(a) the power to "issue all writs necessary or appropriate in aid of . . ." their jurisdiction as provided in the "All Writs" Act now applicable to all Federal judges;

(b) the same contempt power as is now possessed by the Federal judiciary and

(c) the power to authorize searches and issue arrest warrants, a power now available only to the commanding officer.

(3) Extend to servicemen certain basic rights now accorded their civilian counterparts:

(a) the right to appointment of an independent defense counsel upon request immediately following arrest;

(b) the right to a formal hearing similar to the hearing required by Rule 5 of the Federal Rules of Criminal Procedure before an independent military judge within 24 hours of arrest, to determine whether there is probable cause to hold him for trial;

(c) the right to obtain subpoenas from an independent military judge, rather than from the prosecutor who now holds sole power to issue subpoenas;

(d) the right to protection against trial by court-martial after trial in a state court for the same act, and vice-versa; and

(e) the right of military defense attorneys to seek collateral relief for their clients in civilian courts when appropriate, relief currently available only if the accused serviceman has civilian counsel.

(4) Establish a system of random selection for members of special and general courts-martial, and abolish the requirement that two-thirds of the members of such courts-martial must be officers.

(5) Modernize military confinement and sentencing procedures and policies by:

(a) transferring from the commanding of-

ficers to independent military judges the power to release an accused serviceman pending trial or pending appeal;

(b) granting complete credit for pretrial confinement towards any ultimate sentence;

(c) eliminating the power of the convening authority to review sentences and findings, a procedure that has become, in many cases, a time-consuming formality;

(d) transferring the sentencing power, with the added power to suspend sentences, from the members of the court (the "jury") to the military judges in all cases, thereby placing this power in the hands of men who can develop the requisite expertise; and

(e) permitting all confined servicemen—including those awaiting trial or appeal—to participate in work, exercise and rehabilitation programs wherever adequate facilities are available; and

(f) directing an existing code review committee to study and suggest revisions in the current table of maximum punishments.

(6) Modernize the appellate process to eliminate delay and excessive workloads by:

(a) permitting the Judge Advocate General of each service to review cases not automatically reviewable by the Court of Military Review;

(b) empowering the Supreme Court to issue writs of certiorari to the Court of Military Appeals; and

(c) enlarging the Court of Military Appeals from three to nine judges and authorizing it to sit in panels of three judges each.

(7) Direct the existing Code review committee to study and, within one year, to recommend solutions in four additional areas;

(a) the possibility of eliminating all summary courts-martial;

(b) the desirability of transferring jurisdiction over some absence offenses to the Federal courts;

(c) additional methods of eliminating delays in the appellate process; and

(d) means of dealing with prisoners who complete the service of their sentence to confinement prior to the completion of appellate review.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. GURNEY. 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.

At this time, under the previous order, the Chair recognizes the Senator from Florida (Mr. GURNEY) for not to exceed 30 minutes.

S. 4197—INTRODUCTION OF THE MOTOR VEHICLE DISPOSAL ASSISTANCE ACT

Mr. GURNEY. Mr. President, I introduce, on behalf of myself and Senators' SCOTT, THURMOND, BOGGS, FANNIN, COOPER, BAKER, DOLE, and PACKWOOD, a bill which would establish a "Motor Vehicle Disposal Assistance Act." This bill would afford a practical means of disposing of junked and abandoned motor vehicles. It would provide Federal financial assistance to the States to carry out programs approved by the Secretary of HEW to remove abandoned and junked motor vehicles which are a blight to our Nation.

The junked motor vehicle, which is the most obvious and noticeable solid waste disposal problem nationwide, includes the growing unsightly accumulation of junked automobiles, buses, and trucks encircling our cities, and scattered in fields and vacant lots in less populated areas. As President Nixon said in his message to Congress on environmental quality of February 10, 1970:

> Few of America's eyesores are so unsightly as its millions of junk automobiles.

Unfortunately, when old cars die, they do not fade away. I think we can all agree that the constant increase in per capital generation of solid wastes, stimulated by growth of production, and coupled with a rapidly increasing and affluent population, is responsible for the Nation's present environmental crisis. More and more junk motor vehicles have become visible eyesores around the country.

Here are the dimensions of the problem: At the present time, there are a total of 105,403,557 registered vehicles in the United States. The current annual retirement rate is approximately 7.9 million motor vehicles. The number of motor vehicles processed for scrap each year is between 6 and 7 million. Therefore, we can safely say at least 1 million motor vehicles each year and perhaps more are added to the visible junkpiles around the country. Nobody knows exactly how many rusting hulks are strewn across the American countryside but current estimates run between 15 and 20 million. The number of motor vehicles in auto wrecker's yards which have little or no parts value, added to the number of abandoned vehicles, added to the current number of motor vehicles annually retired which the scrap dealers do not process, comes to approximately 8 and 12 million rusted, unprocessed hulks which dot the landscape. Quite obviously, the scrap gap is widening.

In dealing with problems of air and water pollution, the problem is of such complexity and magnitude that solutions require long study and research, complex plans, and huge amounts of money. This is not true in the case of solid wastes such as junk motor vehicles. The root of this problem is a tangible high concentration of salvageable material which we can subject to any kind of processing we choose. Although discarded motor vehicle hulks constitute a small fraction of the waste disposal problem in terms of tonnage, they are higher in metal recycle value than most waste materials. They offer a tremendous incentive for the 33,000 auto wrecking yards and 1,800 scrap processors currently operating across the country. With the aid of these excellent facilities the problem can and must be solved.

We must rid our Nation of the use and discard syndrome. Old motor vehicles not only detract from the beauty of our country but also represent a significant source of valuable material for which our national need is growing. Presently, 60 percent of all the rubber, 20 percent of all the steel, 10 percent of all the aluminum, over 7 percent of the copper, 13 percent of the nickel, 35 percent of the zinc, and over 50 percent of the lead consumed in the United States go for automotive use. Quite obviously junk motor vehicles are truly "a resource out of place."

We must act now to take the necessary steps to recycle the ever growing number of worn-out hulks back into the steelmaking process at an increased rate—a move which would aid in changing our national eyesores into national assets." With this aim in mind I am introducing a bill to establish a "Motor Vehicle Disposal Assistance Act" to provide aid to the States in retrieving junked motor vehicles and processing them for scrap.

This bill would offer Federal financial aid to the States and extracontinental territories administered by the United States to execute programs to remove junk motor vehicles from public thoroughfares, junk yards and remote rural areas. Funds would be allotted to each State in an amount which bears the same ratio as the number of motor vehicles registered in such State bears to the number of such vehicles in all the States. The portion of any State's allotment for a fiscal year which will not be required will be reallotted no later than the 10th month of that fiscal year to other States in proportion to their original allotment.

Under this plan Federal regulations are to be established to spell out requirements for State participation. Such guidelines would include requirements to provide for the administration by a pubic agency in the State of a junked motor vehicle disposal plan to provide for the efficient removal to scrap processing facilities of junked motor vehicles. States would also provide an efficient means of transferring title of junked motor vehicles—or other evidence of ownership of such vehicles in States not requiring title certification—to public agencies or private business concerns charged with the responsibility of processing such motor vehicles.

The criteria established under the section on State plans will also include, after thorough study and evaluation by the Secretary of pertinent information available from authoritative sources—as DOT, HEW, Interior, Commerce, President's Council on Environmental Quality, the Institute of Scrap Iron and Steel—a description of the most efficient means of processing junked motor vehicles as well as the average cost of such processing.

Payments under this act will be made from a State's allotment to any State agency which administers a plan approved by the Secretary of Health, Education, and Welfare. Payments from a State's allotment with respect to the cost of carrying out its State plan will equal 50 percent of the costs for any fiscal year. In other words, half will be Federal; the other half will be State. The Federal share for the total cost of carrying out this plan will be $20 million per year, for fiscal years 1971 through 1974.

With the assistance of this bill, operators would be able to reach out for about-to-be abandoned cars before they are scattered across the land. Within a few years the huge accumulation of junk could be shrunk to nothing. The ultimate

goal would be a smooth flow of old cars back to steelmaking facilities without intermediate stops on city streets, junkyard stockpiles, or in the woods off a country road.

This plan was discussed briefly in committee meetings before the Committee on Public Works this year, as well as in the report on S. 2005, the "Resource Recovery Act of 1970." I have decided to offer it as a bill at this time because I think the plan is balanced, flexible, fundable, and easy to administer, and fills a very real and pressing need.

Mr. President, I feel this plan will assist the States in a twofold fashion. First, it will aid the States, which in most cases lack the financial resources to carry on a meaningful program on their own initiative. Second, this financial assistance should provide the needed incentive to pass State legislation dealing with junked motor vehicles, legislation, I might say, which is presently pending in nearly half of the 50 States.

Several months previous my colleague, the distinguished Senator from New York (Mr. JAVITS) introduced a bill dealing with the same problem area. It is my hope that upcoming hearings which have been promised by the chairman of the Public Works Committee will determine which of the bills is the most efficacious and that some significant legislation will come out of this Congress to deal with this mounting problem of junked and abandoned motor vehicles.

I ask unanimous consent that the bill which I now introduce be printed in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and, without objection, the bill will be printed in the RECORD in accordance with the Senator's request.

The bill (S. 4197) to encourage States to establish junked motor vehicle disposal programs, and for other purposes, is as follows:

S. 4197

Be it enacted in the Senate and House of Representatives of the United States of America in Congress assembled, That this title may be cited as the "Motor Vehicle Disposal Assistance Act."

APPROPRIATIONS AUTHORIZED

SEC. 2. There is hereby authorized to be appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1971, $20,000,000 for the fiscal year ending June 30, 1972, $20,000,000 for the fiscal year ending June 30, 1973, and $20,000,000 for the fiscal year ending June 30, 1974.

GRANTS TO STATES

SEC. 3. The Secretary is authorized to make grants to State which have State plans approved by him, to pay the Federal share of the cost of carrying out motor vehicle disposal plans.

ALLOTMENTS TO STATES

SEC. 4. (a) From the sums available for the purposes of section 3 for any fiscal year, the Secretary shall allot not more than 2 per centum among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Canal Zone. From the remainder of such sums he shall allot to each State an amount which bears the same ratio to such remainder as the number of motor vehicles registered in such State bears to the number of such vehicles in all States. For the purposes of this subsection, the term "State" does not include Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Canal Zone.

(b) The portion of any State's allotment under subsection (a) for a fiscal year which the Secretary determines will not be required to carry out the State plan for that fiscal year shall be realloted not later than the tenth month in such fiscal year, to other States in proportion to the original allotments to such States under subsection (a) for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum which the Secretary estimates such State needs and will be able to use for such period for carrying out its State plan approved under this Act, and the total of such reductions shall be similarly realloted among the States whose proportionate amounts are not so reduced. Any amount realloted to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for such year.

(c) The number of motor vehicles registered in a State and in all States shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

STATE PLANS

SEC. 5. (a) Any State desiring to receive its allotment of Federal funds under this Act shall submit a State plan consistent with such basic criteria as the Secretary may establish. Such plans shall—

(1) provide for the administration by a public agency in the State of a junked motor vehicle disposal plan designed to provide for the efficient removal to scrap processing facilities of junked motor vehicles;

(2) provide assurances that a State law substantially in accordance with requirements established by the Secretary, after consultation with the Attorney General, has been enacted or will promptly be enacted by such State designed to provide an efficient means of transferring title of junked motor vehicles (or other evidence of ownership of such vehicles in States not requiring title certification) to public agencies or private business concerns charged with the responsibility of processing such motor vehicles;

(3) provide assurances that the State agency will pay from non-Federal sources the remaining costs of such program;

(4) set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disposal of and accounting of Federal funds paid to the State agency (including such funds paid by the State agency to any agency of a political subdivision of such State) under this Act; and

(5) provide for making such reasonable reports in such form and containing such information as the Secretary may reasonably require to carry out his functions under this Act and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (a).

(c) Criteria established under this section shall include, after consideration by the Secretary of the latest and best information available, a description of the most efficient means of processing junked motor vehicles, the average cost of such scrap processing, the requirements set forth in paragraph (2) of subsection (a), and other information as the Secretary deems relevant and necessary.

ADMINISTRATIVE PROVISIONS

SEC. 6. (a) In order to carry out the objective of this Act, the Secretary is authorized to—

(1) promulgate such rules and regulations as may be necessary;

(2) appoint such advisory committees as he may deem advisable;

(3) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code; and

(4) use the services, personnel, facilities, and information of any other Federal department or agency, or any agency of any State, or political subdivision thereof, or any private research agency with the consent of such agencies, with or without reimbursement therefor.

(b) Upon request by the Secretary each Federal department and agency is authorized and directed to make its services, personnel, facilities, and information, including suggestions, estimates and statistics available to the greatest practicable extent to the Secretary in the performance of his functions under this Act.

(c) The Comptroller General of the United States or any of his duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to any grantee under this Act.

PAYMENTS

SEC. 7. (a) Payments under this Act shall be made from a State's allotment to any such State agency which administers a plan approved under section 5. Payments under this Act from a State's allotment with respect to the cost of carrying out its State plan shall equal 50 per centum of such costs for any fiscal year. In determining the cost of carrying out a State's plan, there shall be excluded any cost with respect to which payments were received under any other Federal program.

(b) Payments to a State under this Act may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of underpayment or overpayment, and may be made directly to a State or to one or more public agencies designated for this purpose by the State, or to both.

WITHHOLDING OF GRANTS

SEC. 8. Whenever the Secretary, after giving reasonable notice and opportunity for hearing to a grant recipient under this Act, finds—

(1) that the program or project for which such grant was made has been so changed that it no longer complies with the provisions of this Act; or

(2) that in the operation of the program or project there is failure to comply substantially with any such provision;

the Secretary shall notify such recipient of his findings and no further payments may be made to such recipient by the Secretary until he is satisfied that such noncompliance has been, or will promptly be, corrected. However, the Secretary may authorize the continuance of payments with respect to any projects pursant to this Act which are being carried out by such recipient and which are not involved in the noncompliance.

DEFINITIONS

SEC. 9. As used in this Act—

(1) the term "person" includes any individual, corporation, company, association, firm, partnership, society, or joint stock company;

(2) the term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails. The Secretary may exclude classes of motor vehicles other than passenger automobiles from the definition of motor vehicle for the purpose of this Act upon a finding that to do so is in the public interest;

(3) the term "junked motor vehicle"

means any motor vehicle which the owner desires to dispose of, including derelict motor vehicles;

(4) the term "derelict motor vehicle" means any obviously abandoned vehicle which has component parts missing, is inoperable, or is worth less than $100 in value;

(5) the term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa;

(6) the term "Secretary" means the Secretary of the Department of Health, Education, and Welfare.

Mr. PACKWOOD. Mr. President, I am pleased to join several of my colleagues in the Senate in cosponsoring with Senator GURNEY legislation which would allow the Federal Government to assist the States in combating one of our Nation's most serious waste disposal problems. The Motor Vehicle Disposal Assistance Act would provide for Federal financial assistance to the States in their efforts to dispose or recycle wornout automobile hulks.

In recent years, the magnitude of the problem of junked cars has increased dramatically. Junked autos are a national disgrace and a threat to our environment. With the increasing retirement rate of used cars, the challenge to local authorities will continue to rise at an accelerating pace. There are roughly 15 million to 20 million junked cars in the United States today and current estimates predict that by 1975 the retirement rate will reach approximately 8 million cars per year. An example of the effect of this increase is seen in New York City, where there are 18 times more cars abandoned today than there were a decade ago.

The problem is particularly acute in our major metropolitan areas, where zoning restrictions and land costs are such that it is difficult to find room for the storage of large numbers of vehicles. In our major cities, one car is abandoned every 30 minutes. In Chicago, the rate is two every 15 minutes.

Due to the fact that the problem of junked cars is most severe in our large metropolitan areas, many people have mistakenly assumed that rural areas are not affected by abandoned autos. I can assure you that no section of our country is immune to this problem.

In my home State of Oregon, for example, approximately one out of every 25 registered motor vehicles is abandoned. As might be expected, the problem is most acute in Multnomah County, the area with the highest population density in the State. The more sparsely populated areas of Oregon have also been affected, but the problem is of a slightly different variety. One of the most irritating sights imaginable is to see a restful and beautiful countryside blighted by the motorized monster, the wornout automobile. These vehicles also are deposited in Oregon's lakes and streams, thus impairing fish life and destroying the natural beauty of these areas.

It is clear that the problem of abandoned automobiles presents a challenge which must be met. The Highway Beautification Act of 1965, which provides for the screening and fencing of automobile junkyards, has helped to soften the effects of the problem, but it is only a temporary solution. Action must be taken now to come to grips with the root of the problem.

It is primarily the responsibility of the States and municipalities for making sure that these autos do not become a permanent part of the scenery. But I also know that the Federal Government must share the responsibility. After all, millions of autos are purchased in one State and then abandoned in another. It stands to reason that the Federal Government must take the initiative and State and local governments must follow suit if we are to solve one of our most severe problems. I think this is a step in the right direction.

This legislation would allow the States to share with the Federal Government the costs of removing junked motor vehicles to scrap processing facilities.

In this way the Federal Government will be able to assist the States in improving the quality of life which we all share.

Mr. DOLE. Mr. President, I join the junior Senator from Florida (Mr. GURNEY) in cosponsoring the Motor Vehicle Disposal Assistance Act. Passage of this legislation is necessary to halt the disastrous growth of piles of junked automobiles that presently litter our landscape.

A feature article written by Jim Lapham, appearing in the August 2 issue of the Kansas City Star Sunday magazine, provides an accurate description of the already tragic proportions of our solid waste disposal problems.

We have recently passed the Resource Recovery Act to aid us in the solution of this most urgent problem.

Mr. Lapham's article reports that a study has been conducted by the Kansas City Metropolitan Planning Commission that finds solid waste matter generated in the Kansas City metropolitan area is expected to increase about 40 percent in just the next 10 years. This figure will increase to 100 percent by 1990.

The article specifically points out:

> Waste carried from residential, commercial and industrial sources in the Kansas City area now totals 1,083,000 tons a year and is expected to reach 2,400,000 tons by 1990.

Kansas City is not an exception to the problem of solid waste disposal. All areas of the United States are threatened (some far worse than Kansas City) by this menace created by accumulated waste.

Passage of the Motor Vehicle Disposal Assistance Act would be an important step toward the elimination of this eyesore and would contribute to the development of a comprehensive approach to our solid waste disposal problems.

Mr. BYRD of West Virginia subsequently said: Mr. President, at the request of the Senator from Florida (Mr. GURNEY), I ask unanimous consent that the bill (S. 4197) designated as the "Motor Vehicle Disposal Assistance Act" be referred to the Committee on Public Works.

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

ORDER OF BUSINESS

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. GOODELL. 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.

At this time, under the previous order, the distinguished Senator from New York (Mr. GOODELL) is recognized for not to exceed 20 minutes.

STRENGTHENING OF LAWS ON CAMPAIGN FINANCING: AMENDMENTS TO THE ELECTION REFORM ACT OF 1970

AMENDMENTS NOS. 826 AND 827

Mr. GOODELL. Mr. President, the purchased election corrupts our democratic process.

It substitutes government by money for government by consent of the governed.

It replaces the techniques of merchandising products for the techniques of persuading people on the merits of issues.

It makes the chief qualification for office a man's money or access to money, not his talent, integrity, and grasp of the issues.

Mr. President, the dynamics of the elective process has been revolutionized by television. TV advertising can bring about instant recognition for the candidate who can afford an extensive campaign to "sell" his image. For a challenger facing an entrenched opposition, this is certainly not without its advantages. It is, however, clearly susceptible to abuse.

The greatest abuse can be that of stultification—of reducing a political contest to the level of a sales pitch for a new type of plywood.

The effectiveness of the democratic process requires the fullest public access to a rational discussion of the issues.

Television is uniquely able to provide a focus for this discussion—through televised debates that bring out the views and accomplishments of opposing candidates. Unfortunately, in most cases debates reach too few people.

Television is, unfortunately, able to thwart intelligent discussion through the abuse of slick, packaged selling techniques. A candidate with slight qualifications but a large budget can too easily succumb to the temptation of TV sloganeering—of skirting the issues and selling himself in catchy 30-second spots that conceal more than they reveal. The real victim of this tactic is the public, which finds itself voting for an ad agency's skill, not a candidate's qualifications.

Congress is now dealing with one aspect of this problem. Several months ago, the Senate passed a bill to limit the amount of money a candidate could spend on radio and television advertising. I voted for this bill. Regrettably, the House thus far failed to pass this legislation.

Congress has still not confronted the broader problem: the need for adequate disclosure of all campaign finance.

Full disclosure enables the public to know who is backing a candidate.

Full disclosure enables the public to know who is attempting to win public office merely by outspending his rivals.

The existing law covering Federal elections attempts to require some disclosure. It fails, however, in a number of vital respects. Unfortunately, Federal law only covers a very minimum aspect of primaries; it provides for no Federal disclosure for primaries whatsoever. Disclosure should be required both before and after the primary or election. The primary, as recent history shows, is where the most blatant cases of overspending can occur.

Our campaign financing laws have not been completely overhauled for more than two decades. Legislation is needed to eliminate the glaring loopholes in the statutory requirements of public disclosure of campaign financing.

Mr. President, I am extremely pleased to note, therefore, that the Committee on Rules and Administration has favorably reported S. 734, the Election Reform Act of 1970, introduced by Senator CANNON.

This bill is essentially the same campaign reform legislation which passed the Senate overwhelmingly in 1967. The Senate committee bill also contains a new title III providing alternative tax benefits for individuals making contributions to candidates or committees—a concept which I have long supported.

It is particularly gratifying to me that the Senate will have an opportunity to act on this legislation this year. Since 1966, as a member of the House Administration Committee, I have introduced strong measures to reform our outmoded laws on campaign financing. Most of the provisions in the Senate committee bill are identical to those in the bills I have authored since 1966 in a bipartisan effort in the House with former Congressman Robert T. Ashmore, Democrat, of South Carolina. Regrettably, the Ashmore-Goodell Election Reform Act, as it was known, was never scheduled for floor debate in the House after it was finally reported by the House committee in June 1968. Not even a locked-in, all-night session in the House of Representatives in the fall of 1968, after I came to the Senate, managed to take action on this long overdue legislation.

One of the first bills which I introduced in the 91st Congress on January 15, 1969, was S. 77, the Federal Clean Elections Act. S. 77 is the same as the Ashmore-Goodell bill, in the form that it was reported out of the House Administration Committee.

It has always been my firm conviction that a system of free elections in a democratic society is best served by requiring meaningful and timely public disclosure of political candidates' sources of financial support. American voters have a right to have a true picture of where a candidate is getting his support. This has been the underlying philosophy of the bills which I have introduced.

Both my bill, S. 77, and the Senate committee bill, S. 734, contain similar provisions to correct obvious loopholes in existing law. They clearly extend the coverage of contributions and expenditures to the full range of the Federal elections process. They require candidates and political committees to make complete and detailed reports of their campaign finances on a periodic basis. Individuals are also required to report their campaign expenditures in excess of $100. It is clearly stated that the reporting requirements apply not only to campaign contributions, but also to direct expenditures made by individuals and private groups on behalf of a candidate. Thus the law could no longer be avoided by having wealthy backers buy television time, supply transportation, or pay for other campaign costs instead of making contributions.

Under existing law, no person may contribute more than $5,000 to any Federal candidate or political committee in a calendar year. However, this limit can be avoided by contributing to several political committees supporting the same candidate. Both bills close this gap in the law by providing that no person can contribute more than a total of $5,000 to any one Federal political candidate or to political committees substantially supporting that candidate.

Existing law places a limit on the total amount of money a congressional candidate or a political committee may spend on Federal elections. However, these limits make no allowance for the size of the constituency involved, and have been virtually unenforceable. Removal of existing spending ceilings would encourage full disclosure. The major commissions convened during the past decade to recommend changes in our campaign finance laws have endorsed a repeal of these ineffective limits. Accordingly, both my bill and the Senate committee bill repeal these limits.

In this connection, the Special Committee on Congressional Ethics of the Association of the Bar of the City of New York—in a recent comprehensive work entitled "Congress and the Public Trust"—is one of the numerous study commissions which has recommended repealing these limits. The committee, however, has suggested that such repeal might leave one loophole remaining—the possibility of a wealthy candidate spending excessive amounts of money on his own campaign. I will therefore introduce an amendment today which limits to $25,000 the amount a candidate for Congress may spend for his own campaign for nomination or election during any calendar year. This provision was not included in the original Ashmore-Goodell bills which I have introduced in the past.

In accordance with the philosophy of full public disclosure, my bill and the Senate committee bill substantially increase data collection and public reporting. Detailed financial reports are required, and this data would be summarized and made available for public inspection.

Nonetheless, there is one crucial difference between my bill and the Senate committee bill: the mechanism for enforcement.

One of the amendments which I propose today to the committee bill, S. 734, would create an independent "watchdog" agency to fully enforce the law.

The Senate committee's bill maintains the role of the Clerk of the House and the Secretary of the Senate with respect to receiving reports and disseminating information to the public. In my view, this is not an effective means of administering laws on campaign financing. The Clerk of the House and the Secretary of the Senate have neither the staff, funds, nor enforcement authority to do the necessary job. In addition, the Senate committee bill would place new responsibility on each of these offices, and some of them would be duplicative. Unless the Clerk and the Secretary voluntarily agreed to work out these responsibilities jointly—and there is no guarantee that this would occur—it could result in a tremendous amount of unnecessary effort.

My amendment would create a five-member bipartisan Federal Elections Commission, appointed by the President and confirmed by the Senate, with full powers to enforce the act. It is critically important that a strong, impartial administrative mechanism for implementing the disclosure provisions be established. The Commission would receive, tabulate, and make required reports available for public inspection. The Commission also would have the important functions of prescribing the form and method of reporting, and of summarizing and publishing the data it receives. This will help assure that data is supplied in proper form, and that information on campaign spending is disseminated to the public.

This proposal would not just establish "another Commission." This Commission will give "teeth" to the act by virtue of its powers to investigate alleged violations—either on its own initiative or at the request of an aggrieved candidate. The investigative and subpena powers of the Federal Trade Commission are given to this Commission. In case of continued violation, the Commission can issue orders to correct the injury occasioned by the violation.

Only through the creation of such an independent agency, with the needed staff, funds, and authority, can our campaign financing laws be adequately enforced.

There has been widespread support for a number of years for the creation of such an independent Commission. Recently, two more prestigious study commissions have recommended that my proposal be adopted. The Special Committee on Congressional Ethics of the Association of the Bar of the City of New York stated in its recommendations that "A Federal Elections Commission should be established to administer this law," and specifically cited my proposal as the model for such legislation.

The 20th Century Fund task force on financing congressional campaigns, in its recently released report, "Electing Congress: The Financial Dilemma," also recommended the establishment of my proposal. The Task Force had this to say about the need for such a Commission:

> No agency is now responsible for supervising compliance with federal campaign finance regulations. The Secretary of the

Senate and the Clerk of the House are the statutory repositories for campaign spending reports but they do not have the authority, the staff, or the motivation to do anything but accept the reports that are filed. Further, there is no office that keeps records and provides information about political contributions and expenditures of committees seeking to influence federal elections.

There is no federal agency that regularly investigates serious charges of illegal conduct during a campaign. Nor is there any agency competent to give legal advice about campaign activities. We believe this administrative void must be filled if campaign finance regulations are to be effective.

We recommend the establishment of a bipartisan federal elections commission to administer regulations affecting federal campaigns. The commission should audit and publicize all campaign finance reports and report possible violations, including late filing, to the appropriate enforcement agencies for action. The commission should have the staff, resources, and independence to do the jobs assigned to it. It should have the power to investigate charges of illegal activity in federal campaigns, to subponea evidence, and to establish uniform accounting and reporting procedures for political committees.

It should also be pointed out that the Justice Department has given its support to my proposal for a Federal Elections Commission. Assistant Attorney General William H. Rehnquist, Office of Legal Counsel, in testimony before the Committee on House Administration on May 6, 1970, on H.R. 12773—a bill almost identical to my bill, S. 77—states:

The Department of Justice favors Title II to the extent that it places the administration of the Act in the hands of an independent Commission, insulated from outside pressures. This desirable feature of the bill, we think, not only creates the appearance of impartial enforcement, but increases the likelihood of vigorous enforcement.

On July 17, 1970, the Washington Post reported a similar endorsement by Assistant Attorney General Will Wilson, Chief of the Justice Department's Criminal Division.

Mr. President, I might add that one alternative proposed to an independent Commission would entrust the reporting and auditing requirements with the Comptroller General in the Accounting Office.

I can see little merit in this alternative. The GAO is an auditing agency of the Federal Government, operating as an arm of the Congress for the purpose of overseeing the expenditure of funds for ongoing Federal programs. The monitoring of campaign finances is unrelated and inappropriate to the work of the GAO.

Most important, the Comptroller General himself does not regard his agency as the appropriate one to do the job. In 1967, when the Senate considered this proposal, Comptroller General Elmer B. Staats opposed this proposal. In a letter of June 14, 1967, he supported the establishment of a separate agency as embodied in my bill. Mr. Staats said:

Accordingly, while we agree that there is a need for legislation along the general lines proposed in S. 1546 we strongly recommend that administration of its provisions be vested in a separate agency of the Government to be established for the express purpose of dealing solely with the problem the proposed legislation is designed to meet. We would, therefore, favor the establishment of a "Federal Elections Commission" as provided by the so-called Ashmore-Goodell bill, H.R. 18162, 89th Cong. 2d sess.

Mr. President, the second amendment which I am offering today would place a $25,000 limit on a congressional candidate's spending from personal funds for his nomination or election campaign during a calendar year. This proposal was recently recommended by the Special Committee on Congressional Ethics of the Bar Association of the City of New York.

The need for this amendment is quite clear.

A wealthy candidate, able to spend his own funds without limit, can place a less affluent opponent at a great disadvantage. It could deter a qualified man from entering a race because he feared being eclipsed by an opponent's expensive campaign in which he could not realistically compete. I do not believe that a candidate who has personal wealth should be penalized for his good fortune; I merely maintain that he should not have a built-in advantage because of a potential loophole in the law.

Under existing Federal law, a candidate is prohibited from spending more than $5,000 for a House race and $25,000 for a Senate race—although in reality this can be easily circumvented through expenditures made by political committees supporting him. There are no such restrictions in primary elections.

The total limitation of $25,000 for a primary or general election appears to be a reasonable amount. My bill and the Senate committee's bill place a total limit of $5,000 on the contribution which every other contributor may make to a candidate's campaign. If the ceiling on expenditures is repealed, then the congressional candidate himself could spend as much of his own wealth as he wanted to. Why should we not place some reasonable limit on the candidate himself as well?

This proposal is an integral part of the total reform of our campaign financing laws provided by my bill and the Senate committee's bill.

It complements the restriction on the $5,000 ceiling on contributions and the repeal of expenditure ceilings. It prevents a possible loophole from being opened, and insures that we will have enacted a realistic reform measure.

Mr. President, our system of regulating campaign financing is one of virtual nonregulation. While we allow this issue to lie buried, campaign spending continues to spiral. Blatant cases of overspending occur with increasing frequency, and the American voter is the one who suffers because he is deprived of the opportunity to choose his representatives in a rational manner. We must act, and we must act now.

Mr. President, I ask unanimous consent that the text of my amendments to S. 734 be printed in the RECORD.

The PRESIDING OFFICER (Mr. HUGHES). The amendments will be received and printed, and will lie on the table; and, without objection, the amendments will be printed in the RECORD.

The amendments (Nos. 826 and 827) are as follows:

AMENDMENT NO. 826

Beginning with line 1, page 11, strike out all to and including line 4, page 11.

On page 11, line 5, strike out "(1)", and insert in lieu thereof "(g)".

On page 11, line 8, strike out "(j)", and insert in lieu thereof "(h)".

On page 11, between lines 10 and 11, insert the following new section:

"FEDERAL ELECTIONS COMMISSION

"SEC. 202. (a)(1) There is hereby created a commission to be known as the Federal Elections Commission (referred to hereafter in this Act as "Commission"), which shall be composed of five members, who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) A person may not be appointed to the Commission—

"(A) if at the time of his appointment he was not a member of a major political party, or

"(B) if his appointment results in more than three persons from his party being members of the Commission.

For purposes of this paragraph, the term "major political party" means a national political party whose candidate for President received either the largest or the next largest popular vote in the preceding presidential election.

"(3) One of the original members shall be appointed for a term of two years, one for a term of four years, one for a term of six years, one for a term of eight years, and one for a term of ten years, beginning from the effective date of this title, but their successors shall be appointed for terms of ten years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

"(b) If there is a vacancy in the Commission which has existed for more than ninety days, the remaining members of the Commission may not exercise any of the powers of the Commission until such vacancy is filled, but in such case the Executive Director of the Commission may exercise any duties previously vested in him by the Commission. Except as provided in the preceding sentence, three members of the Commission shall constitute a quorum.

"(c) The Commission shall have an official seal which shall be judicially noticed.

"(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as may appear desirable.

"(e) (1) Members of the Commission shall, while serving on the business of the Commission, be entitled to receive compensation at a rate fixed by the Director of the Office of Management and Budget, but not exceeding $100 per day, including traveltime; and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 3109 of title 5, United States Code.

"(2) The Commission shall, in accordance with chapter 51 of title 5, United States Code, and subchapter III of chapter 53 of title 5, United States Code, appoint and fix the compensation of an Executive Director and such other officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions.

"(3) The Executive Director shall be the

chief administrative officer of the Commission. He shall perform his duties under the direction and supervision of the Commission, and the Commission may delegate any of its functions, other than the making of regulations, to him.

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all of its powers at any other place.

(g) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of sections 7324 and 7325 of title 5, United States Code, notwithstanding any exemption contained therein.

On page 11, line 12, strike out "Sec. 202", and insert in lieu thereof "Sec. 203".

On page 12, line 24, strike out "Secretary or Clerk, as the case may be", and insert in lieu thereof "Commission in accordance with published regulations".

On page 13, line 2, strike out "Sec. 203", and insert in lieu thereof "Sec. 204".

On page 13, lines 8 and 9, strike out "Secretary or Clerk, as the case may be", and insert in lieu thereof "Commission".

On page 13, lines 11 and 12, strike out "Secretary or Clerk, as the case may be", and insert in lieu thereof "Commission".

On page 13, line 12, strike out "he prescribes", and insert in lieu thereof "it prescribes".

On page 14, line 17, strike out "Secretary or Clerk", and insert in lieu thereof "Commission".

On page 14, line 20, strike out "Secretary or Clerk, as the case may be", and insert in lieu thereof "Commission".

On page 15, lines 1 and 2, strike out "Secretary or Clerk, as the case may be", and insert in lieu thereof "Commission".

On page 15, line 4, strike out "Sec. 204", and insert in lieu thereof "Sec. 205".

On page 15, line 8, strike out "Secretary", and insert in lieu thereof "Commission".

On page 15, line 12, strike out "Clerk", and insert in lieu thereof "Commission".

On page 15, lines 18 and 19, strike out "Secretary", and insert in lieu thereof "Commission".

On page 27, line 20, strike out "Secretary or Clerk", and insert in lieu thereof "Commission".

On page 17, line 22, strike out "Secretary or Clerk", and insert in lieu thereof "Commission".

On page 18, line 8, strike out "Sec. 205", and insert in lieu thereof "Sec. 206".

On page 18, line 12, strike out "Secretary or Clerk, as the case may be", and insert in lieu thereof "Commission".

On page 18, line 14, strike out "204", and insert in lieu thereof "$205".

On page 18, line 19, strike out "Sec. 206", and insert in lieu thereof "Sec. 207".

On page 19, line 1, strike out "Secretary or Clerk, as the case may be", and insert in lieu thereof "Commission".

On page 19, line 3, strike out "Secretary or Clerk", and insert in lieu thereof "Commission".

On page 19, line 5, strike out "204", and insert in lieu thereof "205".

On page 19, line 10, strike out "Secretary or Clerk, as the cause may be", and insert in lieu thereof "Commission".

On page 19, line 21, strike out "Sec. 207", and insert in lieu thereof "Sec. 208".

On page 20, line 12, strike out "Secretary", and insert in lieu thereof "Commission".

On page 20, line 17, strike out "Sec. 208.", and insert in lieu thereof "Sec. 209. (a)".

On page 20, lines 17 and 18, strike out "Secretary and Clerk, respectively", and insert in lieu thereof "Commission".

On page 21, line 23, strike out "he", and insert in lieu thereof "it".

On page 22, line 4, strike out "he", and insert in lieu thereof "it".

On page 22, line 16, strike out "he", and insert in lieu thereof "it".

On page 22, after line 25, insert the following new subsection:

"(b) For the purpose of any audit or investigation provided for in paragraph (11) of subsection (a) or in subsection (c) of this section, the provisions of sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable to the jurisdiction, powers, and duties of the Commission, or any officer designated by it, except that the attendance of a witness may not be required outside of the State where he is found, resides, or transacts business, and the production of evidence may not be required outside the State where such evidence is kept.

"(c) Any candidate who believes a violation of this title has occurred may file a complaint with the Commission. If the Commission determines there is substantial reason to believe such a violation has occurred, it shall expeditiously make an investigation which shall include an investigation of reports and statements filed by the complainant, as well as of the matter complained of. If, on the basis of such investigation and after affording due notice and opportunity for a hearing on the record, it determines such a violation has occurred, the Commission shall issue an order directing the violator to take such action as the Commission determines may be necessary in the public interest to correct the injury occasioned by the violation. Such action may include requiring the violator to make public the fact that a violation has occurred, and the nature thereof, and may also include requiring the violator to make public complete statements, in corrected form, containing information required by this title. The Commission may also take action to correct such an injury by making public the fact that a violation has occurred, and the nature thereof, and may also make public complete statements (prepared by the Commission itself and its officers and employees) containing the information required by this title.

(d) Any party in interest who is aggrieved by a determination of the Commission under subsection (c) may, within sixty days after such order is issued, file with the United States court of appeals for the circuit in which he resides or in the United States Court of Appeals for the District of Columbia circuit a petition for review of the action of the Commission in issuing the order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission. The Commission thereupon shall file in the court the record of the proceedings on which it based its action, as provided in section 2112 of title 28, United States Code. The findings of fact by the Commission, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commission to take further evidence, and the Commission may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The court shall have jurisdiction to affirm the action of the Commission 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. Any action brought under this section shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this section).

"(e) Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) shall apply to violations of orders of the Commission in the same manner as it applies to violations of orders of the Federal Trade Commission.

"(f) In the performance of its duties under this Act, the Commission shall coordinate its activities with the activities of the Comptroller General under the Presidential Election Campaign Fund Act of 1966.

On page 23, line 3, strike out "Sec. 209", and insert in lieu thereof "Sec. 210".

On page 23, line 4, strike out "Secretary or Clerk", and insert in lieu thereof "Commission".

On page 23, line 9, strike out "Secretary or "Clerk", and insert in lieu thereof "Commission".

On page 24, line 10, strike out "Sec. 210", and insert in lieu thereof "Sec. 211".

On page 24, line 15, strike out "Sec. 211", and insert in lieu thereof "Sec. 212".

On page 24, line 19, strike out "Sec. 212", and insert in lieu thereof "Sec. 213".

On page 24, line 23, strike out "Secretary and Clerk", and insert in lieu thereof "Commission".

On page 25, line 4, strike out "Sec. 213", and insert in lieu thereof "Sec. 214".

On page 25, line 10, strike out "Sec. 214", and insert in lieu thereof "Sec. 215".

On page 25, line 18, strike out "Sec. 215", and insert in lieu thereof "Sec. 216".

AMENDMENT No. 827

Intended to be proposed by Mr. GOODELL to S. 734, a bill to revise the Federal election laws, and for other purposes,

On page 1, line 9, strike out the words "and 610", and insert in lieu thereof the words "610, and 614".

On page 8, between lines 14 and 15, insert the following new section:

"SEC. 107. (a) Chapter 29, title 18, United States Code, is amended by adding at the end thereof the following new section:

"614. Expenditures by candidates for Congress

"'(a) Whoever, being a person who is a candidate in any election for nomination for election, or election, as a Senator or Representative in, or Resident Commissioner to, the Congress of the United States, makes expenditures exceeding $25,000 in the aggregate in any calendar year, from assets to which he holds legal title, in support of or on behalf of his candidacy in that election shall be fined not more than $5,000, or imprisoned not more than five years, or both.

"'(b) For the purposes of this section, an expenditure made by the spouse or a minor child of a person shall be deemed an expenditure made by such person.'."

"(b) The sectional analysis at the beginning of chapter 29, title 18, United States Code, is amended by adding at the end thereof the following new item:

"'614. Expenditures by candidates for Congress.'."

On page 8, line 15, strike out "Sec. 107", and insert in lieu thereof "Sec. 108".

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. HUGHES). Pursuant to the previous order, there will now be a period for the transaction of routine morning business with a time limitation of 3 minutes on statements made therein.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate the following letters, which were referred as indicated:

REPORT ON POSITIONS ESTABLISHED BY THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

A letter from the Administrator, National Aeronautics and Space Administration,

transmitting, pursuant to law, a report on the positions which the Administration has established as of June 30, 1970 (with an accompanying report); to the Committee on Aeronautics and Space Science.

REPORT ON DEPARTMENT OF DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report on Department of Defense procurement from small and other business firms for July 1969 to May 1970 (with an accompanying report); to the Committee on Banking and Currency.

REPORT ON STUDIES CONDUCTED RELATIVE TO THE CONTROL OF HEALTH HAZARDS FROM ELECTRONIC PRODUCT RADIATION AND OTHER TYPES OF IONIZING RADIATION

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on certain studies conducted relative to the control of health hazards from electronic product radiation and other types of ionizing radiation, dated January 1, 1970 (with an accompanying report); to the Committee on Commerce.

REPORT ON THE ADMINISTRATION OF THE RADIATION CONTROL FOR HEALTH AND SAFETY ACT OF 1968

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on the administration of the Radiation Control for Health and Safety Act of 1968 dated April 1, 1970 (with an accompanying report); to the Committee on Commerce.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on improvements needed in reclaiming usable parts from excess aircraft, Department of Defense, dated August 6, 1970 (with an accompanying report); to the Committee on Government Operations.

ENROLLED BILLS SIGNED

The ACTING PRESIDENT pro tempore (Mr. ALLEN) announced that on today, August 6, 1970, he signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

S. 1703. An act for the relief of Rosa Pintabona;

S. 1704. An act for the relief of Lillian Biazzo;

S. 2427. An act for the relief of Cal C. Davis and Lyndon A. Dean;

S. 2863. An act for the relief of Mrs. Cumorah Kennington Romney;

S. 3136. An act to confer U.S. citizenship posthumously upon Guy Andre Blanchette;

H.R. 14114. An act to improve the administration of the national park system by the Secretary of the Interior, and to clarify the authorities applicable to the system, and for other purposes; and

H.R. 14705. An act to extend and improve the Federal-State unemployment compensation program.

EXECUTIVE REPORTS OF A COMMITTEE

Mr. GOLDWATER. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations of 42 flag and general officers in the Army, Navy, Air Force, and Marine Corps.

I ask that these names be placed on the Executive Calendar.

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

The nominations, ordered to be placed on the Executive Calendar, are as follows:

Edward J. Miller, and sundry other officers, for temporary appointment to the grade of brigadier general in the Marine Corps;

Homer S. Hill, and sundry other officers, for temporary appointment to the grade of major general in the Marine Corps;

Rear Adm. Raymond E. Peet, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of vice admiral while so serving;

Rear Adm. James F. Calvert, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of vice admiral while so serving;

Brig. Gen. Roy M. Terry (colonel, Regular Air Force, chaplain) U.S. Air Force, for temporary appointment in the U.S. Air Force in the grade of major general;

Darrell M. Trent, of Kansas, to be Deputy Director of the Office of Emergency Preparedness;

Vice Adm. Ralph W. Cousins, U.S. Navy, for appointment as Vice Chief of Naval Operations in the Department of the Navy;

Brig. Gen. Herbert R. Hackbarth, Brig. Gen. James M. Roberts, Jr., and Brig. Gen. Leonard S. Woody, U.S. Army Reserve officers, for promotion as Reserve commissioned officers of the Army, to be majors general;

Col. Richard C. Allgood, Jr., and sundry other colonels, U.S. Army Reserve officers, for promotion as Reserve commissioned officers of the Army, to be brigadiers general:

Col. Wilbert A. Allen, Army National Guard of the United States officer, for promotion as a Reserve commissioned officer of the Army, to be brigadier general;

Brig. Gen. Jack W. Blair, and sundry other Army National Guard of the United States officers, for appointment as Reserve commissioned officers of the Army, to be majors general; and

Col. Ferd L. Davis, and sundry other Army National Guard of the United States colonels, for appointment as Reserve commissioned officers of the Army, to be brigadiers general.

BILLS AND A JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. BAYH:

S. 4191. A bill to protect the constitutional rights of those subject to the military justice system, to revise the Uniform Code of Military Justice, and for other purposes; to the Committee on Armed Services.

(The remarks of Mr. BAYH when he introduced the bill appear earlier in the RECORD under the appropriate heading.)

By Mr. YOUNG of North Dakota (for himself, Mr. BURDICK, Mr. MCCARTHY, Mr. MONDALE, and Mr. MCGOVERN):

S. 4192. A bill to provide for conserving surface waters; to preserve and improve habitat for migratory waterfowl and other wildlife resources; to reduce runoff, soil and wind erosion, and contributes to food control; to contribute to improved water quality and reduce stream sedimentation; to contribute to improved subsurface moisture; to reduce acres of new land coming into production and to retire lands now in agricultural production; to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning; to the Committee on Agriculture and Forestry.

(The remarks of Mr. YOUNG of North Dakota when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. STEVENS:

S. 4193. A bill to establish the President's Award for Distinguished Law Enforcement Service; to the Committee on the Judiciary.

By Mr. GOODELL:

S. 4194. A bill to make Section 236 homeownership payments available to a cooperative housing project financed under State or local programs; to the Committee on Banking and Currency.

By Mr. SMITH of Illinois:

S. 4195. A bill to amend the Truth in Lending Act with respect to consumer credit transactions in which credit is extended for agricultural purposes; to the Committee on Banking and Currency.

(The remarks of Mr. SMITH of Illinois when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. ALLOTT (for himself and Mr. JACKSON):

S. 4196. A bill to establish the Federal City Bicentennial Development Corporation, to provide for the preparation and carrying out of a Development Plan for certain areas between the White House and the Capitol, to further the purposes for which The Pennsylvania Avenue National Historic Site was designated, and for other purposes; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. ALLOTT when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. GURNEY for himself, Mr. SCOTT, Mr. THURMOND, Mr. BOGGS, Mr. FANNIN, Mr. COOPER, Mr. BAKER, Mr. DOLE, and Mr. PACKWOOD):

S. 4197. A bill to encourage States to establish junked motor vehicle disposal programs, and for other purposes; to the Committee on Public Works, by unanimous consent.

(The remarks of Mr. GURNEY when he introduced the bill appear earlier in the RECORD under the appropriate heading.)

By Mr. HARTKE:

S. 4198. A bill to provide for an equitable sharing of the U.S. market by electronic articles of domestic and of foreign origin; to the Committee on Finance.

(The remarks of Mr. HARTKE when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. TOWER:

S.J. Res. 227. Joint resolution to authorize and request the President to issue annually a proclamation designating the second Sunday of October of each year as "National Grandparents Day"; to the Committee on the Judiciary.

(The remarks of Mr. TOWER when he introduced the joint resolution appear later in the RECORD under the appropriate heading.)

S. 4192—INTRODUCTION OF A BILL TO ESTABLISH A WATER BANK PROGRAM

Mr. YOUNG of North Dakota. Mr. President, in May of last year, I introduced in the Senate S. 2257, legislation to establish a water bank program. At that time I stated that such a program was vitally needed to assist in development of comprehensive, long-range plans for the conservation and development of our natural resources.

My colleague, Senator BURDICK, and the Senators from Minnesota, Senators MONDALE and MCCARTHY, joined in sponsoring the bill at that time. Identical legislation was introduced in the House of Representatives, and on July 16, 1970, the House Merchant Marine and Fish-

eries Committee ordered the bill favorably reported.

As a result of their hearings, the House committee recommended some minor changes in the legislation. I feel it would be well to have these before the Senate at this time, so I am introducing today a revised water bank program proposal which incorporates these changes. I am pleased to say that I am again joined by my colleague, Senator BURDICK, the Senators from Minnesota, Senators MONDALE and MCCARTHY, and the Senator from South Dakota, Senator MCGOVERN.

Throughout the Nation today landowners and public and private agencies are faced with the necessity to plan the use and development of our land and water resources. There are a good many options to be considered, however, in many cases, once a decision is reached and a plan is embarked upon, the process is irreversible. In many instances, these decisions lead to the loss of a valuable natural resource for all time.

We are all aware of the problems facing the Nation's farmers. They are caught in a cost-price squeeze that daily drives more and more of them from the land. In North Dakota alone, we are losing about 1,000 farmers per year.

In order to stay in business and provide an adequate living for themselves and their families, farmers are continually seeking to lower their costs, reduce their risks and improve their efficiency. One of the most common ways of doing this has been to improve the land resources available to them. Often this has meant the use of conservation practices such as strip cropping, well planned crop rotations, the planting of shelterbelts and other measures. At other times, it has meant the drainage of natural wetlands.

This drainage has, generally speaking, been the farmers' only means of improving the return available to him from land in which he has made an investment, on which he pays taxes, and which represents an integral part of his unit.

This drainage, however, often represents the loss of a valuable natural resource to society as a whole. These wetlands are a valuable source of wildlife production. They help retain runoff waters that add materially to flood control and they help maintain water table levels so essential to meeting the ever expanding demand for municipal and industrial water supplies to support an expanding population.

It has long been recognized that the dilemma presented by these apparently conflicting interests cannot be solved without some public action. The legislation we are introducing today is aimed directly at providing such a solution.

By 1950, about half of the wetlands of the prairie pothole region of the United States had been drained. This is considered to be the prime waterfowl producing area of the country. This drainage has continued in recent years, and recent surveys indicate that in my own State, landowners are draining almost 45,000 acres of wetlands each year.

Mr. President, this is a very serious problem. Many public and private agencies have recognized it as such and I believe the Water Bank Program proposed in this legislation would be a great step forward in providing a solution to these problems. In North Dakota this proposal has the active support of the National Farmers Organization, North Dakota Farm Bureau, North Dakota Farmers Union, Greater North Dakota Association, North Dakota Stockmen's Association, North Dakota Wildlife Federation, North Dakota Water Users, the Garrison Conservancy District, and the North Dakota Association of Soil Conservation Districts.

In brief, this program would provide landowners with an economic alternative to drainage. It would establish a program whereby they could enter into contracts with the Federal Government limiting the use of wetlands and thereby leaving them in their present condition.

I sincerely feel that this would be a positive step toward conserving and maintaining a rapidly disappearing natural resource. There is much merit to this legislation, and I would like to urge prompt and favorable action on it.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The bill will be received and appropriately referred.

The bill (S. 4192) to provide for conserving surface waters; to preserve and improve habitat for migratory waterfowl and other wildlife resources; to reduce runoff, soil and wind erosion, and contributes to food control; to contribute to improved water quality and reduce stream sedimentation; to contribute to improved subsurface moisture; to reduce acres of new land coming into production and to retire lands now in agricultural production; to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning, introduced by Mr. YOUNG of North Dakota, for himself and other Senators, was received, read twice by its title and referred to the Committee on Agriculture and Forestry.

S. 4195—INTRODUCTION OF A BILL TO AMEND THE TRUTH-IN-LENDING ACT WITH RESPECT TO CREDIT EXTENDED FOR AGRICULTURAL PURPOSES

Mr. SMITH of Illinois. Mr. President, I am introducing today a bill to amend the Truth-in-Lending Act as it applies to the extension of credit for agricultural purposes. I believe my bill will greatly simplify many unnecessary procedures now required, but at the same time retain essential provisions of the act, insuring meaningful disclosure of credit information.

The Truth-in-Lending Act was passed just over 2 years ago. Since July 1, 1969, when the basic provision, chapters 2 and 3, took effect, the law has proven to be a highly effective means of informing borrowers of the cost of money. Its purpose was solely to require a standard disclosure of the terms of credit transactions, with the aim of achieving the better-informed use of credit. I believe it has gone a long way in doing just that.

The Board of Governors of the Federal Reserve Board was empowered to issue detailed regulations to implement the act, and through its regulation Z, it has done an able job of providing, for the first time in this country, a standard method of computing the interest rate on transactions for credit.

Two of the most meaningful and most essential requirements were that the document evidencing transaction disclose the total finance charge, and the finance charge expressed as an annual percentage rate.

Even as it was first written and later enacted, however, the truth-in-lending bill was never plenary in scope: While it required "each creditor" to disclose specified information to "each person to whom consumer credit is extended," section 121(a), at least seven categories of transactions were excluded from the act: Extensions of credit for business or commercial purposes and to government or governmental agencies, and to organizations were specifically exempted. Also excluded were transactions in securities or commodities by broker-dealers registered with SEC, as well as transactions under public utility tariffs regulated by State governments. Finally all non-real-property transactions where the total amount to be financed exceeds $25,000 were made wholly exempt from the requirements of the act.

One purpose of the bill was aimed at unscrupulous merchants and loan institutions who victimized inner city ghetto residents to disclose the details of their transaction so that the victims would at least know exactly what the loan or credit cost.

A particular practice in the ghetto precipitated a salient provision of the act: The right to rescind chattel mortgages on the residence of the borrower. Widely published in the press during the time Congress was considering this legislation was the nefarious practice of certain unprincipled "building contractors" in the Washington metropolitan area. These individuals went from home to home in low income communities pressuring cash-short homeowners to redecorate the exterior of their homes by adding expensive aluminum siding. The cost often ran into the thousands of dollars, but by guile and misrepresentation, these unscrupulous salesmen persuaded the homeowner that by "just signing a few papers" the money could be raised without difficulty. The "papers" of course, consisted of a chattel mortgage on the house which was promptly discounted to a bank. Once the repair work was done, the salesman disappeared and the homeowner was left with large monthly payments to the bank-mortgager. If he was unable to meet the payments, as he often was, the bank foreclosed on the mortgage leaving the debtor homeless. In many documented cases, it was evident that the homeowner had no idea he was mortgaging his home simply to put on aluminum siding or weatherboarding.

Thus when the framers of the Truth-in-Lending Act were drafting the law, a provision was inserted providing that in the case of a transaction where a security interest is retained or acquired in real property the person to whom credit is extended shall have the right to rescind the agreement for a period of three

business days after the transaction is made, or the disclosures delivered to him. Thus a measure of protection, it was thought, would be provided by giving the obligor the chance to examine the papers in detail and change his mind if he desired.

Although in 1968 when the act was passed, Congress gave special consideration to some transactions it overlooked the unique characteristics involved in the extension of credit for agricultural purposes.

Because the very nature of farm loans and credit is so vastly different from virtually any other kind of credit—for instance, retail merchants' revolving credit accounts, or house repairs involving a chattel mortgage on a residence—it soon became clear that while national across-the-board standards fulfilled important needs in the non-agricultural sector, many of these provisions were manifestly inappropriate for farm loans made for agricultural purposes.

The inappropriateness of the section 125 requirement that on a credit transaction using as security the residence of, the borrower be required to wait three full business days to rescind the transaction before the transaction can be consummated, is illustrated by the typical farm loan: Most farmers use their farm as security for borrowing, and since their dwelling house is generally located on these premises, all the requirements of section 125's rescision come into play. In the normal situation—a situation enjoyed by virtually all farmers and ranchers, the loan institution is a local country bank or production credit association with whom the borrower has had dealt for years. It is nothing less than absurd to require these parties to delay the consummation of credit transaction three full business days because of an ill-drafted inclusion meant to apply to radically different circumstances. Several Illinois constituents have written to me on this specific point and many say they have never heard of any farmer exercising his right to rescind the transaction under 125. All this provision does for agriculture is delay unnecessarily the free flow of farm commerce—and at the same time earn—how ever unintentionally, the well-deserved resentment of both creditor and farmer.

A second significant omission, and an unfortunate inconsistency in the Truth-in-Lending Act, is its failure to treat farm loans and credit in the same way that other business loans are treated. Credit transactions for business and commercial purposes other than real property transactions are exempt if the total amount to be financed exceeds $25,000.

The patent anomaly of excluding business loans over $25,000 while, at the same time, failing to make a similar provision for credit extended for agricultural purposes should have been evident in 1968, but it was not.

Likewise, minor provisions relating to circumstances where "one or more periodic rates" are used—127 (a)(4) and (b)(5)—or the "total finance charge exceeds 50 cents"—127(b)(6)—have proven to be unnecessarily burdensome for both borrower and lender.

A further problem with the act insofar as agriculture is concerned has already been remedied by the Board of Governors of the Federal Reserve Board. Very often lenders extend credit with an arrangement for repayment to be based on the time of the farmer's harvesting of crops or sale of livestock. Clearly an agreement cannot be drawn for repayment by a specific day, of money borrowed to plant wheat when the wheat crop may not mature by that day; or repayment of a loan to purchase feeder pigs when the pigs are not sufficiently fat by a specified day, or the market is down on that day. Both farmers and lenders recognize this interminable factor and simply regard it as incapable of exact determination beforehand. As a consequence, some of those disclosures required by the Truth-in-Lending Act which are incapable of ascertainment are covered by an amendmend to regulation Z issued by the Federal Reserve Board November 6, 1969.

To correct other inadvertent coverage under the act, however, legislation is required.

Mr. President, I certainly do not claim to be the first one to take note of the oversights in the Truth-in-Lending Act, or even the first to introduce legislation to cure the defect. In fact, to date I have counted no less than seven bills—all introduced in the House—which seek to resolve this problem. Their solution, however, is a drastic one—they exempt agricultural loans entirely from the purview of the act. Under these proposals, and all seven are identical, lenders would not be required to disclose any information required under the act whatsoever; not even the total finance charge nor that charge expressed as an annual percentage rate.

In my judgment the solutions proposed in the House go too far: No reputable farm lending institution should object, for instance, to a nationally standardized disclosure of interest rates, or to disclosing the total finance charge, or to itemizing additional charges not a part of the finance charge, or to providing the borrower with the number, amount, and due dates of payment.

In my bill, I have sought to avoid exempting entirely agricultural loans and, at the same time, relieve farm borrowers and lenders of onerous, unnecessary, and time-consuming parts of the act which never should have applied to agriculture in the first place. Here is what the bill provides:

First. Section 104 is amended so that all credit transactions other than real property transactions which involve credit for agricultural purposes where the total amount to be financed exceeds $10,000 are exempted completely. The present law contains no such exemption whatever.

Second. Section 125, establishing a 3-day delay to provide the borrower with a right to rescission where the lender acquires or retains a security interest in real property used as the residence of the borrower is likewise amended to exempt entirely any consumer credit transactions in which a loan is extended for agricultural purposes.

Third. Section 127 (a) and (b), dealing with open-end consumer credit plans, is amended to require only disclosures specifically applicable to agricultural loans, and omits the unnecessary and burdensome minor requirements discussed earlier.

Altogether, it is my hope that the changes proposed in my bill amending the Truth-in-Lending Act will achieve the dual purpose of relieving the farm borrower and lender from broad-scale requirements of the act never properly applicable to agriculture in the first place, and at the same time, preserve the positive advantages or meaningful disclosure which the act presently affords.

Mr. President, I urge the Banking and Currency Committee to consider this measure as early as possible and to report it favorably to the Senate. I ask unanimous consent that the text of this bill be printed in the RECORD following these remarks.

The PRESIDING OFFICER (Mr. SAXBE). The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 4195) to amend the Truth-in-Lending Act with respect to consumer credit transactions in which credit is extended for agricultural purposes, introduced by Mr. SMITH of Illinois, was received, read twice by its title, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S. 4195

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by striking out "$25,000" and inserting in lieu thereof "$25,000 ($10,000 in the case of transactions involving credit for agricultural purposes)".

(b) Section 125(e) of such Act (15 U.S.C. 1635(e)) is amended by striking out the period and inserting in lieu thereof the following: ", or to any consumer credit transaction in which a loan is extended for agricultural purposes."

(c) Section 127(a) of such Act (15 U.S.C. 1637(a)) is amended—

(1) by striking out "Before" and inserting in lieu thereof "Except as hereinafter provided, before"; and

(2) by adding after the last paragraph thereof a new sentence as follows: "In the case of an open and consumer credit plan under which consumer loans are to be extended only for agricultural purposes, the creditor shall disclose to the person to whom credit is to be extended the information, to the extent applicable, prescribed in paragraph (1), 2), (3), and (5)."

(d) Section 127 (b) of such Act (15 U.S.C. 1637 (b)) is amended—

(1) by striking out "The creditor" and inserting in lieu thereof "Except as hereinafter provided, the creditor"; and

(2) by adding after the last paragraph thereof a new sentence as follows: "The statement transmitted to the obligor in connection with an open end consumer credit plan under which consumer loans are extended only for agricultural purposes, shall include, to the extent applicable, the information prescribed in paragraphs (1), (2), (3), (4), (7), (8), (9), and (10)."

S. 4196—INTRODUCTION OF THE "FEDERAL CITY BICENTENNIAL DEVELOPMENT CORPORATION ACT OF 1970"

Mr. ALLOTT. Mr. President, today I am introducing for the distinguished chairman of the Senate Interior and Insular Affairs Committee (Mr. JACKSON) and myself a bill to establish the Federal City Bicentennial Development Corporation. The purpose of the Development Corporation is to provide for the preparation and carrying out of a development plan for certain areas along Pennsylvania Avenue between the White House and the Capitol.

In 6 short years this country will celebrate its bicentennial anniversary as an independent nation. As Senators know, Philadelphia, Pa., has been designated as the focal point for this celebration. But this anniversary also provides a fitting occasion to undertake the long overdue restoration of certain areas in our Nation's Capital.

Presidents Kennedy, Johnson, and Nixon, have appoined various groups to study and prepare plans for the revitalization of Pennsylvania Avenue. I believe that the idea of combining public and private endeavors is the best way to implement these plans.

The Corporation, established by this bill, will seek to promote residential and commercial activity along Pennsylvania Avenue. It is planned to mesh this activity with the present and future governmental revitalization.

In order to achieve this purpose the Corporation has the usual corporate powers, along with the power of eminent domain and the authority to borrow from the U.S. Treasury. Such loans will have to be authorized in the usual appropriation process.

Mr. President, a similar bill has been introduced in the House of Representatives. It is my hope that Congress will enact legislation this year in order that the Federal City Bicentennial Development Corporation may begin its operations in the near future.

The PRESIDING OFFICER (Mr. SAXBE). The bill will be received and appropriately referred.

The bill (S. 4196) to establish the Federal City Bicentennial Development Corporation, to provide for the preparation and carrying out of a Development Plan for certain areas between the White House and the Capitol, to further the purposes for which the Pennsylvania Avenue National Historic Site was designated, and for other purposes, introducted by Mr. ALLOTT (for himself and Mr. JACKSON), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

S. 4198—INTRODUCTION OF A BILL TO PROVIDE FOR AN EQUITABLE SHARING OF THE U.S. MARKET

Mr. HARTKE. Mr. President, today I am introducing a bill to provide for a healthy and growing U.S. electronic industry, and the orderly encouragement of imports within a framework of fair competition. This bill allows foreign competition but does not permit foreign manufacturers enjoying low labor costs and American technology to destroy the American electronic industry. Initially, my bill limits the import of electronic products and components to the levels existing in recent years. At the same time, however, it provides for the adjustment of permissible imports if the domestic consumption of a particular product or component increases or decreases. This insures that U.S. consumers will not suffer price increases because of short supply. The bill also provides that the Secretary of Commerce shall allocate these imports to particular countries based on their past imports, but also permitting him to give due account to special factors among them favoring those nations which have no greater restrictions than our own.

The phenomenal growth of the electronic industry has obscured a growing weakness. Most everyone is aware that the electronic industry has expanded in only 20 years from a $1 billion to a $25 billion industry. Few, however, seem aware that great parts of the domestic electronic industry exist in name only; that more and more electronic production is being done abroad with U.S. firms being merely distributors. Although the electronic industry is considered a growth industry, employment is decreasing. From 1966 to the first quarter of 1970, 50,000 workers have lost their jobs in the radio, TV, and electronic components industry.

Looking at a specific segment of this industry, we see a consistent pattern of increasing unemployment and declining employment opportunity.

From October 1966 to October 1969, factory worker employment in the radio and TV receiving equipment industry declined 17 percent, a loss of 24,500 jobs. Included in these figures are the loss of 1,300 jobs at Ford-Philco in Philadelphia. These figures do not include a more recent loss of approximately 1,000 jobs at Warwick Electronics in its Illinois and Arkansas plants—to Mexico; the closing down of Emerson Radio in Jersey City, with a loss of 1,250 jobs—absorbed by Admiral, with a plant in Taiwan; the layoff of 3,000 workers by Zenith Radio, with 4,000 additional jobs moving to Zenith's Taiwan plant in 1971. Nor does it include a job loss of 1,000 at General Electric.

In electronic components and accessories, between October 1966 and October 1969, factory employment declined by more than 20,000 workers. In both industries, the job loss totaled 44,600, or, adding the more recent layoffs in Warwick, Emerson, Zenith, and G.E., over 53,000.

In still another major industry, office and computing machines, total employment rose by 30,000 but factory employment increased by no more than 400. The average annual growth rate in computer shipments is 15 percent, but industry firms increasingly export component parts for assembly in overseas plants. In the case of electronic desk calculators, American firms like Friden and Burroughs now have such machines made for them in Japan, under the Friden and Burroughs brand names and in accordance with their specifications. The loss of the entire desk calculator industry to Japan is only a matter of time. Thousands of jobs will disappear in the process.

As jobs disappear, imports increase; in 1967, $125.5 million worth of TV sets were imported to the United States; 1969 TV imports are estimated to be about 300 million units, a 46-percent increase from 1968 and a 140-percent increase from 1967. According to preliminary figures, Japan alone exported to the United States 880,000 color and over 2,200,000 black and white TV sets, constituting more than 15 percent of the U.S. color and more than 40 percent of the U.S. black and white TV market.

In 1967, the value of radio receiving sets, radio-phonograph combinations and parts imported into the United States totaled $243 million. Estimates for 1969 range between $410 to $420 million. It is now estimated that from 85 to 90 percent of all radios sold in the United States are imports. In fact in a recent advertisement, General Electric announced that it was the only remaining domestic manufacturer of radios.

In product after product, domestic production is on the verge of disappearing. The continuance of declining domestic production and increasing imports can only further aggravate our already imperiled balance of trade. As a whole, the electrical industry has always been a trade surplus industry, but this may not be true in the very near future. In 1960, the ratio of exports to imports was 3.8 to 1. This ratio fell to 1.9 to 1 in 1966, and to 1.4 to 1 in 1969. In consumer electronics, the estimated 1969 trade deficit is more than 3 times the $285 deficit of 1966. This deficit represents the most successful transporting of men and material since the Normandy invasion. Unfortunately, in this case, we have been transferring key growth segments of the electronic and companion industries to foreign countries. We have been exporting jobs, leaving only unemployment at home.

This exporting of jobs abroad is frequently justified on the base of excessive wage demands by American workers. Undoubtedly, U.S. wages are higher than those paid in Taiwan and South Korea. But before one adopts the easy excuse and ready cliche of immoderate wage demands for the flight of American industry let us look at the facts.

First, it hardly seems reasonable for wages in the United States to be equal to those paid abroad. If wages in the electronics industry were reduced to the legal minimum of $1.60, they would, with fringe costs added, still be more than double the wage with fringe benefits paid in Japan. Payment of the minimum wage to American workers would still result in labor costs 8 to 12 times as much as the prevailing labor costs in Singapore, Hong Kong, South Korea, and Taiwan, and 5 times as high as prevailing labor costs in Mexico. Does anyone believe we should try to compete with such foreign producers by paying American workers only 15 to 20 cents an hour as is done in Taiwan?

We should consider the reasonableness of American wage demands within the

context of the American not Taiwan economy. From an American perspective, it is clear that worker productivity in the electrical/electronics industry, about 4 percent a year, far exceeded worker total wage and fringe benefit gains. Since annual productivity gains were more than 1 percent higher than wage/fringe benefit gains, increases in domestic labor costs cannot be used to justify the closing of domestic plants and the relocation of U.S. plants overseas.

In the past, the U.S. industry remained competitive, even though foreign producers enjoyed much lower labor costs, because of our technological superiority. The rapid growth of the U.S. electronic industry was largely attributable to traditional American inventiveness and initiative. Just from 1957 to 1965, the leading electronics and communications firms invested $23 billion in research and development. This investment resulted in a plethora of valuable patents and the electrical marvels of today. Now, however, that technical know-how developed at great cost to the American taxpayer is being handed over to foreign producers at little or no cost. The conduit for the transfer of American technology is the multinational corporation. These corporations transfer their resources from country to country for their maximum financial benefit, not necessarily for the good of the U.S. worker. In the past 25 years, U.S.-based multinational firms established an estimated 8,000 foreign subsidiaries, mostly in manufacturing. The annual foreign output of these multinational firms ranges between $120 billion and $200 billion, a total greater than the total output of any nation on the globe, with the exception of the United States, the Soviet Union, and possibly Japan.

Let me cite some examples of the loss of American technological competitive edge. General Electric in November 1969 licensed the Japanese company, Matsushita, for use of its patent 3,122,610, which involves the production of FM-type radio receivers. In 1967, G.E.'s license to Matsushita covered a parallel phase-detector circuit for TV receiving sets. A few months earlier, the same license was granted to Toshiba and Nippon Columbia. G.E. has licensed Japanese firms to produce optical gunsights, radar systems, transistors, and semiconductor elements, capacitors, lamps—including mercury and infrared lamps, television receiver converter circuitry, color photographic camera systems, steam-turbine electric generators, and so forth.

RCA has licensed Japanese firms in the following components, products and processes, among others: magnetic memory cores, electron microscopes, electrostatic cameras, AM/FM transistor radios, color picture tubes, photoconductors and photoconductive elements, X-ray analyzers, radio, tape recorder and TV sets, loudspeaker devices, "monolithic integrated circuits," and so forth.

Western Electric has licensed Japanese firms in components, products, systems and processes which include: thin-film devices for semiconductor systems, semiconductors, solid electrolytic capacitors, transistors, central telephone exchange equipment including data processing and subscriber telephone handling systems.

Other American companies that have licensed Japanese firms include: Westinghouse, IBM, Sperry-Rand, CBS, Bendix, Zenith Radio, Fairchild Camera & Instrument, Allis Chalmers, Singer Co., Texas Instruments, and so forth. The licensing agreements cover color picture tubes, video tape recorders, computer data processing devices, navigational instruments, planar semiconductors including integrated circuitry, ceramic capacitors and micro-electronic equipment parts, pump turbines, and so forth. While the United States loses its technological advantage, foreign countries offer other inducement for American firms to locate abroad. For example, Taiwan offers foreign companies a 5-year holiday from income tax and low taxes thereafter. Cheap labor, mobility of resources, favorable interest rates, tax loopholes, immunity from various regulations and other concessions not available in the United States, are powerful forces driving U.S. production abroad.

It is time for the United States to recognize the new economic realities and to adopt measures to protect the American economy and the American worker.

The new economic reality is that all too often American finance and technology used abroad is competing with American workers. The new economic reality is that a great deal of what is traditionally considered foreign trade is a form of nonmarket trade, a trade between parent and subsidiaries in different countries. In such nonmarket trade, the prices at which goods such as parts, components, and finished product change hands are governed chiefly by taxation and accounting advantages obtainable in the various countries where the corporation is located. It is these new economic realities that justify new economic approaches.

Recently some people have warned about a possible trade war. What they do not recognize is that for some time, the United States has been engaged in an undeclared trade war: a trade war we are losing; with American workers being the first casualties.

Mr. President, my proposed legislation has the support of the International Union of Electrical, Radio, and Machine Workers, the International Brotherhood of Electrical Workers, and the International Association of Machinists. Together, these organizations represent nearly 2,225,000 workers. I ask unanimous consent that an analysis of my bill prepared by the IUE and my bill be printed in the RECORD at this time.

The PRESIDING OFFICER (Mr. SAXBE). The bill will be received and appropriately referred; and, without objection, the bill and analysis will be printed in the RECORD.

The bill (S. 4198) to provide for an equitable sharing of the United States market by electronic articles of domestic and of foreign origin, introduced by Mr. HARTKE, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 4198

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the total quantity and value of consumer electronic products and accessories of foreign manufacture, including, but not limited to, television receiving sets, radio receiving sets, phonographs, record players, tape recorders, and chassis and accessories for such products, remote control devices, antennas and antenna rotators, and any combination of the foregoing, and citizens band transceivers, which may be entered, or withdrawn from warehouse, for consumption during any calendar year shall not exceed the quantity and value of such articles entered, or withdrawn from warehouse, for consumption during the calendar year 1966: *Provided,* That, commencing with the calendar year beginning with January 1, 1970, the total quantity and value of such articles which may be entered, or withdrawn from warehouse, for consumption for each ensuing calendar year shall be increased or decreased by an amount proportionate to the increase or decrease (if more than 5 per centum) in the total United States consumption of such articles during the preceding calendar year in comparison with consumption for the year 1966 as determined by the Secretary of Commerce.

SEC. 2. The total quantity and value of electronic components of foreign manufacture of the classes or kinds used in the manufacture of consumer electronic products, including, but not limited to, capacitors, resistors, inductors, transformers, coils, yokes and chokes, tuners, connectors, loudspeakers, TV picture tubes, electron receiving tubes, transistors and other semiconductors, record changers, turntables and tone arms, magnetic tape, and fractional horsepower motors, which may be entered, or withdrawn from warehouse, for consumption during any calendar year shall not exceed the average annual quantity and value of such articles entered, or withdrawn from warehouse, for consumption during the three calendar years 1964–1966: *Provided,* That, commencing with the calendar year beginning January 1, 1970, the total quantity and value of such articles which may be entered, or withdrawn from warehouse, for consumption for each ensuing calendar year shall be increased or decreased by an amount proportionate to the increase or decrease (if more than 5 per centum) in the total United States consumption of such articles during the preceding calendar year in comparison with the average annual consumption for the three-year period 1964–1966 as determined by the Secretary of Commerce.

SEC. 3. (a) The quantities and values of any consumer electronic product of foreign manufacture which may be entered, or withdrawn from warehouse, for consumption during the balance of the calendar year in which this Act becomes effective shall be equal to that proportionate per centum share of the imports of such article for the year 1966 which the number of days remaining in the calendar year bears to the full year.

(b) The quantities and values of any electronic component of foreign manufacture which may be entered, or withdrawn from warehouse, for consumption during the balance of the calendar year in which this Act becomes effective shall be equal to that proportionate per centum share of the average annual imports of such article for the years 1964–1966 which the number of days remaining in the calendar year bears to the full year.

SEC. 4. The Secretary of Commerce shall determine and allocate the allowable quanti-

ties and values of consumer electronic products of foreign manufacture and electronic components of foreign manufacture which may be entered, or withdrawn from warehouse, for consumption among supplying countries by category of product on the basis of the shares such countries supplied by category of product to the United States market during a representative period, except that due account may be given to special factors which have affected or may affect the trade in any category of such articles. In making such allocations among supplying countries, the Secretary shall give special weight to and favor the position of supplying countries which impose on imports of consumer electronic products and electronic components originating in the United States for entry into their countries conditions no more restrictive than those, including the provisions of this Act, imposed by the United States on such products of the manufacture of those countries when imported into the United States. The Secretary of Commerce shall certify such allocations to the Secretary of the Treasury.

SEC. 5 The Secretary of Commerce shall, upon the application of any interested party, determine whether there is sufficient production in the United States of any consumer electronic product or electronic component in conjunction with the imports of such article specified in this Act to meet estimated annual consumption of such article, and if a deficiency is found to exist, determine the increase in imports of such article required to meet such deficiency in the ensuing calendar year. The Secretary of Commerce shall certify such determination to the Secretary of the Treasury.

SEC. 6. The President is authorized to enter into negotiations with other governments for the purpose of consummating agreements to provide for orderly trade in consumer electronic products and electronic components in a manner consistent with the policy of this Act of providing equitable access to the future growth of the American market for both imported articles and articles of domestic origin. The President by proclamation may increase, decrease, or otherwise limit the quantity and value of such electronic articles from such country which may be entered, or withdrawn from warehouse, for consumption in conformance with such agreements.

SEC. 7. Notwithstanding the foregoing, the quantity and value of any such electronic article which may be entered, or withdrawn from warehouse, for consumption during any quarter of the calendar year shall not exceed the proportionate per centum share which the total quantity and value of imports of such electronic article accounted for during the like period of the calendar year ended December 31, 1966.

SEC. 8. All determinations by the President and the Secretary of Commerce under this Act shall be final.

SEC. 9. This Act shall become effective upon enactment.

The analysis, presented by Mr. HARTKE, is as follows:

ANALYSIS OF SENATE HARTKE'S BILL PREPARED BY THE IUE–AFL–CIO

The recent increase in the unemployment rate among American workers has aggravated an already serious problem of unemployment caused by the growth of foreign imports into our domestic market. This increase of imports during the 1960's was particularly pronounced in the consumer goods and one industry especially hard hit has been the electronics industry. What is most disturbing is that the imports continue to grow rapidly. While a number of electronic consumer products are already largely imported, still other products will soon also be manufactured abroad for the most part.

There are benefits to this country as well as to the importing countries in the development and growth of foreign trade. To achieve such benefits certain domestic problems can be tolerated. What has happened, however, in the electronics field is that the growth of imports has been so substantial as to severely dislocate the domestic industry, putting many workers out of jobs and virtually eliminating domestic production of such basic consumer items as radios and black-and-white TV receivers. What makes this uncontrolled situation undesirable is that the price advantage of the imported products largely rests upon the lower labor costs involved in the foreign production.

Most of the electronic consumer products are finding expanding domestic markets. There is certainly room for an orderly growth in imports that will not continue the serious adverse domestic impact of the recent past. This bill will provide a framework for such an orderly growth of imports. American manufacturers who want to continue manufacturing electronic consumer goods in this country deserve such a bill. American workers whose livelihood is at stake need such a bill. Most of all, this country needs such a bill to avoid further aggravations of an already serious problem.

Section 1 of the bill provides that the total quantity and value of any consumer electronic product and accessories of foreign manufacture that may be imported (or released from storage) for domestic consumption in any calendar year shall not exceed the quantity or value in which that product was imported (or released from storage) for domestic consumption in 1966. The proviso specifies that if the domestic consumption of an article increases (or decreases) more than 5% from the 1966 level, then the ceiling on imports of that article will be adjusted in an amount proportionate to the change in domestic consumption.

Section 2 of the bill parallels Section 1 with respect to electronic components of foreign manufacture of the types used in the manufacture of consumer electronic products. The base period here is the average for the three calendar years 1964–1966 inclusive.

Section 3 of the bill provides that during the year in which the bill becomes effective the formulas utilized in Sections 1 and 3 of the bill shall be applied but the amount of the base domestic production used to calculate the maximum on imports shall be reduced to the proportion of the base year or years consumption which corresponds to the proportion of the calendar year remaining in which this bill is enacted.

Section 4 of the bill provides that the Secretary of Commerce shall allocate to importing countries a share of the allowable imports of consumer electronic products and components of particular types based upon the amount of past imports of such products by such countries during a representative period. The Secretary is permitted in his allocation to give due account to special factors which have affected, or may affect, the trade in any types of electronic articles. The Secretary is to give special favorable weight in the allocation process to foreign countries which have no greater restrictions on imports into their countries from this country upon their imports of such articles. The Secretary is to certify to the Secretary of the Treasury the allocations made under this Section.

Section 5 of the bill provides that the Secretary of Commerce, upon any interested party's application, determine whether domestic production of any article involved in this Act in conjunction with imports allowed under this Act is adequate to meet estimated annual consumption of the article. If a deficiency in domestic production is found, the Secretary is to determine the increase in imports that is required to eliminate the deficiency on the next calendar year, and to certify his determination to the Secretary of the Treasury.

Section 6 authorized the President to enter into agreements with foreign countries to provide for orderly and equitable access to our domestic markets in accordance with this Act. In accordance with any such agreements, the President may by proclamation adjust the amounts of imports allocated to foreign countries pursuant to this Act.

Section 7 of the bill provides that the release into our domestic markets of imported articles covered by this Act shall be regulated on a quarterly basis.

Section 8 of the bill provides that the determinations of the Secretary of Commerce and President under the Act shall be final.

Section 9 provides that the bill is effective upon enactment.

SENATE JOINT RESOLUTION 227—INTRODUCTION OF A JOINT RESOLUTION DESIGNATING THE SECOND SUNDAY OF OCTOBER OF EACH YEAR AS NATIONAL GRANDPARENTS DAY

Mr. TOWER. Mr. President, I wish to bring before the Senate today a matter which I feel is deserving of the official consideration of the Congress. For many years we have paused to honor and pay tribute to the mothers and fathers in this country, but we have not formally recognized those who contribute so much to our strength and heritage—our grandparents.

In this time of rapid change—when diversity has become a way of life, it is important to consider that which we hold in common. Let us call it the human condition. We have all loved and hated, realized dreams and been disillusioned, achieved and faltered. Eventually, we have come to realize that only the aging process has been able to properly bring these life forces into perspective so that understanding and true wisdom are possible.

But even as aging brings maturity, with it also comes a lessening of activity—and it is here that we must not let ourselves be deceived. Physical decline is not indicative of an outdated mind. Many a strong spirit or keen sense of judgment has been overlooked by the young, whose attentions are too often drawn only to the demonstrative in their midst.

Grandparents harbor a lifetime in their minds—a rich, valuable set of experiences and observations. They are wardens of a wisdom that comes from years of dealing with life's inconsistencies while simultaneously trying to bring and contribute something of themselves to life. This contribution is, in part, sharing their knowledge and experiences with those closest to them, and I am sure that the majority of us have benefited from this inheritance. Those of us who are fortunate enough to have known our grandparents will recall these exchanges as both enjoyable and positive character-building influences.

I feel that this Nation should pause to focus national and personal attention on our Nation's grandparents and for this reason am introducing this day a joint resolution to designate the second Sunday in October as National Grandparents Day. I urge my colleagues to join me in requesting the President to set aside this time to pay appropriate homage to those loved ones whom we otherwise honor and respect in our everyday lives.

The PRESIDING OFFICER (Mr. FUL-

BRIGHT). The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 227) to authorize and request the President to issue annually a proclamation designating the second Sunday of October of each year as "National Grandparents Day," introduced by Mr. TOWER, was received, read twice by its title and referred to the Committee on the Judiciary.

ADDITIONAL COSPONSORS OF A BILL

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from New York (Mr. GOODELL) I ask unanimous consent that, at the next printing, the names of the Senator from New Jersey (Mr. CASE), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Oklahoma (Mr. HARRIS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Texas (Mr. TOWER), and the Senator from Ohio (Mr. YOUNG) be added as cosponsors of S. 3596, to amend the Fur Seal Act of 1966 by prohibiting the clubbing of seals after July 1, 1972, the taking of seal pups, and the taking of female seals on the Pribilof Islands or on any other land and water under the jurisdiction of the United States.

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

ADDITIONAL COSPONSORS OF JOINT RESOLUTIONS

SENATE JOINT RESOLUTION 61

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Minnesota (Mr. MCCARTHY), I ask unanimous consent that at the next printing of Senate Joint Resolution 61, proposing an amendment to the Constitution of the United States relative to equal rights for men and women, the names of the Senator from Utah (Mr. BENNETT) and the Senator from North Carolina (Mr. JORDAN) be added as additional cosponsors.

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

SENATE JOINT RESOLUTION 223

Mr. BYRD of West Virginia. Mr. President, on behalf of the distinguished junior Senator from Missouri (Mr. EAGLETON), I ask unanimous consent that at its next printing, the name of the Senator from Maryland (Mr. MATHIAS) be added as a cosponsor of Senate Joint Resolution 223, to authorize and request the President to issue annually a proclamation designating January of each year as National Blood Donor Month.

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

SENATE CONCURRENT RESOLUTION 78—SUBMISSION OF A CONCURRENT RESOLUTION TO ESTABLISH A JOINT COMMITTEE ON INTELLIGENCE, AND FOR OTHER PURPOSES

Mr. MCCARTHY. Mr. President, I submit for appropriate reference, for the Senator from Oregon (Mr. HATFIELD) and myself, a concurrent resolution to establish a Joint Committee on Intelligence.

Representatives FRASER and WHALEN plan to introduce the same resolution in the House today.

The proposed committee, to be made up of seven Members of the Senate and seven Members from the House of Representatives, would provide stricter congressional oversight of intelligence agencies.

There long has been need for Congress to exercise increased supervision of intelligence operations, particularly over the Central Intelligence Agency. The influence of CIA operations on foreign policy has been demonstrated repeatedly over the years.

In my judgment this congressional responsibility can best be carried out by establishing a Joint Committee on Intelligence, as proposed in the resolution Senator HATFIELD and I are submitting today.

The PRESIDING OFFICER (Mr. TOWER). The concurrent resolution will be received and appropriately referred.

The concurrent resolution (S. Con. Res. 78), which reads as follows, was referred to the Committee on Armed Services:

S. CON. RES. 78

Resolved by the Senate (the House of Representatives concurring), That there is established a Joint Committee on Intelligence (hereafter, in this concurrent resolution, referred to as the Joint Committee) to be composed of seven Members of the Senate to be appointed by the President of the Senate, and seven Members of the House of Representatives to be appointed by the Speaker of the House of Representatives. Not more than four members from either the House or the Senate shall be members of the same political party. Of the seven members to be appointed by the House of Representatives, two shall be members of the Committee on Foreign Affairs, and two shall be members of the Committee on Armed Services. Of the seven members to be appointed by the Senate, two shall be members of the Committee on Foreign Relations, and two shall be members of the Committee on Armed Services.

SEC. 2. (a) The Joint Committee shall make continuing studies of the intelligence activities and problems relating to the gathering of intelligence affecting the national security and of its coordination and utilization by the various departments, agencies, and instrumentalities of the Government. The Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Bureau of Intelligence and Research of the Department of State, Army Intelligence, Navy Intelligence, Air Force Intelligence, and other services engaged in foreign intelligence activities shall keep the Joint Committee fully and currently informed with respect to their activities. The Joint Committee shall seek to eliminate unnecessary competition and duplication of effort by the services engaged in foreign intelligence activities.

(b) All bills, resolutions, and other matters in the Senate or House of Representatives relating primarily to the agencies referred to in subsection (a) and to any other agency engaged in foreign intelligence activities shall be referred to the Joint Committee.

(c) The Joint Committee shall seek to insure that covert action programs are as few as necessary to guarantee the national security and that such programs are not inconsistent with publicly expressed national policy.

(d) The Joint Committee shall make continuing investigations and studies, and shall make recommendations, with respect to the practices and methods used in the intelligence services to classify information.

(e) Two members of the Joint Committee, one a member of the House and the other a member of the Senate, shall be appointed by the chairman to serve, at the invitation of the President, as representatives to, and nonvoting members of, the United States Intelligence Board.

(f) The members of the Joint Committee who are Members of the Senate shall from time to time report to the Senate, and the members of the Joint Committee who are Members of the House of Representatives shall from time to time report to the House, by bill or otherwise, their recommendations with respect to matters within the jurisdiction of their respective Houses which are (1) referred to the Joint Committee or (2) otherwise within the jurisdiction of the Joint Committee.

SEC. 3. Vacancies in the membership of the Joint Committee shall not affect the power of the remaining members to execute the functions of the Joint Committee, and shall be filled in the same manner as in the case of the original selection. The Joint Committee shall select a chairman and vice chairman from among its members.

SEC. 4. The Joint Committee, or any duly authorized subcommittee thereof is authorized to hold such hearings, to sit and act at such places and times, to require, by subpoena or otherwise, the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable.

SEC. 5. The Joint Committee is empowered to appoint such experts, consultants, technicians, and clerical and stenographic assistants as it deems necessary and advisable. The committee is authorized to utilize the services, information, facilities, and personnel of the departments and establishments of the Government on a reimbursable basis with the prior consent of the heads of the departments or agencies concerned.

SEC. 6. The expenses of the Joint Committee shall be paid from the contingent fund of the House of Representatives upon vouchers signed by the chairman.

SEC. 7. The Joint Committee shall take special care to safeguard information affecting the national security.

SENATE RESOLUTION 440—RESOLUTION REPORTED INCREASING THE LIMIT OF EXPENDITURES FOR HEARINGS BEFORE THE COMMITTEE ON ARMED SERVICES

Mr. STENNIS, from the Committee on Armed Services, reported the following original resolution (S. Res. 440); which was referred to the Committee on Rules and Administration:

S. RES. 440

Resolved, That the Committee on Armed Services hereby is authorized to expend from the contingent fund of the Senate, during the Ninety-first Congress, $10,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act, approved August 2, 1946.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, August 6, 1970, he presented to the President of the United States the following enrolled bills:

S. 1703. An act for the relief of Rosa Pintabona;

S. 1704. An act for the relief of Lillian Biazzo;

S. 2427. An act for the relief of Cal C. Davis and Lyndon A. Dean;

S. 2484. An act to amend the Agricultural Marketing Agreement Act of 1937 to authorize marketing agreements providing for the advertising of papayas;

S. 2863. An act for the relief of Mrs. Cumorah Kennington Romney; and

S. 3136. An act to confer U.S. citizenship posthumously upon Guy Andre Blanchette.

AMENDMENT OF THE CLEAN AIR ACT—AMENDMENTS

AMENDMENTS NOS. 824 AND 825

Mr. NELSON submitted two amendments, intended to be proposed by him, to the bill (S. 3229) to amend the Clean Air Act in order to extend the authorizations for such Act, to extend the provisions of title II relating to emission standards to vessels, aircraft, and certain additional vehicles, and for other purposes, and to provide for a study of noise and its effects, which were ordered to lie on the table and to be printed.

(The remarks of Mr. NELSON when he submitted the amendments appear earlier in the RECORD under the appropriate heading.)

REVISION OF THE FEDERAL ELECTION LAWS—AMENDMENTS

AMENDMENTS NOS. 826 AND 827

Mr. GOODELL submitted two amendments, intended to be proposed by him, to the bill (S. 734) to revise the Federal election laws, and for other purposes, which were ordered to lie on the table and to be printed.

(The remarks of Mr. GOODELL when he submitted the amendments appear earlier in the RECORD under the appropriate heading.)

ADDITIONAL STATEMENTS OF SENATORS

LOGJAM IN THE COURTS

Mr. SAXBE. Mr. President, the article I am about to submit for the RECORD speaks quite eloquently for itself. It was published in the current issue of Life Magazine and deals with what I regard as one of our major domestic problems, the alarming backlog in our courts, the inadequacy of a system that has not kept pace with the times.

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:

"LOGJAM IN OUR COURTS"

(By Dale Wittner)

The criminal courts of troubled urban America are failing. Like once-fearsome scarecrows put out to keep away birds of lawlessness, they are tattered by neglect, familiar and even accommodating to professional hoodlums and incorrigible terrorists of society who walk free for months and years, waiting for trials that never come. To the innocent, the poor, the uneducated to the victims of crime and witnesses to it, and to honest policemen, many big-city courts are already a sham and a broken promise. So strained, so clogged with humanity have they become that substantial justice is only an occasional, almost accidental, product. A system drafted nearly two centuries ago to protect four million people does not work for 200 million. Until it does again, until swift and equal justice is restored, the prospect for law and order in the streets will not improve.

In every major city the symptoms are the same. Crime increases at an average rate of 14% a year, more than doubling every six years. Court backlogs of pending cases, which 10 years ago were measured in weeks, now add up to months and years. Harried judges, prosecutors and public defenders are forced to treat each case like a piece of unimportant manufacture on an endless assembly line. Prosecutions are haphazard. Justice is the subject of bargaining. The possibility of punishment diminishes—and with it, respect for the law.

If the criminal courts are in bad shape in almost every city, the place to see the chaos most clearly is New York, the nation's largest city. There, sheer weight of numbers has bowed the system to the breaking point and criminal justice has already lost its cherished precepts: the protection of society, the presumption of innocence, a speedy trial, a careful search for truth. Human beings are suffering—tens of thousands of them. But the true extent of New York's breakdown is seen in a dreadful array of facts:

Felonies—such as murder, armed robbery, aggravated assault, rape and burglary—increased more than threefold during the 1960s while New York City's population remained almost constant. In the same period the regular inmate population of state prisons, where convicted felons must serve their sentences, *fell* from almost 20,000 to about 14,000.

The city's police force has grown steadily to more than 32,000 men, by far the largest in the nation. Yet the odds *in favor* of a criminal escaping arrest for a felony remain about four to one. For those arrested, the chances of avoiding punishment have actually increased: barely one in five is ever brought to court on a felony indictment. The rest are released for lack of evidence or prosecuted for less serious misdemeanors, for which the average sentence is less than four months in a city prison.

For the one criminal in 20 unlucky enough to be indicted, there is still a 10-to-one chance that the chrages will be reduced before trial, especially if he is willing to plead guilty.

Thus the appalling arithmetic is that in New York City if you commit a felony, the chances of being arrested, indicted, found guilty on the original charge and then going to prison are a great deal less than one in 200.

In the year ending June 30, 1969, while felony arrests were increasing to a yearly rate of 75,000, only 608 felony trials were completed. For misdemeanors and violations, the figures were almost as bad: 18,000 sentenced to jail out of 450,000 cases.

The Criminal Court began 1969 with a backlog estimated at more than half a million cases. During the year, 20 new judges were added to alleviate congestion. Yet by the start of 1970, the backlog had risen to almost 700,000 cases and was increasing each month. For every three cases brought to court, only two are disposed of. At the current rate it would take two and a half years to clear the calendars, assuming no new arrests were made.

Each backlog case represents at least one criminal suspect for whom the court has not had time to reach a verdict. For reasons more often practical than humane, 99% of those defendants are free on bail or pretrial parole.

New York City jails have a planned capacity of under 8,000. Yet last week the census of those squalid pens was over 14,000. More than 8,000 of these prisoners had not been convicted of anything at all but were simply awaiting court appearances. A recent sample showed that more than a quarter of these pretrial inmates had been behind bars for more than three months; nearly a thousand had been there for more than six months, and 143 for more than a year. Among them were 546 awaiting trial for murder.

Many defendants, after long detention, hear the charges against them dropped for lack of evidence. Others finally plead guilty and are freed, their sentence being the time they have already served. Thus for many, not only has the presumption of innocence disappeared from the courts, but the sentence is served before the case is even judged.

The criminal justice system is hinged on the theory of a speedy trial. It is from the court's hopeless inability to compel prompt trials that every other failure of the city's system has followed. Ironically, it is only to the innocent that the Sixth Amendment's promise of a speedy trial means anything. To the guilty, delay is the most effective ally, the surest obstruction to the judgment they fear.

A prosecution is a fragile thing. A case that is strong a month after the arrest may be no case at all by the time it is finally called for trial. "Evidence grows stale or is lost. Witnesses die or simply disappear. The memories of police officers and witnesses fade, often just enough to raise the reasonable doubt that requires a jury to acquit rather than convict. An assistant district attorney, inheriting a case weakened by long delay, must weigh the chances of conviction. When they favor the defendant, he either dismisses the charge altogether to save the state the expense of a futile trial, or he tries to strike a bargain in which the severity of the charge is reduced in return for a plea of guilty. In legal jargon this practice is known as "plea bargaining." It has become such a flagrant part of New York City justice that another metaphor has evolved: "giving the courthouse away." Yet it is the only way, under the current system, that the courts keep moving at all. Thus it has many defenders, including the Chief Justice of the United States (*page 26*).

With the calendars of many courts regularly listing 70 or 80 cases a day, the average judge is buried under tons of paperwork. He no longer has enough time for listening to testimony and for deciding guilt or innocence Instead, judges have been relegated by the system to the function of clerks. They are paid $30,000 a year, privileged to wear judicial robes and occupy elevated seats under the words "In God We Trust." But for most of them, a court day consists of overseeing a roll call of cases, adjourning most of them to new dates in other court sections, waiting for defendants, attorneys and witnesses to appear, and occasionally rubber-stamping a bartered guilty plea and sentencing the defendant.

Much of the power once held by the judge has fallen to the prosecutor. Frank Silverstein, 29, graduated from Brooklyn Law School only a year ago. Now, at a salary of $11,000, he is a criminal court assistant to the Bronx District Attorney. To the hundreds of people who each day cross the obscenely scribbled threshold of the Bronx Criminal Courthouse, young Frank Silverstein is the fulcrum of justice; he is the law.

Through his hands—and those of 14 other young lawyers like him—passes virtually every criminal prosecution in a county of 1.5 million people. With each case come human problems that must be answered immediately. A detective who has made an arrest presses Silverstein to decide whether the suspect should be charged with a felony or a misdemeanor. The exasperated victim of an assault and robbery, her testimony still not taken after half a dozen futile, all-day trips to court, wants to drop the charges.

Silverstein tries to dissuade her. A youth charged with a penitentiary offense of burglary hopes the prosecutor will accept a guilty plea to petty larceny, a misdemeanor. A women claims to have been raped and the suspect swears it never happened; Silverstein must decide whether or not there is enough evidence to prosecute the man.

Most of a prosecutor's decisions are made in hurried, whispered conferences with defense attorneys, after only a few seconds of flipping through case papers and police reports. Yet his are the judgments that will alter the lives not only of the defendants but of their families, of the victims, policemen and witnesses.

"The power of this job is incredible," says Silverstein. "It's more than any one man should have. Do you know what it's like to face a defendant in court and know that if he is convicted, or even if he is held in jail for trial because he can't make bail, he is going to lose his job and his family will have to go on welfare? It wouldn't be so bad if you had all day to study the facts. But there you are in court with maybe 30 cases yet to go, and the judge wants to get on to the next one. You have to say something and say it fast."

Of his negotiating power, Silverstein rationalizes that in a case weakened by delay "it's better that a guilty defendant be convicted of *something* without a trial than turned loose by a jury because the evidence has become too weak to get a conviction. Even when you drop charges entirely, you figure that at least you've disposed of a case." And disposition of cases, far more than careful justice, has become the bench mark by which the city's criminal courts are measured.

"In the year I've been here, I've learned to be pretty practical about this business," says Silverstein. "Now I know how the system functions and, even if it is screwed up, as long as I have this job I've got to try to make it work for those people out there." A hitch of his thumb takes in the entire Bronx. "When I get a case, I try to look at it objectively, to figure out what the eventual disposition would be considering all the delays and everything else.

"If I get a burglary, for example, that I think would have to be disposed of as a misdemeanor after a string of adjournments, I figure it's better to get it out of the way at the first or second appearance than have it kicked from one judge to another for maybe a year. So if I've had time to look at the case at all, at the first appearance I'll try to get a discussion going with the defense lawyer—please, don't call it 'giving the courthouse away.'"

DISMANTLING OF MEDICARE NURSING HOME PROGRAM

Mr. MOSS. Mr. President, on April 10 I addressed the Senate describing the step-by-step dismantling of the medicare nursing home program and the reprehensible practice of retroactive denial of claims.

On May 7 my Subcommittee on Long-Term Care, of the Special Committee on Aging, held hearings to look into these important questions. One of our witnesses at that time was Dr. Frederick W. Offenkrantz, medical director of the Cranford Health and Extended Care Facility. His effective and important testimony has been summarized in a recent column by Mr. Theodor Schuchat, retirement editor for the North American Newspaper Alliance.

I ask unanimous consent that Mr. Schuchat's column be printed in the RECORD.

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

MEDICARE HITS CLERICAL SNAG

(By Theodor Schuchat)

There is a bit of bureaucratic jargon that is becoming fearsomely familiar to thousands of Medicare patients and their families—"retroactive denial."

The phrase applies to all too many Medicare patients who are transferred to skilled nursing homes for extended care after a spell in the hospital. It means that patients have to pay bills they thought would be covered by Medicare.

Extended care is supposed to reduce Medicare costs by moving patients who no longer need the costly full range of hospital services. In general, Medicare pays most costs for the first 20 days of extended care and all but $5 per day for the next 80 days.

Each patient's need for extended care is checked three times. Every Medicare hospital has a utilization review committee to see that patients do not linger when they could be healing elsewhere at lower cost.

Nursing homes, too, make Medicare utilization reviews. So do the insurance companies and Blue Cross organizations that pay Medicare bills, acting as Uncle Sam's fiscal intermediaries.

As Medicare's costs have soared beyond expectations, the fiscal agents have been instructed to deny more payments for extended care, despite protests by doctors and patients.

The Health and Extended Care Center in Cranford, N.J., for example, was recently notified of retroactive denial of Medicare payments for 18 patients—all in one day. The nonprofit center's medical director, Dr. Frederick W. Offenkrantz, protested to Sen. Frank E. Moss, D-Utah, who is chairman of the subcommittee on long-term care of the Senate Special Committee on Aging.

"In many cases, no portion of the patient's chart, except for an initial checklist, was requested or reviewed by the individual making these cutoffs, which, of course, should be medical judgments," Dr. Offenkrantz noted.

"In every instance, the cutoff was made retroactive up to as much as seven weeks from the date of our notification," he continued. "Sometimes this was to the date of the patient's admission to this facility. In several instances, the date of cutoff was actually after the death of the patient."

Often the physician familiar with these cases flatly refused to order them out of the nursing home, according to Dr. Offenkrantz. "Because of the severity of the patient's illnesses, these physicians felt strongly that discharge would constitute malpractice.

"I must call to your attention," he told the Senate subcommittee, "that if this constitutes malpractice on the part of the attending physician, it constitutes malpractice on the part of the intermediary in so ordering, contrary to our combined medical advice.

"Since many of these victims come from poor areas—many being inner-city ghetto residents from Newark and Elizabeth—they cannot afford the charges," Dr. Offenkrantz pointed out, "and as a nonprofit facility, we are deeply in debt because of those denials which are made long after we, in all good faith and honesty, have rendered the service."

Dr. Offenkrantz is not unfamiliar with bureaucracy, having spent 6 years as an Army medical officer in World War II. Once he declared the water supply of Townesville, Australia, unfit for our soldiers to drink. Called on the carpet by Gen. Douglas MacArthur personally, Dr. Offenkrantz stood his ground and his medical judgment prevailed.

Displaying comparable courage, he told the Senators, "Judgments on the part of the government and its agent are being made by incompetent, unskilled, disinterested, uninformed, or misguided personnel in the Medicare program.

"Nowhere in government or public services does the question of human life and well-being become a matter of large numbers and special concern as it does with the Medicare admission to hospitals and extended care facilities," Dr. Offenkrantz reminded the subcommittee.

"The citizens affected here are not young people with tremendous powers of recovery," he said. "They are geriatric patients in whom errors of judgment can well be fatal.

"How can all of this be discredited at the whim of a clerk or young nurse functioning in Baltimore or Newark for the thousands of extended care patients in New Jersey and elsewhere?"

LEAGUE OF FAMILIES PROPOSES JOINT SESSION

Mr. DOLE. Mr. President, the National League of Families of Prisoners of War in Southeast Asia has played a leading role in efforts to publicize the situation of more than 1,500 American servicemen who are prisoners of war or missing in action in Indochina. Working alone, with civic organizations, veterans groups, and Members of Congress, these brave and tireless family members have helped generate substantial publicity within our country and throughout the world on behalf of their husbands, sons, and brothers.

The League of Families feels that the force of world opinion is the single most important influence for fair treatment and eventual release of their men. They feel that if Hanoi can be shown the American people sincerely care about POW's and MIA's that they will be forced to live up to the obligations of international law and human decency.

One idea proposed by the League of Families for publicizing the depth of American concern on this issue is that the Congress meet in joint session to discuss prisoners of war and to hear their story from Government officials, concerned citizens, and family members.

I believe this proposal deserves serious consideration and attention by all members of this body. I ask unanimous consent that a statement of the League of Families outlining their proposal for a joint session be printed in the RECORD, so that Senators may familiarize themselves with the details of this suggestion.

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

STATEMENT

The members of the National League of Families of American Prisoners and Missing in Southeast Asia are becoming increasingly concerned about the welfare of our men who have now been held captive by the communist forces for periods ranging up to six years.

Time may very well be running out for some of these men—more than 400 U.S. servicemen who have been identified as captives and some 1100 who are missing and believed to be captives. Of course, we are equally concerned about all other Americans—military and civilian—who share this fate.

The United States cannot afford to forget these men, even for a single day. And we believe that all agencies of the executive branch of the government, as well as all of the leaders of our national legislature must continuously exert new pressures to see that these prisoners are accorded humane treat-

ment, and that they are set free at the earliest possible moment.

These objectives, which are the main objectives of the National League of Families, cannot be achieved, however, unless the spotlight of concern is maintained week after week, month after month, until the prisoner-issue is resolved.

The families of these men are deeply grateful for those actions the Congress has taken on behalf of the prisoners. We are fully aware of every effort that has been made by members of both Houses.

But, we believe it is essential that Congress not allow itself to be satisfied with the efforts of the recent past. Although these efforts were meaningful, the fact is that the men are still prisoners. And that we have no assurance (other than a slightly larger trickle of mail from those held in North Vietnam) that their lot has been improved.

Under the conditions in which these men are held captive (many in isolation, many incommunicado, all ill-fed, ill-treated, and ill-cared for) they cannot be expected to endure forever. Many have now been prisoners for four, five and six years.

Therefore, the Congress must miss no opportunity to aid them.

We strongly feel that the prisoner-issue must be presented to the American public in a forum that will capture imagination and the attention not only of our own citizens but those of the entire world. Our men desperately need such a forum.

That forum can only be provided by a joint meeting of the U.S. Congress, with the ambassadors, ministers and representatives of the foreign nations in attendance.

We recognize that some in the Congress possibly might feel that a joint meeting for such purpose would raise questions of precedent. But we cannot escape the feeling that precedent is a shallow concern compared with the lives of these brave Americans who have sacrificed so much for our nation.

And, too, there has already been established the precedent of convening joint meetings of the Congress to applaud the successes of our space teams. Surely these achievements, magnificent thought they have been, cannot be more important than our commitment as a nation to the freedom and liberty of man. This, after all, is the very bedrock on which our democracy stands.

There could be no more stirring evidence of our national concern for man's humanity to man than a joint meeting of the Congress focused on the forgotten Americans of the Vietnam War.

When these men are released, they will want to know that their Government left no stone unturned in its efforts to help them.

It could very well be that a joint meeting of the Congress is the *very stone* under which the solution to the prisoner issue lies—waiting to be exposed to the sunlight.

Details of the meeting would have to be carefully worked out, of course, but as we envision it, we would hope that it could open with an address by the Secretary of State, who would review the overall prisoner-issue and highlight the unsuccessful efforts that have been made to obtain adherence to the prisoner-of-war regulations detailed in the Geneva Conventions. This could be followed by the appearance of three or four former prisoners who have escaped or been released from communist prisons in Laos, South Vietnam and North Vietnam and who could relate their experience. And, we would hope, that three or four wives and parents (particularly some of those who have traveled abroad and confronted the enemy only to receive broken promises) also would have an opportunity to briefly detail their plight. The families of men taken prisoner in the South have endured a particularly distressing circumstance, inasmuch as none of these men has ever been allowed to write a single letter.

If the House and Senate leadership in both parties would spark the drive for a joint meeting, we feel there would be little chance that it would fail to materialize.

On behalf of our imprisoned and missing men, their wives, children and sorrowing parents, we urgently beseech you, therefore, to take whatever steps are necessary to bring about a joint meeting of the Congress so that the representatives of the people, and the people themselves, may be permitted to see the problem with new eyes and open hearts, and be encouraged to raise their voices and their hands in a national outpouring of sympathy and assistance for those who are held or believed to be held captive by the communist forces in Southeast Asia.

4–H CLUBS IN THE INNER CITY

Mr. TYDINGS. Mr. President, for the past 50 years 4–H clubs have helped youngsters in rural communities learn valuable skills and provided opportunities for community service. It is a fine development, however, that today's total 4–H club membership of 3.5 million includes about 1 million urban young people from ages 9 to 19.

In an excellent article published in the Wall Street Journal of July 27, Leanne McLaughlin documents the flexibility of 4–H clubs in adapting to the needs of these newest urban recruits. Obviously the skill needed to raise a prize-winning steer and other exercises in animal husbandry are not particularly interesting to inner city youth. Instead, projects have included organizing residents of a public housing project to clean up the litter that had resulted in several elevator fires, or getting the city of Washington, D.C., to install crosswalks and playground signs in a neighborhood.

I ask unanimous consent that this very interesting article about 4–H expansion into urban areas be printed in the RECORD.

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

4–H CLUBS OPEN UNITS IN GHETTOS TO TEACH KIDS HOW TO "SURVIVE"

(By Leanne McLaughlin)

Ollie Saunders hardly fits the stereotype of a 4–H Club member. He is 11 years old, black and lives with his mother and three brothers in a two-room apartment near Cleveland's run-down Hough section.

Yet every Saturday Ollie attends the meetings of the Eager Beaver 4–H Club in a community center near his home. His latest project was a shoeshine box that he built and that he uses to earn money after school. "4–H is like school, but better," he says. "You learn things to help you now, not just for when you graduate."

As Ollie's experience illustrates, 4–H clubs, once limited almost exclusively to farms and small cities, have taken hold in many large cities. The move is a recent one—most city 4–H clubs are less than five years old—yet today's total 4–H membership of 3.5 million includes about one million urban young people from nine to 19, many of them black.

Rural 4–H'ers still spend a lot of time raising prize steers, much as they did 50 years ago when the organization began. Urban branches of the organization don't go in for animal husbandry, of course, but they have adapted the group's traditional, intensely practical approach.

"Our kids don't have to know how to make Indian head bands; they need to know how to survive in the city," says John Thompson, a former Boston Celtics' basketball player who directs the Washington, D.C., 4–H program. "We teach them how to make their own dinner, sew their own clothes and budget their bus money so they can get to school. We figure these skills will help pull them through the impossible odds they face in their neighborhoods each day."

"SURVIVAL" COURSES

4–H is just one of many youth groups that have taken up residence in poor city neighborhoods in recent years. Its program, however, is significantly different from those of other such organizations. For one thing its program is financed through local county governments and the Department of Agriculture and staffed by workers on the payrolls of local land grant colleges. This backing makes it possible for 4–H to have a professional staff, instead of depending on volunteers.

Like its farm program, city 4–H puts a good deal of stress on competition, believing that blue ribbons can bring much needed recognition to children who often receive little of it.

Almost 60% of city 4–H club members are girls. Girls tend to be overlooked by other groups at work in the central city, but 4–H officials believe that young girls are an especially important group because many of them are put in charge of running their households at very young ages. The club teaches them basic housekeeping skills plus such "survival" courses as how to use food stamps, feed six people nutritiously on $20 a week and obtain a good credit rating.

Critics contend this program seems to be aimed at teaching a whole new generation of girls how to live on welfare and like it, but 4–H says that isn't the intention at all. "Sure our programs teach girls how to make the best of a bad situation, but what we're really trying to do is stabilize the girls' homelives so they can give more attention to real careers when they're older," explains a black 4–H worker in Oakland, Calif.

TOO SQUARE?

4–H clubs have faced some obstacles in establishing themselves in central city areas. Many potential members view the organization as "square" because of its farm antecedents. Thus, to atract new members, some city organizations avoid the use of the 4–H name. "We let members call themselves the Green Buccaneers or whatever, but club activities still stress the old 4–H approach of learn by doing," says R. O. Monosmith, California's 4–H director.

Even so, some individual 4–H'ers must put up with some ridicule from their peers. "The other guys laughed at first; they thought I was going to be some kind of farmer," admits Lee Fenner, 13, a member of the Washington Imperial Drum Corps 4–H Club, which specializes in playing military marches. But he proudly adds: "Now they envy me. My club goes neat places to play, and we've been on television."

Urban 4-H'ers are allowed to tailor some of their own programs, picking projects that appeal to them. Young people in Long Island clubs learn how to make and fire their own miniature space rockets. Teen members in Rochester, N.Y., hold seminars on drugs, alcohol and sex. And 4-H'ers in Syracuse, N.Y., and Oakland, Calif., study judo and karate.

Once the youngsters gain confidence, 4-H leaders encourage them to do projects in their communities. One Washington group is credited with putting pressure on the city to install crosswalks and playground signs in a neighborhood. Another Washington group organized residents of a public housing project to clean up the litter that had resulted in several elevator fires.

Serving the community has long been a goal of 4-H clubs. The four Hs stand for head, heart, hands and health, and the club's pledge reads: "I pledge my head to clearer thinking, my heart to greater loyalty, my hands to larger service and my health to

better living for my club, my community and my country."

Whether urban 4-H helps slum kids to any appreciable degree remains to be seen. Most programs in low income areas are less than two years old, and leaders admit those they reach may not be the type of youngster likely to get in trouble anyway.

Nonetheless, there have been some notable examples of young people who have been helped.

"I saw a seven-year-old boy, whose only diversion was smoking marijuana on the street corner, join our Clover Buds pre-4-H program for younger children and become enthusiastic about nutrition, instead of drugs," says Mrs. Nancy Smith, a Camden, N.J., leader. "Now when his parents fight and send him out alone on the street, he knows he can come to the club and talk to an understanding adult. However, small, that's progress."

POLLUTION AND ITS CONTROL

Mr. TOWER. Mr. President, I invite the attention of Senators to an editorial in the Western Livestock Journal dealing with the need for a certain amount of perspective in the current campaign against pollution. The essence of the article is that we need to examine and act on the facts of pollution and its control, rather than on emotional responses to the visible degradation of our environment. This will be the only long-run method for solving pollution problems which will succeed. I ask unanimous consent that the editorial, be printed in the RECORD.

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

THE EDITOR COMMENTS

Hysteria over pollution, poverty and quality of life is a current communications-fanned phenomenon which could bring regrettable actions.

Suddenly "pollution" has become the dirtiest and one of our most-used words. Suddenly "poverty" is something just discovered. Suddenly "quality of life" in these United States is rapidly deteriorating.

Suddenly people with questionable qualifications are quoted unequivocally on the individual and life-on-this-planet-shortening effects of everything from the pill to cigarettes to saturated fats to hydrocarbons to nitrogen in the soil.

Intensity and volume of the bombardment upon the auditory and ocular senses have rarely been equaled. Suddenly columnists, commentators, demonstrators and people in public life are on the bandwagon. The situation is "red alert." A single day's delay in massive corrective measures will be fatal.

Problems? Yes, pollution, poverty and quality of life are problems. They require action. But it should be action based upon facts not hysteria. Action with full realization that each of the three problems can be lessened but not completely erased. Action based upon the greatest good for all, not the possible ill effects for the few.

Sprayed herbicides can be detrimental but think of the watershed improvement they can bring through eliminating water-hogging brush in favor of grass cover which slows erosion, increases and makes more uniform the yield of water and, incidentally, provides added grazing for livestock.

For a moment let's look at the quality of life business and its purported deterioration. For whom? Was there ever a time when as high a percentage of U.S. people was living as well as today? Was there ever a time when so many people had access to so many recreational facilities . . . fishing, skiing, water sport, hunting, vacationing, zoos, parks, museums, art galleries, theaters, not to mention television and radio? Was there ever a time when so many people had so many niceties for comfortable living . . . transportation, comfortable homes including regulated heat, air-conditioning, modern lighting and appliances, in-home entertainment? Was there ever a time when so many people had as much time for the enjoyment of material and spiritual things due to the fact that less hours of each day, week, month and year are required to produce a livelihood? Was there ever a time when so many people were so well informed? Was there ever a time when so many people were so widely traveled? Was there ever a time when so many people had the needed purchasing power and the variety quality and quantity of tasty, healthful foods for "the good life?"

Quality of life? Just where is it deteriorating? From the material aspect, today it is the most advanced in all the history of mankind. This doesn't necessarily mean that people are any happier, though certainly life today is easier, doesn't have the drudgeries of the past.

Poverty? The problem is real, it is pressing. But it should be remembered that poverty is a matter of degree and of viewpoint. We might consider a particular person, family or community poverty-stricken whereas the subjects might not so view their plight.

Regardless of income level, there are few of us who do not have additional wants. As the whole level of living advances, the relative spread between stratas may not lessen. The well-to-do level of today may be the poverty level of tomorrow. So we will always have poverty with us. Which fact does not lessen society's responsibility to see that, regardless of reason for their state of affairs, children, who have no control over that state, are fed, clothed and educated. Humanitarian motives dictate this, but materialistic considerations are served since the end cost can be much less in seeing that these grow up to be contributors to society rather than drags upon it.

Pollution? Nowhere in agriculture does this problem focus more than upon the feedlot industry. And that industry is taking gigantic strides for control of both the air and stream contamination.

Meanwhile, perhaps the "silent majority" in agriculture better act as a safety valve on the boiler that today is about to explode from the pressure of current hysteria over pollution, poverty and quality of life.

CAMPUS UNREST

Mr. ALLEN. Mr. President, the Montgomery Advertiser-Journal of July 26, 1970, contains an interesting and timely editorial entitled "Should Student Mobs Rule?"

Feeling that this excellent editorial will be of interest to the Senate and to the public generally, I ask unanimous consent that this editorial be printed in the RECORD.

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

SHOULD STUDENT MOBS RULE?

The amazing report released Thursday by Dr. Alexander Heard, President Nixon's special consultant on campus problems from May 8 to June 30, suggests that Nixon should give the highest priority to student attitudes when formulating foreign and domestic policies.

Heard, Chancellor of Vanderbilt University, and Dr. James E. Cheek of Howard University, summarized their findings which, in the main, seem to suggest that the only wisdom in the country is that possessed by students, who regard "the whole social order as being in a state of erosion." They deeply resent "repression" (translation: Agnew's criticism of their disruptions and riots), and are the embodiment of integrity, idealism and passion which should be given paramount consideration.

How much integrity, idealism and wisdom are required to close universities, burn and bomb buildings, and wreck the educational opportunities of serious students does not appear to be answered by Heard and Cheek.

Nor have they paid any evident attention to the warnings of other educators and leaders about the New Left McCarthyism on campus. It was assailed by Senator Margaret Chase Smith, Presidents Nathan Pusey of Harvard (who saw Nazi parallels) and Kenneth Pitzer of Stanford, among others.

Heard and Cheek had ears only for students, not the general public. According to a recent Gallup Poll, an overwhelming ratio of Americans (5 to 1) opposed the recent student strikes focused on the Cambodian expedition.

This decisive majority of the population is to be ignored, as we read Heard and Cheek, who have answered the question of Prof. K. Ross Toole of the University of Montana. Toole asked some time ago:

"By virtue of what right, by what accomplishment, should thousands of teenagers, wet behind the ears and utterly without the benefit of having lived long enough to have either judgment or wisdom, become the sages of our time?"

Although not directly addressing their report to this question, Heard and Cheek answered: By virtue of every right. That is at least a forthright advocacy of an adolescent autocracy.

Considering the time-span of the Heard study, we are left to conclude that he believes campus turmoil began with Cambodia. It didn't. It began, for all practical purposes, six years ago at Berkeley with the filthy speech movement.

Since then it has spread, usually with violence in one degree or another, to hundreds of institutions with almost as many issues—black studies, "irrelevant" curricula, war, retructuring universities, academic discipline, the high cost of off-campus rent—any issue at all. Or none.

And what has been the result? Before the Heard summary was released, educational specialist Fred M. Hechinger, a member of the New York Times editorial board, released his study.

In 1964, he wrote, optimists saw Berkeley as the beginning of sweeping educational reforms and reaffirmation of academic freedom. Pessimists were concerned over a movement that "justified questionable means in the pursuit of only vaguely conceived idealist ends."

The pessimists were worried about the political radicalization of campuses. Hechinger concluded from the hearings by the President's Commission on Campus Unrest (a study separate from the Heard inquiry) and from his interviews with 11 university presidents, that "the pessimists were more nearly right."

Universities have grown weaker. Many are in a state of economic crisis and "their influence in the nation at large has been diminished."

Following are some excerpts from Hechinger's report:

"What emerges is a tug-of-war between the views of those who want to believe that the students know everything (Heard and Cheek, for example?) and those who insist that the students know nothing. Neither view is realistic . . .

"Students are capable judges of many flaws in their education and the collegiate environment. But their knowledge about the relationship between the universities and national policies and the eventual reform of

society and the world is shallow and immature."

"Their interpretation of the power and the politics that motivate and move rival forces is as unrealistic as their judgment of the actual attitudes and aspirations of many of the people whom they would like to help. Their lack of economic realism is destructive, and the universities bear the brunt of this. . . .

"Political radicals have no interest in (real) reforms because they would strengthen institutions which they would love to topple. Faculty members, who tend to be more activist about the flaws of society than about the deficiencies in their own departments, tend to give in to the students' political demands more eagerly than to a reappraisal of education . . .

"The politicizing of the campus, even under such grave provocations as the Indochina war, has moved the universities to the brink of disaster. In the days of the right-wing McCarthyite onslaught on academic freedom, the universities' defense was that, contrary to the Know-Nothing charge, they were not engaged in political indoctrination; they were rather the free testing ground of ideas."

If it can be shown, Hechinger continued, that "universities today are in fact becoming places of political partisanship where radical students and their faculty allies suppress other views, then the universities will render themselves defenseless because their actions would be indefensible."

Stereotyped ideological demands and the rhetoric of power have contributed little to rational thought, Hechinger found:

"The students, in ignoring cause and effect, have been blind to the devastating consequences of declining financial suport, perhaps because the radical movement is led by the sons and daughters of the rich who never had to worry about who pays for their own needs.

". . . Donors and taxpayers will be increasingly reluctant to pay for universities which they regard as political rather than academic enclaves. Insensitivity to this danger will hurt those most whom the concerned students want to help—the poor, who will be frozen out by any fiscal retrenchment."

Finally this, which is a direct answer, in advance, to Heard's urging that Nixon pay more attention to students than millions of voters and taxpayers:

"It is highly doubtful that the universities could effectively force political policy decisions on the American people, no matter how hard they might try. It would be tragic if in their inability to know what they cannot and should not do, the universities were to undermine their capacity to accomplish what they can and ought to do in the service of scholarship and society."

Heard said that events of this summer—presumably the Nixon Administration's surrender to college radicals—"would determine which colleges and universities open this fall, and under what conditions."

No. The radicals and their co-conspirators on the faculties will determine that. No president or other leader can be ruled by a mob, however elite and omniscient it considers itself.

LT. CHARLES HEMINGWAY

Mr. DOLE. Mr. President, I recently received a very warm and inspiring letter from Mr. W. E. Hemmingway, of Dodge City, Kans. Mr. Hemmingway told of a journey he and Mrs. Hemmingway had made to West Point to attend Memorial Day ceremonies and visit the grave of their son, Lt. Charles Hemmingway.

Lt. Chuck Hemmingway was extremely popular and well-liked especially by his colleagues in the Vietnamese army. After his death, a Vietnamese army major composed a poem in memory of Chuck, and it has been displayed at the West Point library at the request of his parents. Some idea of the type of young man Chuck Hemmingway was is contained in some words he wrote to a cousin after graduation from West Point.

Mr. Hemmingway shared these words with me in his letter:

I'll say one more thing then I must close. This I say to you as a soldier. Remember there are men fighting and dying every day so you can walk into a free classroom and learn the facts, so you can walk into church and worship, so you can watch that television and laugh. Don't let yourself down and don't let the memory of those men down. Remember these men for what they could have done in peace, whether it be clear a country field or write a book. Since they have died for us, we are going to have to do that much more. That is the challenge with which I leave you.

The full story of the Hemmingways' visit to West Point was reported by Chris Farlekas in the Middletown, N.Y., Times Herald Record of June 1, 1970. 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:

IN '65, A GRADUATION; IN '70, A WREATH FOR A GRAVE

(By Chris Farlekas)

WEST POINT.—Five years ago, Mr. and Mrs. William Hemmingway came to West Point from their home in Dodge City, Kan., to see their son graduate.

Five years later, they made the journey again, but this time it was to place flowers on his grave and to participate in a special ceremony on Memorial Day.

The ceremony also marked the next-to-last step of a 12,000-mile odyssey of a poem about their son, Lt. Charles Hemmingway.

Hemmingway graduated from high school as "the person most likely to succeed." At West Point, he was one of the most popular cadets.

He grew to love the Hudson River Valley. He did volunteer work with migrants and underprivileged children.

He married after graduation and was sent to Vietnam, where he died June 13, 1967. Four months later his son was born.

He is buried in a neat, orderly row with other men from the class of 1965 who were killed in Vietnam.

His parents treasure letters about their son, one, from a fellow officer, reads: "A pall of gloom hangs over the barracks. We all liked him more than we should have liked anyone in a combat theater . . .

"I ran into an old American first sergeant from the Quang Tri area, one of the roughest men in the Army. When he heard about Chuck, he broke down and cried."

The Vietnamese soldiers, to whom Hemmingway was an adviser, also loved him. Once during a monsoon he carried the men across a river, one at a time, on his back. These and other kind acts caused Vietnamese Maj. Tran Quoc-Lich to write his poem: "Memory of a Friend."

The 20-line poem was kept in Vietnamese Army headquarters.

Last summer, Maj. Sava Stepanovitch was in Vietnam on a temporary duty tour. He is a Frenchman and an old Vietnamese hand. He parachuted into Dien Bien Phu for that last climatic battle in 1954 before the French retreated from Indochina.

He joined the American Army five years ago and is currently teaching French at the academy.

He was with Hemmingway in Vietnam.

Last autumn he brought back the scroll with the poem. It was placed in the library foyer.

When he found that the Hemmingways were coming to West Point for Memorial Day, he arranged Saturday's ceremony. Officially, the scroll was presented to them. They are leaving it at the library on display for the summer.

In the autumn, it will be taken to Dodge City.

After the ceremony, the Hemmingways talked of their son. They tried to keep the remembered incidents light and joyous, but pain betrayed their thoughts as they spoke.

Hemmingway's grandmother, who took her first plane ride at 72 to come, kept remembering "a little boy who crawled way underneath the bed so he wouldn't have to leave the farm."

Hemmingway's life will be a feature in the autumn edition of the West Point alumni magazine.

So when the leaves turn, the scroll will complete its journey and be at home in Dodge City.

Part of the poem reads: "You lost your life. Why did it end? I will remember you my friend. I'll write your name in our history; 'A courageous soldier died for liberty.'

"One day, the war will be over in our country. I'll go to the United States to see your grave, on which I'll place flowers with much regret and affection."

THE 1925 GENEVA PROTOCOL MUST BE RATIFIED

Mr. PROXMIRE. Mr. President, the continuing fight for human rights requires vigilance and intense commitment from all of us. I draw the Senate's attention to the laudable initiative for peace taken by President Nixon last November when he announced his decision to recommend the 1925 Geneva Protocol, outlawing chemical and biological weapons, to the Senate for expeditious ratification. This initiative certainly came at a propitious time and with considerable flourishes of publicity. This move was viewed by many observers as a dramatic, statement of commitment on a vital international human rights and disarmament issue.

Since the furor of November, the dust has been allowed to settle on this treaty to the point that many Americans have just assumed that the Geneva Protocol has come down to us for ratification. I wish to remind my colleagues that this is not the case.

I do not doubt President Nixon's sincerity and commitment on this issue. He has been a strong supporter of many human rights measures, such as the Genocide Convention. Thus I hope that the Geneva Protocol will be submitted to the Senate in the very near future.

The pursuit of peace often rests on a delicate balance. A large part of the initiative and dynamic leadership in disarmament must now come from the United States as the world anxiously watches. This is not the time for hesitancy. An editorial published in the St. Louis Post-Dispatch of July 25 makes this point. I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editori-

al was ordered to be printed in the RECORD, as follows:

MORE THAN AN EMBARRASSMENT

In one of those moments of unctuous piety which so often substitute for action, President Nixon announced he would, as "an initiative toward peace," send to the Senate for ratification the 1925 Geneva Protocol outlawing the use of chemical and bacteriological weapons. That was back in November and Mr. Nixon's hesitancy to submit the treaty, as Ambassador to the United Nations Yost delicately but pointedly reminded his chief the other day, is becoming a matter of some embarrassment.

It is, after all, hardly a matter for national pride that 84 other countries have signed the protocol, leaving the United States as the only power of any size which has not. Our failure to ratify has been made even more conspicuous by the fact that, with the exception of Germany in World War I, the United States is the only country ever to have engaged in wide-spread chemical warfare. So far in Vietnam, American troops have used more than 14,000,000 pounds of CS, an incapacitating gas, and have sprayed millions of acres with 2,4,5-T, a defoliant which has been shown to cause birth defects.

The United States has argued that these agents are not covered by the protocol. The language, which refers to the use "in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices," is open to other interpretations. In any case, there is little doubt that America has violated the spirit of the treaty in the way these supposedly nonlethal agents have been used. Gas is routinely laid down to flush out the enemy before artillery attacks and the purpose of defoliants is to strip away protective vegetation and thereby expose hostile soldiers to fire.

The use and spread of chemical and biological weapons has been principally deterred by worldwide revulsion against the German gas attacks. But as the Harvard biologist Matthew S. Messelson has pointed out, these restraints are being endangered by the continued use of chemical agents by the United States. To use gas on a large scale in conjunction with ordinary military operations can only stimulate other nations to invest in gas warfare training and to acquire their own chemical weapons.

It would be unfortunate if the continued American refusal to ratify the protocol were to be responsible for a general recruitment of the biological and chemical sciences to serve a new dimension in warfare. Such a development can best be forestalled if the United States takes an unambiguous position on the protocol and renounces the use of all chemical weapons. To submit the treaty to the Senate can scarcely be considered a political risk by Mr. Nixon. It would only be a matter of keeping his word.

SELF-DETERMINATION AND THE NATIONAL CAPITAL

Mr. TYDINGS. Mr. President, the League of Women Voters has made a great effort in support of home rule for the District of Columbia. The League has collected nearly one and one quarter million signatures all across the country in the name of full congressional representation for the citizens of the National Capital.

I have received league petitions containing more than 40,000 signatures from my own State of Maryland. This clearly demonstrates the vital concern of millions of Americans who recognize the obvious need for enfranchisement of the citizens of this city.

Mr. President, my committee on the District of Columbia has at this session reported and the Senate has passed two bills in support of home rule. Neither bill has been considered so far by the House of Representatives.

Our latest attempt for self-determination in the National Capital has been the introduction of legislation for a constitutional amendment to give home rule to District citizens. I have worked very hard with the distinguished Senator from Indiana (Mr. BAYH) to bring this amendment to a vote in the Constitutional Amendments Subcommittee of the Committee on the Judiciary. I have been bitterly disappointed that we have been unable to get a quorum in the subcommittee to consider this legislation and that finally, when a quorum was achieved, we were not able to succeed in bringing it to a vote.

I intend to continue my fight to change the status of National Capital citizens who are taxed and conscripted and from whom are demanded all the duties of citizenship without the privilege of representation.

Mr. President, I ask unanimous consent to have printed in the RECORD the statement I recently made before the Constitutional Amendments Subcommittee of the Senate Committee on the Judiciary in full support of home rule and congressional representation for the District of Columbia.

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

STATEMENT OF SENATOR JOSEPH D. TYDINGS

Mr. Chairman, I support complete home rule and full Congressional representation for the District of Columbia. The Senate District Committee, of which I am Chairman, has already reported a home rule bill in this Congress. The Senate passed it last year. That bill did not go far as I had hoped, but did go far as the President would support.

On April 28, 1969, the President of the United States sent to Congress his recommendations on representation for the citizens of the District of Columbia. The President's message contained recommendations relating to home rule, adequate financing of the National Capital and congressional representation for the District of Columbia.

The subject of today's hearing, the congressional representation, should be viewed within the larger context of the long struggle for full self determination for the citizens of the District of Columbia.

Last year, the President proposed the creation of a home rule study commission to submit to Congress and the President a comprehensive plan for self-government in the District. Although I was severely disappointed that the President did not support the bi-partisan "home rule now" proposals the Committee was already considering, I scheduled a Senate hearing on the President's proposal in less than 48 hours of its receipt. The proposal was thereafter reported to and passed by the Senate without opposition.

As passed by the Senate, the Commission on Government for the District of Columbia is authorized to study and make proposals with respect to the basic structure of the District Government, its legislative and executive authority, its financial and taxing powers, and election of its officials by residents of the District. In addition, this body will perform a Hoover Commission function to discover means for improving governmental economy, efficiency, and quality of services. The Commission is charged with submitting a final report on an expedited basis no later than 18 months after its selection.

ADEQUATE REVENUE

Also, the Senate District Committee has recommended urgently needed increased Federal funding for the National Capital, beyond the Presidential proposal formula of 30 percent of local revenues. The 30 percent formula is the minimum level of support the Federal treasury should provide for essential governmental services in the Federal capital.

CONGRESSIONAL REPRESENTATION

Today, we are concerned with the third prong for responsive government in the National Capital, the provisions by way of constitutional amendment for a meaningful voice in the halls of Congress. The President's Message called for an amendment to the Constitution to provide at least one representative in the House of Representatives and such additional representatives as Congress shall approve, and to provide for the possibility of two Senators from the District of Columbia. On an interim basis, until such an amendment is finally adopted, the President called for a non-voting House delegate for the District.

The Senate District Committee and the Senate itself approved a non-voting delegate bill last year. It is essential to emphasize the interim nature of the non-voting delegate provision, however. The nonvoting delegate is at best a vehicle for opening lines of communication to the Congress for District citizens; it is not the final goal. Absent swift action to achieve full representation in Congress, including two Senators and the number of representatives to which the District would be entitled by apportionment, the nonvoting delegate provision would rightly be regarded as totally inadequate.

I believe that progress toward self-government for the National Capital, including a full voice in the national legislature, is as inevitable as the ideal of democracy is cherished. A first step was taken in 1961 with the adoption of the 23rd Amendment providing for local voting in the District of Columbia in Presidential elections. We stood on the threshold of home rule in 1965 only to see the hopes of Washingtonians dashed by unresponsiveness in the House of Representatives.

I shall not pause to recount for you the sorry record the Congress has had over the years on the issues of District self-government and congressional representation, except to emphasize that the Senate has met its responsibilities by approving home rule legislation. Nor shall I engage in the usual rhetoric to justify the obvious need for the enfranchisement of the citizens of this metropolis into the rights and privileges of full citizenship. The right to vote for national and local representatives is simply a premise upon which democracy is founded.

The citizens of the District, and I believe all the citizens of the nation, are weary of failures in this regard, and are equally weary of words without action. Recently, the League of Women Voters presented Congress with nearly one and a quarter million signatures collected all across the country on petitions for full congressional representation of the National Capital.

No doubt the subcommittee will hear today comparison made between the status of District citizens, who are taxed, who are conscripted, and from whom are demanded all of the duties of citizenship without the privilege of representation, and the all too similar status of the American colonists at the time of the American Revolution. We will hear of the irony that the principal cause of the Revolution persists in this country only in the Nation's Capital. We will be told

that there are eleven states with populations smaller than that of the District and that by virtue of being states enjoy full representation. And we will hear of the incongruity of fighting wars thousands of miles away to establish democracy on foreign shores, while the central privilege of democracy, the right to voice in the Government, is still being withheld from a sizable segment of the American public.

The Senate has already acted on the local self-government issue and on the interim nonvoting delegate to Congress. I now urge as Senate business of the highest priority the prompt approval of full participation by this city's 800,000 citizens in our American form of government.

ADEQUATE APPROPRIATIONS FOR RURAL ELECTRIFICATION ADMINISTRATION

Mr. SMITH of Illinois. Mr. President, I agree with the administration on the great majority of its programs and positions on issues and the steps it is taking to implement them. On some issues, however, I find myself in disagreement with it. The appropriations recommended by the administration for loans to the Rural Electrification Administration for the 1971 fiscal year are such an issue.

I served in the Illinois General Assembly for 15 years where I gave as much attention to, and assistance with, the problems of the electric cooperatives as any member of that body. I am, therefore, extremely interested in and concerned with their problems.

There are 29 electric cooperatives in Illinois. Because of them, central station electric service is available to every person and business in the entire State, including even the most sparsely populated areas. Rural Illinois, and rural America in general, cannot continue to grow and develop without adequate electric power.

Rural electric systems in the United States have received loans from the Rural Electrification Administration since 1935 at a favorable rate of interest. These loans are used only for capital improvements such as the construction of electric lines and facilities. They are not used for operating costs. Since 1944 electric cooperatives have received loans from the REA, amortized over a period of 35 years at an interest rate of 2 percent.

It should be emphasized that these are loans—not grants. During the history of the Rural Electrification Administration it has only been necessary to foreclose loans amounting to $37,237. This is an outstanding record in view of the fact that the REA has made loans amounting to about $7 billion since it came into existence.

I would also like to point out, Mr. President, that there is a condition attached to these loans. In order to receive these loans rural electric systems had to agree to, and, in fact, provide area coverage. This means that they had to provide electric service to any individual or business in their service area regardless of whether the service could be provided at a profit or a loss. The electric supplier act, enacted by the Illinois General Assembly in 1965, gave all electric cooperatives in Illinois a utility responsibility for service. If an electric cooperative refuses to provide service, the Illinois Commerce Commission can direct it to do so under provisions of the Electric Supplier Act.

The long-range goal of the electric cooperatives is to reach the place where they can obtain financing for capital improvements from sources other than the U.S. Government. As a step in this direction, the rural electric systems in the United States have established a bank known as the National Rural Utilities Cooperative Finance Corporation—hereafter referred to as the CFC. The bank will be financially underwritten by the purchase of stock by rural electric systems and their member-owners. It is estimated that the bank will be able to loan only $40 million during its first year in operation. In our opinion it will take at least 15 to 20 years for the bank to reach the place where it can meet most of the financial requirements for loans to rural electric systems. In the interim it will be necessary for the electric cooperatives to receive loans for capital improvements from the Rural Electrification Administration.

It is not possible for electric cooperatives to receive sizable loans from any other source because the Rural Electrification Administration has a first mortgage on all of their real and personal property. Because of the shortage of money for capital improvements and because, at the request of the Federal Government, the rural electric systems in the United States have made advance payments on their loans, they have and will be required to continue to deplete their reserves in order to provide capital improvements. These reserves are required so that the electric cooperatives can take care of their financial problems and emergencies when it is necessary to rebuild part or all of their distribution electric system.

For example, a few years ago a severe ice storm occurred in the area served by Illini Electric Cooperative at Champaign, Ill. It was necessary for the cooperative to rebuild the entire system so they could continue to serve 3,700 customers in Champaign, Douglas, Edgar, Ford, McLean, Piatt, Vermillion, and Moultrie counties. The cost for this emergency was nearly a million dollars.

Clearly, if electric cooperatives do not receive adequate loans from the Rural Electrification Administration, they must continue to use reserves for capital improvements. This means they will have less money to invest in the CFC, and may keep the bank from accomplishing the long-range objectives for which it was established.

The CFC will be originally underwritten by investments from rural electric systems. This will require sizable investment. Rural electric systems will, in general, obtain money for this investment from reserves.

The rural electrification program has developed to a point where there is a golden opportunity for practically all of the rural electric systems in the United States ultimately to depend on CFC for loans and for the Congress, in due course, to reduce or eliminate substantially the appropriations to the Rural Electrification Administration for loans to a great number of rural electric systems.

We should not let this golden opportunity pass us by being "penny wise and pound foolish." The practical approach is to provide adequate appropriations for loans to the rural electric systems during the transition from Government to private financing so that they will be able to underwrite the CFC and move forthwith toward financial independence. The administration and the Congress can deter or prevent this very desirable transition by failing to provide adequate appropriations.

Mr. President, the administration has recommended appropriations in the amount of $345 million to the REA for the 1971 fiscal year. Carryover applications alone up to July 1, 1970, amounted to $289 million and projected applications for the whole of fiscal 1971 are estimated at $464 million, bringing to a total of $753 million the amount required nationally for loans.

In Illinois alone, there may be a need for over $14 million by July 30, 1970. The appropriation recommended by the administration for loans cannot make this amount available to the electric cooperatives in Illinois.

The House of Representatives has appropriated $345 million in loans for fiscal 1971, plus $20 million in contingency for use by both electric and telephone programs. When the matter came before the Senate, we appropriated $375 million outright for use as loans for rural electric cooperatives. I strongly urge the conferees to adopt the Senate figure.

Failure to provide adequate appropriations not only could cause rural electric systems to fail, not only in their efforts to establish CFC, but also in their duty to provide adequate power in rural America. Reserves of rural electric systems will only last so long. When they are gone, rural electric systems simply cannot provide adequate power to their customers. I do not look forward to explaining to the people of Illinois why a "brown out" or "black out" has occurred in rural areas, particularly if it is attributable to the failure of this administration and this Congress to provide adequate loan funds to the REA.

THE VALUE OF A GOOD COP

Mr. PELL. Mr. President, there are few matters of public policy that have evoked as much irrational reaction and as little perspective as the issue of police-community relations.

Egged on by one element of society to be more brutal in their dealings with dissident groups, and criticized by another element of society for being too brutal, the task of a professional policeman has become increasingly more difficult.

Recently, the Providence Journal published a column in which the dimensions of heroism required of police were deftly outlined. The District of Columbia's own police chief, Jerry Wilson, was rightly cited as a meritorious example.

The value of good policemen was put into a perspective which I believe important for us to keep in mind in our de-

liberations on so-called questions of "law and order."

Mr. President, I ask unanimous consent that the article, written by Garry Wills, and published in the Providence Journal of July 27, be printed in the RECORD.

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

DOWN THESE MEAN STREETS A MAN MUST GO

Two very good cops—James Severin, Anthony Rizzato—died recently in Chicago, men who volunteered to go into the toughest neighborhood, hear its gripes, convey a desire to help, play ball with its kids. The two men were on their way to such a ballgame when snipers got them.

"It seems senseless," I heard one lady say, reading the headline. That depends on what the killers wanted. Their act makes very good sense if the goal was trouble. The greatest threat to troublemakers is a good cop. If the death of Severin and Rizzato can scare other cops away from community projects of their sort, can harden lines on both sides and prevent communication, then the forces of darkness will have scored a great victory. But if more good cops fill their place, pick up their work, Severin's and Rizzato's deaths will give life to others.

The good cop is an extraordinary mixture of savvy, guts, and insight. He has looked at the seamiest side of human life without becoming cynical. He remains compassionate without going soft or unrealistic. He lives with a more constant pressure of danger, over longer periods at a time, than most men who serve in Vietnam—yet he must protect the rights of those he grapples with. And the honor given him is not nearly as great as that we give to soldiers, many of them forced into their work by the draft. The police force is a volunteer army. The individual cop faces, night after night, the challenge Raymond Chandler put to his fictional hero, Philip Marlowe—"Down these mean streets a man must go."

"Support Your Local Police" said the old John Birch bumper sticker. But Birchers did not support them. They undercut the good cop by crying for retaliation, for some deaths when there is looting, for mass arrests in the midst of rioting. The good cop knows that arrests at such a time just tie his own men up, take them off the street when he needs them most, to protect his own life as well as civilians' lives. The police policy of "containment," which prevented the mistakes of 1967 from happening last summer, or the summer before, has protected the suburbs in which men can chew a "Shoot em!" around their cigars while dreaming, in safety, of support for their local police state.

There are many cops who want to retaliate. Supporting them is a way of letting the good cop down, making his role difficult or impossible. At the giant July 4 rally, when kids at the Washington Monument "smoke-in" moved down toward Bob Hope on his stage, D.C. Chief Jerry Wilson threw a detachment of his men between the two groups. Soon pop bottles were flying, and riot helmets had to be run in for the cops. "Wilson's crazy," one policeman muttered, "sending us in here with soft hats."

"Where is Wilson?" I asked. "Big Jer? Up front, grandstanding, I guess." He knew where he would be—where the bottles were thickest. Wilson, tall, and easy target, walked around calmly, sticking his bullhorn up to fend off an occasional bottle, still in his officer's soft hat. He came on a group of cops griping at how heavy the barrage had become. "This? This is nothing," he said. "Not nearly so bad as I expected." He passed on, sipping coffee, but I stayed to listen to the cops' reaction. "It's ok," one young policeman said to the others, "we'll get 'em when the show is over and the lights go out." But they did not, by and large, "get 'em." Wilson saw to that.

The Jerry Wilsons are men who can create pride, discipline, and morale—and thus improve the performance of police. If we let them. Those who cry for blood are sending the police into civil strife and slaughter, making them die for a bunch of loudmouths, for the politicians who pander to loudmouths. The classic instance is Mayor Daley, attacking his own police after the April riot of 1968 for not shooting enough looters. Before that time, Chicago police were thought of as one of the nation's best forces, perhaps the best. It had been trained by Orlando Wilson, the noted reformer. But Daley egged on its men to become the nation's shame in August of 1968, at the Democratic Convention. (It would be interesting to know what a professional like Frank Rizzo of Philadelphia would do if a Mayor criticized his men after they performed with cool restraint, risking their lives.)

The way to support police is with better pay, better education, higher respect for the idealists (which means tougher standards on corruption). The whitewash approach of the Birchers, which simply denies there is any police corruption or brutality, weakens the position of those cops who resist the temptation to go on the take or to go out later and "get 'em."

It is extraordinary how many good cops there are, given the job, given its dangers, its poor rewards, the benighted public attitude. They are there—even when Daley works the force over, an officer Rizzato or a Sergeant Severin proves that some of Orlando Wilson's ideals live on.

Many of our problems cannot be instantly solved, only survived. The survival itself will make a problem more tractable, later on. But we cannot survive unless the front line defenders of civil order are heroic. And we have no right to ask heroism of them without massive improvements in pay, in education, in work conditions, in the civil honor accorded them. Until we face up to this—and to how much it will cost—all our talk of law and order is a trivial game of Let's Pretend.

CHRONOLOGY OF CAMPUS DEMONSTRATIONS

Mr. WILLIAMS of Delaware. Mr. President, the Wall Street Journal of August contains an interesting editorial outlining the chronology of the campus demonstrations, beginning with 1964 and extending through 1970.

This editorial points up the utter ridiculousness of the efforts of certain groups to blame the Nixon administration for their present campus unrests, and it places the responsibility where it belongs.

I ask unanimous consent that the editorial be printed in the RECORD.

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

HOW'S THAT AGAIN?

A short and not very inclusive chronology:

1964: "Free speech" demonstrations over rules about political speeches break out at the University of California at Berkeley. Sit-in demonstrators occupy the Administration building, Governor Edmund Brown orders their removal and 796 students are arrested.

Two-time political loser Richard Nixon emerges from somewhere to stump for Barry Goldwater. Spiro Agnew completes his third year as chief executive of Baltimore county.

1965: Berkeley's "free speech" movement becomes the "filthy speech movement," as demonstrators back the free use of obscenity. Demonstrations, on a smaller scale, appear at other campuses, and the press and public bodies start to analyze the "new student revolt" and "new student left."

Richard Nixon practices law in New York, and Spiro Agnew finishes another year as Baltimore County executive.

1966: Student strike at Berkeley proves abortive, but anti-draft demonstrators hold the University of Chicago administration building for three days. Anti-war Harvard students surround and stop a car carrying Secretary of Defense McNamara, shout him down when he tries to answer their questions.

Richard Nixon stumps successful for Republican Congressional candidates. Spiro Agnew is elected governor of Maryland.

1967: Disruptive demonstrations occur at California, Columbia, Harvard, Illinois, Iowa, Johns Hopkins, Michigan, Minnesota, Oberlin, Princeton, Stanford, Wisconsin and others.

Richard Nixon tours Europe, Asia and Latin America; Spiro Agnew inaugurated in Maryland.

1968: Columbia University erupts as blacks and the Students for a Democratic Society occupy several buildings to protest a proposed gymnasium location; police are called and a student strike closes most classes. A study by the National Student Association counts 221 major demonstrations at 101 colleges and universities between January 1 and June 15. S. I. Hayakawa pulls the plug on the demonstrators' sound truck at San Francisco State College.

Richard Nixon and Spiro Agnew win the November election.

1969: Order is restored at the University of Wisconsin by 1,900 National Guardsmen. Swarthmore President Courtney Smith dies of a heart attack while awaiting a faculty committee studying demands of students occupying the admissions office. Harvard deans are dragged out of the administration building by students opposing retention of ROTC on the proposed noncredit basis. Students at Cornell University demand a fully autonomous "Afro-American College," occupy the student union building and, feeling threatened, arm themselves with guns.

Richard Nixon and Spiro Agnew are inaugurated in January. The new President announces a policy of withdrawing troops from Vietnam.

1970: Yale University suffers a student strike over the torture-murder trial of Black Panthers in New Haven. Hundreds of campuses erupt to protest the American attack on Communist sanctuaries in Cambodia. After three nights of violence at Kent State University, National Guardsmen open fire and kill four students. Two students are also killed at Jackson State College.

President Nixon appoints a special commission to probe into the basic causes of campus unrest. The drift of testimony is that it's caused by Richard Nixon's policies and Spiro Agnew's rhetoric.

CRIME PROBLEM

Mr. TYDINGS. Mr. President, street crime across the Nation continues to rise. Here in the National Capital, during the first 3 months of this year, crime increased twice as rapidly as the national average.

Last week, the Senate passed a sound and constitutional anticrime bill that will become an effective tool for law enforcement officers in finally defeating the crime problem.

The Senate debate naturally centered

on the bill's more controversial provisions. Too little was said about the enormous task that law enforcement officers have on the street everyday in carrying out their responsibilities.

Recently, Time magazine did an interesting story about the efforts made by Police Chief Jerry Wilson to deal with the crime crisis in the National Capital.

The National Capital is indeed fortunate to have Jerry Wilson as its Chief of Police. In the year since he assumed that position, Chief Wilson has exhibited the ability and the leadership that have made the Police Department in the National Capital one of the outstanding departments in the country. The police in Washington are faced with many problems—like almost continuous demonstrations—that police in other cities are not. Under Chief Wilson, the Washington Department has handled those problems with the mark of unparalleled police professionalism.

I ask unanimous consent that the Time magazine article about Chief Wilson be printed in the RECORD.

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

WHAT THE POLICE CAN—AND CANNOT—DO ABOUT CRIME

Millions of Americans in 1970 are gripped by an anxiety that is not caused by war, inflation or recession—important as those issues are. Across the U.S., the universal fear of violent crime and vicious strangers—armed robbers, packs of muggers, addict burglars ready to trade a life for heroin—is a constant companion of the populace. It is the cold fear of dying at random in a brief spasm of senseless violence—for a few pennies, for nothing.

Last fall the National Commission on the Causes and Prevention of Violence painted an eerie picture of the urban future: downtown areas deserted after dark save for police patrols, apartment buildings ringed by private guards, whole cities terrified of strangers and infused with a fortress mentality. From Baltimore to Los Angeles, that future is closer at hand than anyone imagined. Banks and department stores are building inside parking garages to reduce muggins of nighttime workers. Downtown restaurants and theaters are closing early for lack of business. Vigilante groups and private security agencies are flourishing. Half the nation's 60 million households contain at least one gun.

To be sure, Americans are several times more likely to be hurt in auto accidents or household mishaps than to be raped, robbed or murdered. Only about 10% of robbery victims are badly injured; fewer than 1% are killed. The nation's well-being is far more insidiously undermined by embezzlers, price fixers and organized racketeers than by muggers or car thieves. But that is cold comfort. The "war on crime" is beginning to look as unwinnable as the one in Indochina. The latest FBI statistics show a 13% rise in serious crimes during the first three months of 1970. Worse, the most crime-prone segment of the population—poor urban youths aged 15 to 24—will increase disproportionately at least until 1975. Sheer demography adds a racial factor: half the nation's blacks are under 21. Though victims of black crime are overwhelmingly black, it is chiefly young black males who commit the most common interracial crime; armed robbery.

FRUSTRATED MINORITY

After a decade of assorted riots, the nation's 400,000 policemen are armed with more lethal weapons than some of history's major wars required plus Mace and Pepper Fog, undercover agents, computers and helicopters. The best cops have also learned new techniques for cooling crowds instead of using those weapons. Yet street crime—the worst problem—is so rampant that police are fast becoming the nation's most frustrated minority. In fact, roughly half of all serious crimes are never reported, often because numbed victims expect no help from overburdened police. Between 70% and 80% of police effort is spent not on crime but on hushing blaring radios, rescuing cats and administering first aid. Countless additional police hours are wasted on crimes without true victims, like drunkenness and gambling. Even the best police work is undone by clogged courts and punitive prisons that breed more crime. Of all reported major offenses, the experts say, only 12% lead to arrests, only 6% to convictions and only 1% to prison. Thus, in the U.S. today, the chances of being punished for a serious crime are three in 100. Moreover, one-third of the inmates released from the nation's so-called correctional system later commit other crimes.

To help meet these challenges, the Federal Government is funneling a record $268 million to local lawmen this year—four times last year's outlay. More controversially, Congress and state legislatures are considering measures that would allow police to expand wiretapping and enter suspicious dwellings without knocking. In most areas, public opinion has seldom been so pro-cop. A recent Gallup poll revealed that a majority of Americans view crime control as their No. 1 priority, and even long-time dissenters are beginning to have second thoughts. Though many radicals still think of police as "pigs"—with some justification in a number of cities—liberals who used to minimize crime are now recognizing that police have a serious task on their hands. Large numbers of blacks, realizing that crime victimizes them more often than any other group, are clamoring for more protection. Here and there, voters are even giving police political power. Ex-cops are now city councilmen in Los Angeles, New York and Seattle. In Minneapolis last fall, Detective Charles Stenvig was elected mayor by a landslide. And in city after city, police associations are winning ever-larger voices in municipal management.

All the law-and-order clamor has yet to do much for police morale—and is unlikely to. Criminologists lawyers and thoughtful police officials are gradually recognizing that police problems go deeper than Supreme Court decisions that allegedly handcuff cops, and beyond the constant risk of sudden death in defense of unappreciative citizens. Nor is the real trouble the continuing emergence of new social abrasions—the mushrooming growth of hard-drug addiction, the bombings of urban buildings (four embassies in Washington were blasted last week), the crescendo of riots and demonstrations unmatched since the 1930s.

These days the malaise is deeper. The realization is growing that even the best police work, as it is currently set up in the U.S., is little more than a symbolic response to crime. Police can do little to prevent the creation of criminals. The dark reservoirs of anger and disappointment besetting the nation inevitably erupt into violence; a society flush with consumer goods multiplies crime incentives and opportunities. In short, crime has taken on a chronic quality that seems beyond the power of the present police system to change.

All these pressures are compounded in Washington, D.C., one of the world's most crime-ridden seats of government. No major American city has a larger share (73%) of black residents; few cities live in greater fear or ask more of their police. In an average week last year, the nation's seventh largest city recorded five homicides, six rapes, 200 auto thefts, 238 robberies and 442 burglaries. In the first quarter of 1970, crime in the capital rose 21.7%, far faster than it did in the nation as a whole. Churches have hired guards to protect ushers from being robbed after taking the Sunday collection. Tourists are advised not to leave their hotels alone after dark. Throughout the city the victims of crime range from presidential aides and foreign diplomats to black merchants and mothers on welfare.

Whatever their rank or race, all share a common demand: better police protection. In fact, they are slowly getting it—thanks mainly to the tireless efforts of Jerry Vernon Wilson, chief of the D.C. Metropolitan Police Department. In many ways, Wilson has the toughest police job in the U.S. Under intense political pressure, he must not only use a predominantly white force to curb crime in a black city but also cope with Washington's frequent mass demonstrations, such as last weekend's Honor America Day (*see* THE NATION). A tall North Carolinian of 42, Wilson is a self-educated man with a slow drawl, a quick mind, limitless cool—and a brutal candor that is almost unique among the nation's defensive bluecoats. His men often feel so dejected, he admits, that "there's a tendency to say, 'Oh well, just another robbery,' and not respond as we should."

The hot summer for which Wilson is bracing threatens to be enflamed by mob violence as well as street crime. Keeping mass demonstrations from turning into ugly rampages is Wilson's specialty. His method is not blind force but simple astuteness. At first, his approach made Attorney General Mitchell and his staff skeptical. But when the Justice Department briefed police forces around the country last month on the subject of summer demonstrations, it distributed a detailed description of Wilson's "model" methods.

DISCIPLINED RANKS

Instead of restricting mass functions like the May 9 antiwar protest, Wilson begins his work by aiding them. He considers it part of his job to uphold the constitutional rights of free speech, petition and assembly. His staff participates in negotiations with march leaders that help coordinate city-provided toilet facilities, first-aid stations and speakers' platforms. Demonstrators are encouraged to train their own marshals to take the brunt of the policing. When the actions starts, busloads of special riot-control squads are parked out of sight; visible officers usually wear no riot equipment. Though all officers avoid arrests as far as possible, minor violators are occasionally photographed, tracked down and arrested later.

For major events, Wilson takes command on the streets himself. When a few antiwar extremists refused to leave the Justice Department steps last November, he hurled the first canister of tear gas, then led his men in disciplined ranks down Constitution Avenue behind the fleeing protesters. Later, after Wilson used his bullhorn to order an unruly crowd from DuPont Circle, a middle-aged woman who lived near by asked why he did not use more force. Said Wilson: "Madam, before I answer your question, let me ask you one: Are you prepared to be arrested? I just ordered this area cleared." The woman scuttled off.

"The use of violence," Wilson says drily, "is not the job of police officers." Blacks, whites and Congressmen of both parties are pleased by Wilson's aplomb. As one young longhair put it: "He's very definitely a nonneurotic pig."

Street crime, Wilson concedes, is less tractable. His basic approach is to flood difficult areas with highly qualified, tightly supervised patrolmen. His force is still 500 men short of its authorized strength of 5,100, but Wilson has intensified recruiting—in part by using a Pentagon program that releases servicemen five months early if they sign up to be cops. Thanks to his extensive lobbying before Congress, starting salaries have been raised to $8,500 (his own salary is $28,500).

Wilson also lacks the usual police reluctance to use brainy officers: this fall he expects to have 50 recent graduates of Ivy League colleges on the streets, including the Harvard-educated son of Writer Ring Lardner. Most of them were recruited by one of the nation's first such cops, David Durk.

Wilson hopes to have a full force by the end of this month. Meantime, he has increased the number of men on the beat by paying his officers to work an average 14 hours' overtime each week. He has made each of his six district supervisors personally responsible for cutting crime in his own area; two have been transferred in the past two months. Since fast response produces fast arrests—one of the few workable crime deterrents—Wilson has installed an elaborate computer system that pinpoints high-crime blocks for more efficient patrolling. In the most turbulent areas, he has increased the saturation of foot patrolmen. Using two-way radios ($875 each), officers can question the computers about a suspects record and get an answer in one minute. Wilson pays radio dispatchers bonuses for instant action; one man recently got $350 for particularly fast descriptions that snagged five fleeing robbers. He also monitors the traffic on his own police radio and curtly demands written reports when he hears dispatchers or patrolmen responding too slowly.

To keep lines open to the city's blacks, Wilson attends community meetings about three evenings a week. He has increased the number of black patrolmen on his force from 25% two years ago to 35% now—including two deputy chiefs. Nearly half his rookies in training are black. But, unlike other police chiefs, he has downplayed mere public relations. He knows only too well that a chief's lectures to community groups can be quickly undercut by incidents like one last year in which a white policeman fatally shot a black robbery suspect. The victim turned out to be an undercover cop.

So far, Wilson's white officers have been trained to treat blacks decently mainly as a matter of self-protection. A mistreated kid, for example, may hurt a cop when he gets big and dangerous. But ultimately, as Wilson sees it, every man on the beat must go beyond self-interest and somehow learn to see himself as a servant of all citizens—blacks as well as whites. Fast police response in the ghetto, Wilson thinks, is the best contribution that police can make to racial peace in his city.

Wilson's stress on service and sensitivity is not always translated into better behavior on the beat. Julius Hobson, a local black militant, claims that many D.C. cops are as harsh as ever to the black and the poor—except that "they are more clever than they used to be and usually hold back if there are cameras around." Though most of Wilson's men admire his brains and courage, subordinates have been known to blunt his directives. His order to avoid minor arrests during the November demonstrations was never announced to the cops in one district—they read about it in the newspapers. When he publicly criticized his men for overreacting to unruly demonstrators recently, the Washington Patrolmen's Association passed a resolution suggesting that he was not backing them.

"Well, now," he wrote in a seven-page reply, "I don't stand behind my men. I stand in front of them. You know very well that I have had as many invectives and rocks thrown in my proximity as any 20 of those 200 men who unanimously voted to deplore my actions. I have done this so that I will know what goes on. I sincerely believe that if a chief of police wants to have the credibility in the government and the community to effectively support his men, then he must have the guts to recognize when things are done imperfectly and to stand up and say: 'We must improve.'"

Wilson is one of a new breed of top cops who have risen to command through administration instead of traditional detective work. "He's not a cop's cop, but a community cop," says one longtime observer of U.S. police departments. Yet Wilson's earliest thirst was for rough-and-tumble action. The son of a baker in Belmont, N.C., he dropped out of ninth grade, lied about his age and served for three years on a Navy minesweeper in World War II. Before his 17th birthday, he was a gunner's mate with five battle stars for preinvasion sweeps from Anzio to Okinawa.

He was bored by his first 15 months as a cop—in the Marine Corps military police. After returning to Belmont to finish high school, he recalls, "I thought about being a lawyer until the school superintendent told me that lawyers were a dime a dozen." Instead, he joined the D.C. police in 1949. For six months he walked a somnolent beat in Georgetown, quietly arresting occasional drunks. Then, transferred to a clerk's job in the station house, Wilson taught himself a rare police skill: typing. Sixteen years, five promotions and numerous training courses later, he was working as head of the understaffed planning division—and chafing at the department's shortcomings.

When Lyndon Johnson set up a commission to probe D.C. crime, Wilson became the department's liaison man. The commission's members included Attorney William Rogers, now Secretary of State. They ranked the D.C. police as one of the worst managed in the nation, but were pleased with Wilson's receptivity to fresh ideas. Soon commission members began using their influence on Wilson's behalf. Over the objections of then Police Chief John Layton, Wilson became assistant chief in charge of field operations in 1968. Last summer, Layton was pressured to step aside, and Wilson became chief. "I am for change," he announced, "not the status quo."

CHALLENGING ASSIGNMENTS

More like a Cabinet member than a cop, Wilson heads for work each morning at 7:15 in a car chauffered by a police cadet. He speed-reads memos on the way. His office is furnished in Danish modern and hung with paintings on loan from the National Gallery of Art. He spends most days meeting subordinates and staging occasional unannounced inspection tours. At night, the officer on duty alerts him to emergencies; he is called four or five times a month.

His social life consists of playing with his two sons, Brian, 9, and Kevin, 4, mowing his lawn and reading Kipling, textbooks on sociology, psychology and oil drilling—a subject that fascinates his precise mind. Occasionally he attends embassy parties with his wife Leone, a former police stenographer. "She gets a kick out of it," Wilson allows. Before driving off in their black 1970 Ford, the Wilsons carefully lock the doors and windows of their house in Northwest Washington. They have yet to be robbed.

For a while this winter, Wilson thought that other citizens might soon enjoy the same good luck. The growth rate of Washington crime dipped for five straight months. Unfortunately, the growth resumed in May, when crime jumped 5%. Such is the baffling cycle of success followed by failure that police chiefs face across the country.

O. ROY CHALK'S INCOME FROM D.C. TRANSIT SYSTEM

Mr. WILLIAMS of Delaware. Mr. President, the Washington Post of August 5 contains an article entitled "D.C. Transit Salary for Chalk: $95,012."

The article points out that Roy Chalk's income last year from the D.C. Transit System and affiliates was $95,012, representing an increase of $40,100 over his pay from those same sources in 1968. According to the article, the manner in which Mr. Chalk's salary had been increased was not known to the Transit Commission when the recent fare increase was being considered.

Furthermore, during the recent Senate consideration of a bill, the purpose of which was to authorize the Government to buy this transit system, the threat was made that if Congress did not bail out the company it would go into bankruptcy.

At the time I was joined by other Senators in opposing this proposal, and we insisted that the Senate did not have adequate knowledge of Mr. Chalk's financial arrangements. We were unable to get a copy of his company's financial statements, nor could we get any information as to the manner in which he was bleeding the company with high salaries.

The manner in which this individual has been pampered by the District Commission and the Congress is a disgrace, and I repeat my recommendation of the earlier occasion, that before Congress or the District government advances any more money to Roy Chalk's enterprise a thorough congressional investigation be made with the first step being to subpena his books and records.

The commuters using this transit system over the years have been victimized long enough.

I ask unanimous consent that the article be printed at this point in the RECORD.

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

DISTRICT OF COLUMBIA TRANSIT SALARY FOR CHALK: $95,012

(By Jack Eisen)

O. Roy Chalk's income last year from his D.C. Transit System and affiliates in the Washington area was $95,012, an increase of $40,100 over his pay from those sources in 1968, a corporate document disclosed yesterday.

In addition, the Civil Aeronautics Board reported, Chalk received $29,999 from Trans Caribbean Airways.

That brought Chalk's total publicly disclosed compensation in 1969 to $125,011. The comparable 1968 figure was $85,612.

Chalk's increase in personal pay came during a troubled year for his various enterprises.

Trans Caribbean sought a still-pending merger with American Airlines to avert financial collapse. D.C. Transit sold off real estate, raised fares and borrowed funds to meet obligations. The tabloid D.C. Examiner was on the brink of insolvency (and folded early in 1970).

D.C. Transit recently raised its city fare to 40 cents after convincing the Washington Metropolitan Area Transit Commission that this was necessary to maintain service.

The full extent of Chalk's higher pay was not known to the commission when the fare increase was being considered. The commission knew only that he had raised his salary by $10,000, to $75,000, and it criticized even that.

The $40,000 increase from Chalk's Washington activities was disclosed in D.C. Transit's annual proxy statement to stockholders, dated Monday and signed by his wife, Claire, who is secretary of the corporation. The annual stockholders' meeting will be held Aug. 13 in New York.

Of the increase, the proxy statement said, $25,000 was a "nonrecurring payment . . .

for serving as a consultant and president and chairman of the board of Chalk House West, Inc." from 1965 to 1969.

Chalk House West, a new apartment complex on the Maine Avenue waterfront in Southwest Washington, was sold last December to S. Finley Thomas of Middleburg, Va., for a reported $1.6-million profit. The project was renamed Finley House.

In the Chalk-controlled corporate structure, Chalk House West, Inc., is a subsidiary of the D.C. Transit System (Delaware), a holding company. The D.C. Transit System (D.C.), which actually operates the bus system and pays Chalk his basic salary as president and board chairman, is likewise a subsidiary of the Delaware firm.

The transit commission, under an interstate compact, regulates D.C. Transit and the area's other bus-operating firms. But it says it lacks legal power to control salaries paid their executives, other than to refuse to permit the amounts to be included as expenses in setting fares.

It also disclaims control over holding companies such as the Delaware firm, or its direct realty subsidiaries, such as Chalk House West, Inc.

Another $5,000 of Chalk's additional pay was listed as salary for serving as board chairman of the WV&M Coach Co., the Arlington-based Virginia subsidiary of D.C. Transit. Until last year the job was unsalaried, the proxy statement said.

WV&M won a 15-cent fare increase earlier this year after telling the Washington Metropolitan Area Transit Commission in its application that it was "insolvent."

During a public hearing, one creditor warned that it was prepared to foreclose and take possession of much of the firm's bus fleet to satisfy a debt.

Transit commission records showed yesterday that Chalk's salary of $5,000 from WV&M was not disclosed either in the fare case or in the firm's annual report to the commission. (The report must show only executive salaries above $20,000.)

In granting the controversial 40-cent fare to D.C. Transit in June, the commission criticized the previously publicized $10,000 salary increase for Chalk and the lesser increases granted to other officials.

". . . To give such increases at a time when the company is undergoing (such) financial problems . . . is not an action which we can condone nor which we can ask the riding public to pay for," Commission Chairman George A. Avery wrote in a formal order.

The commission said it must "disavow" the salary increases by requiring the company to absorb the higher cost out of funds belonging to its stockholders.

Avery, on vacation, could not be reached for comment yesterday.

The proxy statement said Chalk's earnings from the bus companies in 1970 would be about the same as the $80,000 basic pay for 1969.

ECONOMIC DISASTER: AN INFLATIONARY RECESSION

Mr. TYDINGS. Mr. President, today, the Nation's No. 1 problem is the economy.

Current administration policies have thrown the American economy into reverse. Everything that should go down—prices, interest rates, unemployment—is going up. And everything that should go up—real income, the stock market, business profits, new housing starts—is going down. This economic mess is the result of the unrelenting pursuit of a narrow policy of high interest rates.

Not only has this policy of high-interest rates failed to halt inflation, but also it has thrown us into a recession as well—a recession threatening the jobs of thousands of Marylanders and the economic vitality of this Nation. For the first time in many years we find ourselves caught in an absurd economic squeeze, an inflationary recession. This combines the worst of inflation and recession: runaway prices, unemployment, and declining business activity.

Yet despite this disastrous upsetting of the U.S. economy over the past 18 months, the administration still clings stubbornly to its policy of high interest rates.

Despite the continuing assurances of the administration that the economic situation is improving, the cold, hard facts show that this is not true. This week's figures reported that the consumer price index rose another four-tenths of a percent in June; this is the same percentage increase as in May. The index of food prices in the Washington area rose seven-tenths of a percent—making a whopping total increase of over 6 percent in the last 12 months. Maybe the policy makers feel that the situation now looks good, but I cannot believe that a housewife whose food-buying dollar of last year is only worth 91 cents this year feels the same way.

Even worse are the unemployment figures for this month. In the past 4 weeks over 9,000 Marylanders lost their jobs. The rate of unemployment in the State jumped by one-half of 1 percent from 4.2 to 4.7 percent. The January–June 1970 unemployent in Maryland is up 28 percent from the same period last year. This is totally unacceptable; this smacks of a major recession. For every four Marylanders unemployed at this time last year, there are now five without jobs.

This month's figures reveal the total ineffectiveness of our present policies not their success. And if the present rate of inflation is slowed significantly in the coming months, it will be at the prohibitive cost of thousands of more jobs.

One does not have to be an economist to see that everyone is paying the price for this economic mismanagement. Let us take a look at the entire record:

For 8 straight years of Democratic administrations, unemployment—as high as 7½ percent during the 1960's—declined steadily. At the end of 1968, unemployment in this country was at the lowest point since Harry Truman left the White House—3.8 percent.

During the past 18 months, unemployment has increased 50 percent to a level of 5 percent—and many economists predict it will hit 6 percent before the year is out. In Maryland alone, more than 63,000 men and women today want to work but cannot find jobs. In Baltimore alone, the number of unemployed has nearly doubled since the new administration has come to office, from 24,000 to 44,000 men.

While far too many Marylanders are looking for jobs, all Marylanders are paying prices that continue to rise and squeeze our incomes. In the past year the price of hamburger is up 9 percent; hot dogs are up 13.5 percent; potatoes are up 15.4 percent. As every family knows, it costs more to live today than 18 months ago. Raises and gains in union contracts—all these have been wiped out by an economic policy that ignores the American family budget.

There is more to our economic crisis:

For 8 full years—starting at the end of 1960—we had uninterrupted economic growth in this country. Since 1969 the first real decline of the decade hit. And during the first half of 1970 the Nation's GNP dropped at even a faster rate than during our last recession.

For 98 consecutive months—more than 8 full years starting at the beginning of 1961—the average American's real take-home pay went up.

Today, the buying power of the weekly after-tax earnings of the average workingman is less than last year and even below 1965. The dollar you had when Nixon came to office now buys only 91 cents worth of goods.

For the last 7 years of the Kennedy-Johnson administrations the stock market registered steady growth and expansion.

This year, the Dow Jones industrial index dipped below 700 for the first time since April 1963—a loss of 300 points off its 1968 high water mark. For both large and small investors across the Nation, this drastic decline in the market has meant losing close to a third of their invested savings. Stockholders have lost roughly $160 billion since President Nixon took office, and this includes over 700,000 shareholders who live in Maryland.

Nor are these the only recordbreaking achievements of this administration.

Today, interest rates are higher than at any time in the last 100 years. This means the average citizen cannot buy a house because he cannot afford a mortgage.

A family that bought a $20,000 house the month President Johnson left office has to pay an additional $5,000 in interest alone.

In sum—the cost of living is increasing 33 percent faster than it did during the most inflationary of the Kennedy-Johnson years—and over 400 percent faster than in the best of those years.

Why have our economic policies failed so miserably?

They have brought us inflation and recession because they utilize only one tool—high interest rates. This slow and ineffective way of controlling the economy has blunted growth enough to raise unemployment, but not enough to stop inflation. We have all the burdens without any of the benefits.

It is a spineless economic policy, one that does not offend the special interest friends of the administration or the Pentagon bureaucrats who are jealously guarding their swollen budgets.

It is a policy that hurts only the average American, the family man, the wage earner, and the home buyer.

We must recognize this state of the economy as our greatest problem and attack on all fronts:

First, we must reduce the wasted spending in the Federal budget. Last year I voted with the Democratic Congress to cut the Nixon budget by $5.6 billion. This year we should cut $15 billion that is slated to go to obsolete programs and bureaucratic fumbling.

One of the worst drains on the econ-

omy results from the country's unnecessary overseas commitments.

This year Americans will turn over to Uncle Sam between $43 and $50 billion—more than $100 million a day—to finance these commitments, many of which are no longer vital to American security. We are currently supporting 1.2 million U.S. military personnel and 350,000 of their dependents stationed abroad on 2,270 bases in 33 foreign countries. What is worse, we also are footing the bill for more than a quarter-of-a-million foreign nationals in defense jobs overseas while unemployment grows in this country and the Government closes military bases in Maryland.

Since 1945, we have shipped more than $135 billion in economic and military aid to other nations. And most of it has been money down the rat hole, neither helping the people of the recipient countries nor strengthening American security.

Both our economy and our national security demand more conservative and prudent foreign and military policies which do not squander our limited financial resources around the globe.

Second, the President's policies have also failed because of his refusal to establish the voluntary wage-price guidelines of his predecessors.

Seven days after his inauguration, the President announced that the Government would not attempt to influence price and wage decisions. And we have all been paying for that Republican "hands-off"—"be nice to special interests"—policy in the form of higher prices ever since:

In 1969, copper prices went up five separate times for an unbelievable total increase of 24 percent.

In 1969, the price of rolled steel increased during the first 9 months alone by an amount equal to the percentage increase during the entire 8-year period from 1961 through 1968. And rolled steel goes into every automobile and virtually every appliance Americans buy.

It is little wonder that inflation continues to hit each of us in the pocket book with no end in sight. When the solutions offered for a problem fail to deal with the causes, it hardly comes as a surprise when they do not succeed. We cannot halt inflation until we cut the fat in the budget and hold the line on price increases.

The only inexpensive item left in America is talk. But we have had enough rhetoric about our ailing economy. What we need now is action.

CONGRATULATIONS TO PRESIDENT NIXON ON SUBMISSION OF DRAFT TREATY ON THE SEABEDS

Mr. PELL. Mr. President, for nearly 3 years I have been urging the U.S. Government to provide leadership in the formulation of new international agreements to govern the activities of nations in ocean space, including those areas of the world seabeds that lie beyond national jurisdictions.

On Monday of this week, the United States took a major and most welcome step toward providing the needed international leadership by submitting a draft treaty on the seabeds to the United Nations Committee on Peaceful Uses of the Seabeds in Geneva.

The importance of this proposal cannot, I believe, be overstated. On Monday, I issued a statement to the press expressing my delight at the submission of the draft treaty by the United States, and extending to President Nixon my congratulations on his decision to undertake diplomatic initiative despite the strong pressures brought to bear by the very powerful U.S. petroleum industry. I ask unanimous consent that the text of my statement and an excellent editorial on the same subject, published in the Washington Post of Wednesday, August 5, be printed in the RECORD.

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

SENATOR PELL CONGRATULATES PRESIDENT NIXON ON SUBMISSION OF DRAFT SEABEDS TREATY

Senator Claiborne Pell, Chairman of the Ocean Space Subcommittee of the Senate Foreign Relations Committee, today issued the following statement regarding the submission by the United States of a draft seabeds treaty to the United Nations Seabeds Committee meeting in Geneva:

"The submission by the United States of a draft treaty governing seabed mineral exploitation is one of those rare occasions that can be described as truly historic.

"I am more than delighted—I am exhilirated—that the Government of the United States has, with this draft treaty, assumed world leadership toward establishing a regime for the seabeds—an area covering 70 percent of our earth.

"I congratulate President Nixon on his decision to submit this draft treaty. I think it should be known that the decision to submit this excellent proposal to the United Nations Seabeds Committee was made despite strong opposition from the oil companies, one of the strongest and most powerful industrial lobbies in the United States. That the President resisted those pressures is much to his credit.

"I speak as one who has labored intensely for three years toward the goal of international negotiations on a world seabeds treaty. The submission of this draft treaty by the United States is gratifying to me, particularly because of the similarity between the Administration's proposal and the draft treaty which I introduced as a Senate resolution.

"I very much hope that other members of the United Nations Seabeds Committee will give the United States draft treaty their earnest consideration and will judge it on its merits and in terms of its potential to underwrite international community objectives.

"Once again, I wish to express my heartfelt congratulations to President Nixon and those within the Administration who shared in making this diplomatic initiative possible."

A FINE SEABED PROPOSAL IS LAUNCHED

The Nixon administration can be proud of the draft of a proposed international seabed treaty which it submitted at Geneva Monday. The draft bears out, and in some respect embellishes, the imaginative and generous prospect the President opened up last May when he first proposed a treaty. His promise then was to protect and regulate the immense spaces—three fourths of the world's total area—at the bottom of the seas, which are now unprotected and unregulated; and also to provide for exploiting their economic resources and for sharing the expected billions of dollars in seabed revenues among all the peoples of the world.

The essence of the administration proposal—and the main source of domestic opposition to it—is to limit each state's coastal-shelf sovereignty to waters no deeper than 200 meters. Beyond, the coastal state would act as an international trustee, administering the seabed and keeping for itself a third to a half of the revenues from exploitation while turning over the rest to a new international authority which would manage the resources (pollution control, marine parks, etc.) and finance economic development in developing countries.

It was courageous as well as enlightened for Mr. Nixon to fix a narrow national shelf, knowing that American oil companies favor a far wider shelf and that they regard a narrow one as a "giveaway." But the United States has many oceanic interests—navigation, defense, research, fishing and so on—which it pursues not only off its own coast but off the coasts of a hundred other countries. Since seabed claims tend to harden into claims on the water and air "columns" above, an American assertion of a wide shelf would inevitably inspire similar if not broader claims by other coastal states. The result would be a net loss of the freedom of the seas which this country's varied interests require. Indeed, a leading independent expert, Columbia Law School Professor Louis Henkin, believes that a narrow shelf—far from hurting American companies—"may even give them access to more minerals than would a system in which the coastal nations of the world can grab large areas of seabed."

The companies' real objection, Mr. Henkin suggested to Congress last year, is that oil and gas taken from area beyond 200 meters might receive unfavorable tariff and tax treatment. "Surely the legitimate needs of the oil companies can be attended to by Congress, within the national family," he argued. "Surely such considerations should not determine the national policy in regard to mineral resources of the seabed; even less should they enjoin a national policy that would jeopardize other interests in the seabed and in the sea as a whole." This is the appropriate perspective in which to view the President's seabed proposal, and the opposition to it.

ADMINISTRATION'S REVENUE-SHARING PROPOSALS

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the RECORD the breakdown of figures from the Treasury Department on the distribution of Federal funds to the State of Texas under the administration's revenue-sharing proposal. I hope to see this major reform of our federally heavy governmental system considered again early next session, if not before the end of the current session. I know that my own State could make excellent use of these funds to upgrade local law enforcement programs, school systems, water and sewer systems, and all other State and local governmental functions which are close to the people and essential to their real health and well-being. Congress has been usurping the funds and prerogatives of State and local governments for years, and it has now become so bureaucratically vast that huge amounts of the taxpayers funds are siphoned off in administrative costs and never returned to the States to serve the people who work to pay those taxes.

There is even greater reason than this to enact a revenue-sharing proposal; that is the infringement of federally determined policies and priorities on the right of our citizens to determine their

own community goals, policies, and priorities.

It is not my concept of true federalism that the Federal Government should usurp the decisionmaking power of State and local governments. I have cities and schools in my State which will not even accept free property and facilities from Federal surpluses through HEW disposal channels because they are forced to accept various odious Federal requirements on operating policies in order to receive the property. They would rather pay for the surplus property in a regular property disposal through GSA. Does not that tell us something about the extent to which the Federal Government has encroached upon the prerogatives of self-government, when a city or school chooses to tax its own constituents in order to avoid the strings attached to donated Federal property?

The only feasible method that we have to break the continuing trend toward greater Federal control of our local affairs is to start channeling Federal tax revenue back to the States. This loss of revenue to support Federal expenditures will cause a retrenchment in Federal programs, and Congress will have to ration the limited funds it can raise with a great deal more care and reason. Unwise and unnecessary programs would either be dropped or reformed, and Congress will be much more interested in getting a full dollar's worth of productivity out of each scarce dollar it receives in taxes.

I think this would be a most desirable turn of events, and would greatly strengthen true federalism in our country and greatly increase citizen support for our Government.

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

ADMINISTRATION'S REVENUE SHARING PROPOSAL—TEXAS

Total annual amount to Texas	$248,193,838
State government share	185,844,727
Local government share	62,349,111
To cities	40,174,918
To counties	22,174,193
Local share to cities:	
Abilene	439,787
Amarillo	894,510
Arlington	225,238
Austin	1,178,427
Baytown	199,007
Beaumont	813,315
Brownsville	182,859
Bryan	178,614
Corpus Christi	1,253,936
Dallas	5,654,386
El Paso	1,398,586
Fort Worth	2,495,135
Galveston	693,834
Garland	220,841
Grand Prairie	165,119
Houston	6,937,737
Irving	267,769
Laredo	206,058
Longview	153,520
Lubbock	635,610
McAllen	314,166
Mesquite	160,495
Midland	333,271
Odessa	374,134
Pasadena	325,538
Port Arthur	392,025
Richardson	194,686
Local share to cities—Con.	
San Angelo	$259,581
San Antonio	2,509,312
Texas City	198,477
Tyler	271,711
Victoria	188,848
Waco	489,672
Wichita Falls	713,773
All other cities	9,254,941
Total to cities	40,174,918
Local share to counties:	
Andrews	164,437
Bexar	623,784
Brazoria	358,971
Cameron	236,080
Collin	164,816
Dallas	1,588,420
Duval	231,303
Ector	475,722
El Paso	278,762
Galveston	530,080
Gray	157,917
Gregg	163,300
Harris	2,881,020
Hidalgo	281,340
Jefferson	502,257
Johnson	154,506
Lubbock	195,293
McClennan	210,000
Montgomery	159,130
Navarro	161,632
Nueces	525,379
Scurry	162,087
Smith	151,700
Tarraut	772,300
Travis	324,022
Victoria	210,986
Wharton	162,466
Wichita	279,368
All other counties	10,067,115
Total to counties	22,174,193

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess subject to the call of the Chair, with the understanding that the recess not extend beyond 12:30 p.m. today.

The motion was agreed to, and at 11:23 a.m. the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 12:22 p.m., when called to order by the Presiding Officer (Mr. HUGHES).

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, notwithstanding the fact that the morning hour has expired, I ask unanimous consent that the period for the transaction of routine morning business continue, with statements therein limited to 3 minutes, upon the conclusion of which the unfinished business then be laid before the Senate.

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

PRESENTATION OF MEDAL OF HONOR TO LT. COL. WILLIAM A. JONES III, AND 1ST LT. GARY L. MILLER

Mr. BYRD of Virginia. Mr. President, this afternoon the President of the United States will present, in the name of the Congress, the Medal of Honor to two Virginians who lost their lives in Vietnam: Lt. Col. William A. Jones III, U.S. Air Force, and First Lt. Gary L. Miller, U.S. Army.

Mr. President, both of these gallant Virginians gave their lives for their country and did so in an heroic way. They are being cited by the President of the United States for conspicuous gallantry in action. Both of these officers acted above and beyond the call of duty in serving their Nation and their fellow citizens.

Mr. President, Lt. Col. William A. Jones III, has a distinguished connection with Congress. His grandfather, William A. Jones, represented Virginia in the House of Representatives for many years. Representative Jones was regarded during his congressional days as an outstanding Congressman and a valuable contributor to the Congress.

His grandson inherited the many fine qualities of Representative Jones. I invite the attention of the Senate today to the gallantry of Lieutenant Colonel Jones, whose bravery and courage are being cited by the President this afternoon. At the White House ceremony, his widow, Mrs. Jones, will be accompanied by her three daughters and the mother of Colonel Jones.

First Lt. Gary L. Miller is from Covington, Va. The Medal of Honor will be presented today to his widow for his combat actions above and beyond the call of duty.

Both of these men, Colonel Jones and Lieutenant Miller, deserve the appreciation of our Nation for their devotion and sacrifice to their country. I shall be present this afternoon when the Medal of Honor is presented to their widows. I take this occasion to cite the heroism of these two men.

I ask unanimous consent that the citation in regard to Colonel Jones and the citation in regard to Lieutenant Miller be printed at this point in the RECORD.

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

CITATION

The President of the United States of America, authorized by Act of Congress, March 3, 1863, has awarded in the name of The Congress the Medal of Honor to Lieutenant Colonel William A. Jones, III, United States Air Force, for conspicuous gallantry and intrepidity in action at the risk of his life above and beyond the call of duty.

On 1 September 1968, Colonel Jones distinguished himself as the pilot of an A-1H Skyraider aircraft near Dong Hoi, North

Vietnam. On that date, as the on-scene commander in the attempted rescue of a downed United States pilot, Colonel Jones' aircraft was repeatedly hit by heavy and accurate antiaircraft fire. On one of his low passes, Colonel Jones felt an explosion beneath his aircraft and his cockpit rapidly filled with smoke. With complete disregard of the possibility that his aircraft might still be burning, he unhesitatingly continued his search for the downed pilot. On this pass, he sighted the survivor and a multiple-barrel gun position firing at him from near the top of a karst formation. He could not attack the gun position on that pass for fear he would endanger the downed pilot. Leaving himself exposed to the gun position, Colonel Jones attacked the position with cannon and rocket fire on two successive passes. On his second pass, the aircraft was hit with multiple rounds of automatic weapons fire. One round impacted the Yankee Extraction System rocket mounted directly behind his headrest, igniting the rocket. His aircraft was observed to burst into flames in the center fuselage section, with flames engulfing the cockpit area. He pulled the extraction handle, jettisoning the canopy. The influx of fresh air made the fire burn with greater intensity for a few moments, but since the rocket motor had already burned, the extraction system did not pull Colonel Jones from the aircraft. Despite searing pain from severe burns sustained on his arms, hands, neck, shoulders, and face, Colonel Jones pulled his aircraft into a climb and attempted to transmit the location of the downed pilot and the enemy gun position to the other aircraft in the area. His calls were blocked by other aircraft transmissions repeatedly directing him to to bail out and within seconds his transmitters were disabled and he could receive only on one channel. Completely disregarding his injuries, he elected to fly his crippled aircraft back to his base and pass on essential information for the rescue rather than bail out. Colonel Jones successfully landed his heavily damaged aircraft and passed the information to a debriefing officer while on the operating table. As a result of his heroic actions and complete disregard for his personal safety, the downed pilot was rescued later in the day. Colonel Jones' conspicuous gallantry, his profound concern for his fellowman, and his intrepidity at the risk of his life, above and beyond the call of duty, are in keeping with the highest traditions of the United States Air Force and reflect great credit upon himself and the Armed Forces of his country.

CITATION

The President of the United States of America authorized by Act of Congress, March 3, 1863, has posthumously awarded in the name of The Congress the Medal of Honor to First Lieutenant Gary L. Miller, United States Army, for conspicuous intrepidity and gallantry in action at the risk of his life above and beyond the call of duty.

First Lieutenant Gary L. Miller, Infantry, Company A, 1st Battalion, 28th Infantry, 1st Infantry Division, was serving as a platoon leader on the night of 16 February 1969, in Binh Duong Province, Republic of Vietnam, when his company ambushed a hostile force infiltrating from Cambodian sanctuaries. After contact with the enemy was broken, Lieutenant Miller led a reconnaissance patrol from their prepared positions through the early evening darkness and dense tropical growth to search the area for enemy casualties. As the group advanced they were suddenly attacked. Lieutenant Miller was seriously wounded, however the group fought back with telling effect on the hostile force. An enemy grenade was thrown into the midst of the friendly patrol group and all took cover except Lieutenant Miller, who in the dim light located the grenade and threw himself on it, absorbing the force of the explosion with his body. His action saved nearby members of his patrol from almost certain serious injury. The extraordinary courage and selfishness displayed by this officer were an inspiration to his comrades and are in the highest traditions of the United States Army.

Mr. BYRD of West Virginia. 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. 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.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 1076. An act to establish a pilot program in the Departments of Interior and Agriculture designated as the Youth Conservation Corps, and for other purposes; and

H.R. 16915. An act making appropriations for the Legislative Branch for the fiscal year ending June 30, 1971, and for other purposes.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess, subject to the call of the Chair, with the understanding that the recess not extend beyond 1 p.m. today.

The motion was agreed to; and at 12:33 p.m., the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 1 p.m., when called to order by the Presiding Officer (Mr. BYRD of West Virginia).

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed a bill (H.R. 18546) to establish improved programs for the benefit of producers and consumers of dairy products, wool, wheat, feed grains, cotton, and other commodities, to extend the Agricultural Trade Development and Assistance Act of 1954, as amended, and for other purposes, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to a concurrent resolution (H. Con. Res. 679) authorizing the printing of additional copies of "Education in Israel" for use of the Select Subcommittee on Education, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 18546) to establish improved programs for the benefit of producers and consumers of dairy products, wool, wheat, feed grains, cotton, and other commodities, to extend the Agricultural Trade Development and Assistance Act of 1954, as amended, and for other purposes, was read twice by its title and referred to the Committee on Agriculture and Forestry.

HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 679) authorizing the printing of additional copies of "Education in Israel'" for use of the Select Subcommittee on Education, was referred to the Committee in Rules and Administration.

SPANISH BASES

Mr. FULBRIGHT. Mr. President, it is because of my grave concern for the overall relationship between the executive and legislative branches in the sensitive area of foreign policy that I speak today of the manner—not the substance—in which the Givernment of the United States is about to enter into an important agreement with Spain. The foreign policy implications of the agreement spread far beyond Spain. But the domestic implications are even broader. They go first to the administration's respect for the commitments resolution—a sense of the Senate resolution that was approved last June 25 by a vote of 70 to 16.

They go second to the administration's sense of the public's role in understanding and thus supporting foreign commitments.

Finally, events of the past 2 weeks go to the serious question as to the accuracy of representations made by Department of State officials to the Foreign Relations Committee with respect to the timing of the signing of the Spanish agreement.

In my speech of Monday, I said:

If the Senate and through it the people of the United States are to regain for themselves their responsible role in the making of commitments with foreign countries, action must be taken within the next two weeks with regard to the proposed agreement with Spain.

That time limit was set advisedly because I was aware the State Department wished to sign the agreement prior to September 26, the date on which the current extension runs out. I hoped for some Senate action well before that date and thus before Congress was presented with a fait accompli in the form of a signed agreement.

It was with some surprise, therefore, that I received the information yesterday afternoon from Secretary Rogers that the signing was to take place tomorrow.

Prior to that notification, all the information I had received had indicated the signing would await a response to my request for some form of public discussion if not specific Senate approval in terms of a treaty.

That point was made a number of times during the discussion of the agreement before the committee on July 24 with Under Secretary of State U. Alexis Johnson and Deputy Defense Secretary David Packard.

I do not think there is any security regulation violated by my recalling the statements made to the committee by those two gentlemen 11 days ago.

Secretary Packard at one point said:

I do not disagree with the idea that there ought to be free discussion and we ought to talk about whether this is a good or not a good agreement.

He later added:

I think we ought to consider this suggestion (for an open hearing). We will give it consideration.

In response to a suggestion that—in order to guarantee congressional and public understanding of the implications of the agreement—it be submitted as a tragedy or that public hearings be held, Under Secretary Johnson asked whether publication of a sanitized version of that day's hearing would serve the same purpose.

I said it was doubtful that such an arrangement would adequately meet the need for public discussion and based my decision partially on the delays encountered by the Symington subcommittee in getting its transcripts cleared for publication.

Under Secretary Johnson had noted that time was a problem, but only in that the present extension ran until September 26.

The situation was left, as of July 24, that Under Secretary Johnson would consult the Secretary on whether the agreement would be submitted to the Congress as a treaty or, if not, whether the Under Secretary would agree to come in open session and discuss its significance and the interpretations given to it by the administration.

The Department's decision was to be delivered to the committee the following Monday or Tuesday—July 27 or 28. On Tuesday, Assistant Secretary of State David Abshire informed the Chief of Staff, Mr. Marcy, that plans for an early signing were being put off and, therefore, there was no rush in the Department replying to the committee request for a treaty or a hearing.

Without hearing from the Department, but realizing that time to discuss the matter was limited by the September 26 deadline, I decided to review the agreement against past testimony on Spain given the committee. Some questions occurred to me that were not apparent in the few hours I had to study the agreement during the committee session. My statement of August 3 was designed to raise some of these questions and present my views to the Senate. It must be remembered that although this matter was undergoing debate in Spain both in its legislative body, the Cortes, and in the press, nothing was being discussed in this country thanks to the security classifications attached by the administration.

When a meeting with Secretary Rogers was set for yesterday, I expected it would represent an answer to my request for some form of public discussion. I was not only disappointed that the decision was made against submitting a treaty, but surprised that a signing date was set for tomorrow which would totally eliminate the opportunity for any rational public discussion before the administration went ahead.

Such a step not only represents continuation of the questionable past policy of making alliances without congressional approval; it also violates the inherent necessity for officials of the executive and legislative branches to respect the position of the other, even in matters over which they disagree.

The administration may gain a tactical advantage on the Senate floor in debate over the Spanish agreement by having already signed it and thus committed the prestige of this Nation toward fulfillment of its terms. But due to the manner in which some officials acted in order to keep secret the terms of the agreement prior to that signing, I believe something has been lost in terms of credibility both here in the Senate and with the Nation as a whole.

I have great respect for the Secretary of State and therefore doubt that this type of maneuvering represents his views.

It appears more likely that in this matter—which is not at the center of his interest these days—the bureaucracy has taken over control of policy. The drive of the bureaucrats to continue past practices by keeping the Spanish agreement in its present, primarily secret form is understandable. Many of the same State Department personnel are involved in today's negotiations that were involved in the agreements of 1963 and 1968. For them, to depart from a past course would be tantamount to admitting that they were wrong before.

Despite the fact that the agreement has been signed, I will press for my proposed amendment to the defense authorization bill. That will guarantee some debate—even if part must be in closed Senate session—if the Department continues to refuse to submit this agreement as a treaty or fails to present witnesses in public hearing so that the details and implications of this matter can be understood.

Far more than base rights in Spain are involved. And it is no answer for any Senator to give that a reassessment of commitments should take place, but that it should start with some country other than Spain.

Spain is where it should start.

A LETTER TO PRESIDENT NIXON

Mr. FULBRIGHT. Mr. President, a courageous and sensitive doctor from Florida, Dr. John J. Fisher, wrote a remarkable letter to President Nixon which was printed in the Miami Herald of August 3, 1970.

This letter is remarkable because Dr. Fisher is a Republican, a member of the Florida State Senate, the father of 10 children and sufficiently concerned about the future, indeed the present, of our country to take the trouble to write his President protesting the barbarous conduct of certain over-zealous representatives of the Government.

This letter is a moving account of one citizen's experience with the growing mood of intolerance in our land, and I ask unanimous consent to have it printed in the RECORD.

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

DR. FISHER'S LETTER TO NIXON

DEAR MR. PRESIDENT: I am forty-seven years of age and, although a practicing physician, have twice been elected to the Florida Senate as a member of the Republican Party.

This summer I rented a large camper and my wife and I took off with seven of our children for a month's tour of this nation. We believed that such a trip would provide an excellent opportunity for all to see our great land from coast to coast, and would allow us to discuss together, against such a background some of the problems which seem to be besetting it today. We hoped also to develop a better understanding between our generation and theirs . . . with many of our campfire and after dinner discussions concerning the state of law and order in our country.

Time and again we older have tried to explain to our children that laws are to be upheld until, if they are unfair, they are repealed. We pointed out that there are acceptable means embodied within our Constitution to effect the correction of any wrong within our system. We argued that law enforcement officers exist for their protection and benefit, and that the alternative to law and order is lawlessness and anarchy. Truly, Mr. President, the relation of the police to our younger generation is, to use one of their own expressions, one of their biggest "hangups."

We stopped to spend a week at Yosemite National Park. . . . Since it happened to be the week preceding the Fourth of July weekend, the choice of camping sites was limited. I admit I was dismayed to find ourselves assigned to one in which we were surrounded by those youth whom we have, in our American way, labelled "hippies."

Such apprehension was soon dispelled, however, as we found these long-haired, oddly-dressed children to be more polite than most of my youngsters' college friends who visit our home. The campground was neat and orderly, and altogether one of the most friendly and pleasant that we visited. Curfew was observed, and we were very impressed indeed by the spirit of brotherhood that abounded . . .

We were at the extreme end, bordering a large meadow that stretched beyond. The grassy clearing was surrounded on all sides in the near distance by Yosemite's granite mountains and provided a beautiful natural gathering place for the youngsters, whose transportation and entertainment resources are necessarily limited. In the evenings before supper I would take my two-year-old son over to the meadow and we would watch them throw Frisbees, run foot races, and sing songs.

One afternoon two of my sons, aged sixteen and thirteen, and I took a playball to kick around, and subsequently found ourselves engaged in a pick-up soccer game with some of the oddest looking players on any athletic field. I have never seen the game played more cleanly or in a more friendly spirit, however, and was indeed sorry to see it end.

On Friday July 3 I heard that the meadow was to be closed at 7 p.m., two hours before darkness comes at Yosemite, and three before park curfew. No reason for such action was given, but there were rumors that the concessioneers at the Park, such as the Curry Company, were fearful of the young people congregating. This held some ring of plausibility to me since I had observed that the stores employ uniformed guards to keep barefoot children out of their establishments.

At 7 p.m. I was taking a predinner stroll with my twenty-one-year-old married daughter, who had joined us in San Francisco, when it happened. First came the trucks from one side, with bullhorns ordering all off the meadow and back to their campsites. Before one could comply with this order, mounted troops wearing helmets and brandishing clubs, some twelve to fifteen in number, rode in from the other direction.

Before my very eyes we watched these children stampeded, several being clubbed, and two thrown to the ground, handcuffed, and led off to jail. Their crime I could not see, except that one, a David Vassar, who was at Yosemite making a documentary, had a camera. This was knocked from his grasp as he was beaten.

Can this be America, I thought, the America we were telling our children still existed? Where have I been? What must my teenagers think?

My daughter, who had become separated from me in the attack was led up to me roughly held by a ranger who said, "This girl has no identification on her but claims she's your daughter." If I hadn't been there, it would have been off to the enclosure with her. . . .

The children were driven to the edge of the campground by the rangers, who stood menacingly on their mounts, flanked by the ground troops. The harsh expletives that resulted from the charge soon turned to song as surprisingly cooler heads among them began to prevail.

"Come along people now,
Smile on your brother
Everybody get together,
Try to love one another,
Right now!"

I asked a nearby ranger how I might contact the superintendent of the park, since I felt a riot threatened, one which could be averted by action on his part: either a satisfactory explanation to all of us for the early curfew on the meadow, or a rescinding of his order for such. I was told that he was unavailable until Monday morning at 8:30 a.m., almost three days later.

I finally met the assistant superintendent, a Mr. Russ Olsen, as he arrived on the scene. When I asked him the reason for the police action I had witnessed, he said the hippies were littering the meadow. When I volunteered that I had been at Yosemite five days and never even seen a candy wrapper in the field, he replied that the hippies disturbed the peace. When I answered that I had camped next to this area for five days and heard no disturbance until the rangers came, and that I had elicited similar opinions from other older ones in the campground, he said it was bad for the hippies to congregate. Would he limit the size of our church edifices, Mr. President, on such reasoning?

Despite the urging, subconscious or not on their part, of the rangers for the youth to riot by such announcements over their loudspeakers as "You are a disorderly mob," the youngsters slowly returned to their campsites, the more radical ones being quieted by their friends.

The next day many of the long-haired jean-clad cult quietly departed. . . .

When we returned to our campsite late that afternoon from our daily hike, the usual meadow games were in progress, but with a few changes. There seemed to be more concern with the hour as seven approached, and a national television crew was on hand. A small new sign stating the new curfew hour for the meadow had been placed by the rangers, and a curious crowd was already lining the highway that bordered the meadow.

Promptly at seven the public address warning sounded. Helmeted rangers grouped at one side, clubs and Mace at the ready. A string of armed horsemen filed in from a new direction, into the area between the meadow and the campground. . . . They took a position where they were relatively screened from view by those standing at the edge of the field. The young people in the meadow did not see them. Moreover, they had decided that their intentions would appear more peaceful if they sat, and had formed a huge circle of several hundred on the grass.

Even the veteran news crew was unprepared for what happened next. Without any warning, the horsemen suddenly burst forth in a pack, riding their iron-shod steeds directly into the midst of the seated assembly, at full gallop, scattering those who were fortunate enough not to be run over. . . . The foot troops then moved in with their clubs, while the horsemen circled about and returned swinging lariats and belts. In one moment the peaceful meadow had been changed into a sickening spectacle by these "peace" officers.

I wonder, Mr. President, if you have ever been charged by a horseman? I can tell you now by experience that it makes you want to pick up anything you can, stick or stone, to ward off his charge. I threw my cigar, the only thing I had at hand, at the one that came directly at me, his horse already out of control. Through no effort on his part, he narrowly brushed me and went riding down into the campsites before he was able to rein in. If my infant son had been playing outside the camper, he might have been trampled to death.

Their escape route purposely cut off, the young people did the only thing they could, they fought back. I found myself cheering as with their bare hands and the few missiles they were able to find in the field, they drove the rangers from the meadow. One girl planted a hastily lettered sign "People's Park" in the place of the one announcing the new curfew, and they rushed to the intersection and put up a road block at that point from which reinforcements might be expected. The park service and its rangers had the riot they wanted at last.

Even so, the large and noisy crowd refrained from taking the large store that stood unprotected nearby. The only violence I witnessed at the intersection was when a sheriff attempted to drive his car into the crowd and almost ran down a middle-aged woman on her bicycle as she tried to get out of his way. Fireworks were set off and a celebration party ensued. We noted no rangers in the campgrounds that evening as we sat eating supper. The young people had won their park, at least for the evening.

I was awakened in the middle of the night, sometime between three and four o'clock, by the blood-chilling screams of a human being beaten. I slipped out of bed and into the cab of the camper to see what was happening. At first all was quiet again, and then another shout of agony, this time nearer by. A short time later the nearest raiding party came into view.

Flashing strong electric beams, they moved quietly from campsite to campsite, waking the sleeping occupants up, thrusting them against trees for search, scattering their belongings. If any objected, even verbally, he was beaten. I subsequently learned there were ten to fifteen in these patrols, some rangers, some highway patrolmen, and some United States marshals. They carried riot guns, sidearms, and clubs. Now they enjoyed superiority in numbers as well as weapons, as they singled out each campsite.

They would have spared our camper as they were limiting their efforts to the children, except they saw me watching them. The raiding party came up to my open window, six lights in my face. I was ordered by a voice behind one of these to produce my registration. I asked if I might see their credentials, and received the reply, "I don't need credentials."

I replied that it was the middle of a black night, they had come up to my camper, on my campsite, and they should identify themselves at least. "We can take him in for delaying a peace officer," another flashlight holder growled.

Recognizing their brand of law and order, I pointed out my registration, taped to the lower left windshield as recommended.

I learned from a newspaper account later forwarded me that over one hundred of these young people were arrested "for resisting a law officer." The following morning as we left the park after a shorter stay than we had planned, I heard two rangers bragging about beating up some of their prisoners.

Imagine, over a hundred of our next generation now carry permanent emotional scars against our type of law enforcement. . . . And let's go further, if this came about in the peace of one of our national parks, how soon shall we dread the middle-of-the-night knock on the door at home?

President Nixon, tell me what words I can find to tell my own children now that will counteract the spectacle of law and order which they have personally witnessed on federal property.

Please explain to me how this, which now seems like an awful dream, can happen in our place, in our time. And tell me how you and I can make this nation the America you say it is, and until now, I thought it was.

Until you can do this, I shall be ashamed to be a Republican, and for the first time in my life, be less proud of being an American.

The PRESIDING OFFICER (Mr. BYRD of West Virginia). The time of the Senator from Arkansas has expired.

Mr. FULBRIGHT. Mr. President, I ask unanimous consent to proceed for 10 additional minutes.

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

THE O'NEILL REPORT

Mr. FULBRIGHT. Mr. President, in considering the wisest course of action to take with regard to the Safeguard system, we are asked to take so much on faith because we are dealing with a complicated weapons system whose technical virtues and defects we laymen cannot possibly understand. But we can understand what those who do know about such things say. And we can understand all too plainly when we are told half truths or even less than half the truth.

As my colleagues in the Senate may remember, when the Safeguard system was first proposed by the administration last year, Deputy Secretary of Defense Packard appeared before a subcommittee of the Foreign Relations Committee to explain how the system would work. In the course of his opening statement on March 26, 1969, which appears on page 260 of the hearings on "Strategic and Foreign Policy Implications of ABM Systems," Mr. Packard said:

There must be continuous review of the growing Soviet nuclear forces and continuing efforts to insure that our deterrent cannot be eroded. This was a concern of the past Administration. It was my concern when I started my review of our strategic nuclear posture.

I then said to Mr. Packard:

I think it would be very interesting to have before this Subcommittee just who participated in this review and how and in what depth it was made. The reason that particu-

larly appeals to me is that this Committee has done some reviewing, too, with some of the leading authorities in the field of nuclear warfare. . . . I think we and the public ought to be able to compare the nature of this review. . . . In your review, did you go outside and employ any independent people to analyze the feasibility and advisability, the wisdom, of this program? . . . I would like to know what was the nature of the review and who participated in it.

Mr. Packard replied:

One of the men that I talked to, I have a very high regard for, is Professor Panofsky.

Two days later, Dr. Panofsky appeared before the subcommittee and began his testimony by saying:

To clarify the record, I would like to state that I did not participate in any advisory capacity to any branch of the Government in reviewing the decision to deploy the current modified Sentinel or Safeguard system—I appreciate having had the opportunity of an informal discussion with Mr. David Packard, Deputy Secretary of Defense, several weeks ago prior to the modified Sentinel decision.

The chairman of the subcommittee then asked Dr. Panofsky whether he had held an extended conversation with Mr. Packard and whether he had called on Mr. Packard or whether Mr. Packard had called on him. Dr. Panofsky replied that they had talked for about half an hour and that:

We happened to accidenta ly meet at the airport.

Dr. Panofsky then went on to testify in detail on the Safeguard system and concluded by saying that he considered the deployment of Safeguard "an unwise decision from many points of view, from the point of view of sound engineering judgment, economy, and stopping of the arms race."

This year those who attended the hearings held by the Subcommittee on Arms Control, International Law, and Organization had a similar experience, one might almost say an identical experience, in the loose citing of authority by the Defense Department. The story begins on June 4, when Dr. John S. Foster, Jr., Director of Defense Research and Engineering, appeared as a witness before the subcommittee. In the course of the questioning, I said to Dr. Foster:

You know, of course, Mr. Foster, that this country has spent over a thousand billion dollars on military affairs since World War II. You also know that every former Presidential science adviser is opposed to expanding Safeguard at this time. We have had most of them testifying before this Committee. In view of this record, I don't see how you can be so confident of your judgment about these matters.

Dr. Foster replied:

Well, Mr. Chairman, let me just simply point out that I asked a group of scientists to come together as an ad hoc committee and, before the Secretary of Defense made his recommendation to the President, review the program. I deliberately chose scientists who opposed the deployment of Safeguard as well as those who favored it. In fact, as I recall, when they met there were more against it than for it. I had, however, one very simple instruction for them—to put politics aside and just ask the question: Will this deployment, would these components, do the job that the Department of Defense is trying to do? And I gave them a range of possible deployments, since the Secretary had not yet made up his mind. There was considerable concern about this move, but the report sent to the Secretary of Defense said that this equipment will do the job that the Department of Defense wants to do.

I then asked Dr. Foster for the names of the scientists on this ad hoc committee. Dr. Foster said that the panel had been chaired by Prof. Lawrence H. O'Neill of Columbia University and had included among its seven members Dr. Sidney D. Drell, deputy director of the Stanford Linear Accelerator Center, and Dr. Marvin L. Goldberger of Princeton University. This testimony appears on pages 441 and 442 of the subcommittee hearings on "ABM, MIRV, SALT, and the Nuclear Arms Race."

So much for chapter I of the O'Neill report story. Now to proceed to chapter II. Dr. Drell and Dr. Goldberger apparently felt that Dr. Foster had misrepresented the conclusions of the O'Neill panel for they subsequently wrote the subcommittee chairman. Their letters appear on pages 522 and 523 of the hearings. In his letter, Dr. Drell said:

Dr. Foster remarked during his testimony that '. . . the report was sent to the Secretary of Defense, and what it said was that this equipment will do the job that the Department of Defense wants to do.' *That is an incorrect statement* since the report contains no such far-reaching conclusion.

Dr. Drell then repeated statements made before a House subcommittee which included these assertions italicized by Dr. Drell for emphasis:

There have been extensive studies, and I believe it is fair to say that all now recognize that Safeguard, even working perfectly, and with a full nationwide Phase II deployment costing about $10 billion can be effective in preserving 300 Minuteman missiles, which is deemed adequate as a retaliatory force, against only a very narrow band of models of an assumed Soviet strike. . . . All analyses of which I am aware make it clear that if defense of Minuteman is the principal or sole mission of Safeguard, its further deployment cannot be justified.

Dr. Goldberger's letter said:

Although I have not seen Dr. Foster's testimony, I have been informed that I was named as a member of a panel chaired by Dr. Lawrence O'Neill whose report was described by Dr. Foster as follows: '. . . the report was sent to the Secretary of Defense, and what it said was that this equipment will do the job the Department of Defense wants to do.'

I can only presume that the implication here is that our panel supported the arguments presented by Dr. Foster and the Department of Defense in justifying the next phase of Safeguard to your Committee. *The report took no such position.*

Dr. Drell and Dr. Goldberger then testified before the subcommittee on June 29. Both witnesses repeated the statements made in their letters. In the course of his testimony, Dr. Goldberger also said:

I have studied much of the testimony presented to this and other Committees of the House and Senate and am struck by two things. The experts who testified against Safeguard emphasized the technical shortcomings of the system in tremendous detail, got into hair-splitting arguments over whether it took 1,001 or 1,234 Soviet SS–9 missiles to knock out Minuteman, whether the system would or would not work when needed, et cetera, and in general conveyed an unfortunate impression of complexity and controversy that seemed to be beyond the grasp of all but the technical sophisticates. In addition, they failed on occasion to distinguish sufficiently clearly between opposition to ABM in general as compared to opposition to Safeguard in particular. The civilian proponents of ABM presented by the Department of Defense to the various Committees, in spite of explicit classified briefings which I knew took place in certain cases, almost to a man avoid talking about the actual Safeguard system. The more charitable interpretation one can put on this remarkable fact is that they could not, as men of scientific integrity, defend the system that was being proposed. They concentrated instead on the Soviet threat, the intransigence of the Chinese, national determination, the virtues of defensive weapons as extolled by Mr. Kosygin, et cetera, but never, never on the relation of Safeguard performance to the actual or projected threat.

Subsequently, in the course of the hearing, the chairman of the subcommittee asked the witnesses:

Do you know of any advisory group with which you have served whose majority opinion supports the proposal to deploy Phase II of Safeguard?

Dr. Goldberger replied: I do not, and Dr. Drell agreed.

The third chapter in this story begins with a letter from Dr. Foster on July 24 saying that he had considered the subcommittee's request that most of the report be declassified and had concluded that it could be. He attached a copy of the original classified version of the report marked with brackets indicating portions of the report which were to remain classified. I ask unanimous consent that Dr. Foster's letter of July 24 to the chairman of the subcommittee and the O'Neill report, with certain sections deleted for security reasons at the request of the Defense Department, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FULBRIGHT. Mr. President, on Sunday, July 26, there appeared in various newspapers an Associated Press story, dateline Washington July 25, about the O'Neill report. The Associated Press could only have obtained the O'Neill report in the Pentagon because the declassified report was received by the committee staff only late in the afternoon on July 24 and was not shown to anyone, including committee members, over the weekend. The Associated Press story stated in its lead paragraph that:

A report censored for security reasons on the Safeguard antimissile defense system says the full Phase II program would provide protection against a limited Red Chinese missile attack and some defense of U.S. Minuteman missiles from a Russian blow.

The Associated Press story continued:

It provides thin area coverage and some defense of Minuteman, said the report by

seven civilian scientists to Melvin R. Laird, Secretary of Defense.

The story, as it appeared in the Baltimore Sun on July 26, was inserted in the CONGRESSIONAL RECORD on July 28 by the senior Senator from Colorado (Mr. ALLOTT).

The Associated Press story also appeared in the San Diego Union where it was seen by Dr. Drell and Dr. Goldberger. They thereupon wrote me saying that the O'Neill report "differs from the misleading implications in this story." Among other things, their letter said:

We in no way endorsed full Phase II as a thin area defense against China.

. . . as the report states, there was no consensus that Phase II would provide effective protection against a limited Chinese attack. Against these remarks our full statement in the O'Neill report must be read in context: "Safeguard full Phase II is a system embodying compromise *intended* to enable the system to achieve, *to some extent*, the three objectives stated by the President. It provides thin area coverage and some defense of Minuteman . . ." (Italic added for emphasis).

Concerning the defense of Minuteman missiles from the Russian blow, we recommended that "if the only purpose of Safeguard is defined to be to protect Minuteman, Phase II–A, as defined in March 1969, should not proceed."

Therefore we stand by the following statement in our testimony before the Subcommittee on Arms Control, International Law and Organizaion, chaired by Senator Gore, on June 29: "All analyses of which I am aware make it clear that if defense of Minuteman is the principal or sole mission of Safeguard, its further deployment cannot be justified."

I ask unanimous consent that the text of the letter to me from Dr. Drell and Dr. Goldberger of July 29, together with a copy of the Associated Press story from the July 26 issue of the San Diego Union, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. FULBRIGHT. Mr. President, I urge my colleagues to read the O'Neill report, which will be found at the conclusion of my remarks, carefully. Dr. Foster, in his letter of July 24 to Senator GORE, said that he was encouraged by the technical judgment expressed in the group's report that "Safeguard full phase II is a system embodying compromises intended to enable the system to achieve, to some extent, the three objectives stated by the President." Dr. Foster may be searching desperately for some encouragement. In the first place, he is talking about full phase II, as was the Associated Press story in its lead paragraph, while the proposal submitted by the administration was for phase II–A and not the full phase II. In the second place, it seems to me that a report which states that—

A more cost effective system for the active terminal defense of Minuteman than Phase II–A of Safeguard can be devised.

If the only purpose of Safeguard is defined to be to protect Minuteman, Phase II–A as defined in March 1969 should not proceed.

is not a ringing endorsement of the Safeguard system.

We have had, in the past, a missile gap. More recently, we have experienced a credibility gap. We seem now to be combining the two in a missile credibility gap which emerges clearly from the record of the Defense Department in attempting to support claims that it has submitted the Safeguard system to independent outside review. The missile credibility gap was opened last year by Mr. Packard's implication that Dr. Panofsky had supported the Safeguard system. It was widened this year by Dr. Foster's assertion that the O'Neill panel had concluded that Safeguard could meet certain objectives. Two members of the O'Neill panel do not agree and surely they must know what they decided and recommended. One of the members of the O'Neill panel, Dr. Drell, went even further and said:

All analyses of which I am aware make it clear that if defense of Minuteman is the principal or sole mission of Safeguard, its further deployment cannot be justified.

For we who must rely on the informed judgments of others, as far as technical matters are concerned, Dr. Drell's statement stands as a severe indictment of the Safeguard system and calls into question the tactics employed by the Defense Department in seeking to make it appear that the scientific community supports the Safeguard system as an effective defense of our deterrent missile force.

EXHIBIT 1

JULY 24, 1970.

HON. ALBERT GORE,
Chairman, Subcommittee on Arms Control, International Law and Organization, U.S. Senate, Washington, D.C.

DEAR SENATOR GORE: I received your letter of July 1 in which you asked if most of the report of the Ad Hoc Group on Safeguard for FY 1971 (the O'Neill Report) could be declassified. I have reviewed the classification within the report. I believe that the report classification was correct at the time of writing when the Administration was still in the process of selecting a recommended course of action for Safeguard deployment in FY 71. However the situation today is different—the Administration's recommendation has been announced and is public information. Therefore, I conclude that most, but not quite all, of the O'Neill report can now be declassified. Attached hereto is a copy of the original classified version of the report which has been marked with brackets to indicate the remaining classified portions. When the bracketed portions are deleted the remainder is unclassified and, as you can see, most of the report has been declassified. We have included with the report the letter of transmittal, which lists the members of the Group.

I feel it is important that I point out to you that the report may not be an easy one for the public to read and understand in proper context. The report, as you know, is highly technical and was written by an ad hoc group of technical experts for key people in the Department of Defense whose daily work on ABM gives them a thorough background in the subject. In other words, the style of the report is based on the assumption that the reader is very well informed in some detail about ABM.

I hope that the way the Group worked is clear from the report. At the time the Group met, the Administration (and the Department of Defense) had not yet arrived at a decision on what to recommend as the next step in Safeguard beyond Phase 1. Consequently the Group was reminded of President Nixon's objectives for ABM as he stated them publicly on March 14, 1969. The Group was given (but not restricted to) a range of possible steps which might be initiated in FY 1971. The reason for this approach—and I think this was understood by the Group—was that we wanted technical opinions on the adequacy of ABM components, not political opinions on the need for or desirability of proceeding with ABM deployment.

The Group chose to explore the use of Safeguard components for defense of Minuteman only, for area defense only, and for a composite system having both objectives. The Group made valuable technical observations and technical recommendations that were a most helpful ingredient in our review of Safeguard and our later selection of a recommended FY 1971 course of action to meet national needs. I can best describe the usefulness of the Group's work by citing a few examples. The Group recommended that we appraise the use of existing air defense systems for interim defense of Minuteman. We have done this and we have concluded that conversion of our existing air defense systems would be expensive and would probably have a very short useful life because they could be negated with relative ease by simple tactics. The Group also advised us to examine the desirability of using MSR's in a dedicated system. We did this and found that the "mix" has technical as well as schedule advantages. Consequently we propose that Safeguard defense of Minuteman should proceed with the addition of another Safeguard site, Whiteman, which could be operational in 1975. Concurrently we are developing a new hard site radar to augment Safeguard defense of Minuteman, should the threat require it. Another observation of the Group was that the number of Sprints at the two Phase I sites could be increased to achieve an early improvement in defense capability. This increase is, as you know, part of the Administration's request for FY 1971 funding.

We were aware that all members of the Group did not agree on the need for ballistic missile defense to meet all of President Nixon's objectives and that the Group did not wish to express advocacy for or opposition to any specific step in Safeguard deployment. However, I was encouraged by the technical judgment expressed in the Group's report that "Safeguard full Phase II is a system embodying compromises intended to enable the system to achieve, to some extent, the three objectives stated by the President. It provides thin area coverage and some defense of Minuteman. It retains the possibility of including Safeguard technology in a dedicated system for Minuteman defense."

I hope that the unclassified report will be useful in clarifying ABM issues and expediting the Senate's consideration of the Administration's request for Fiscal 1971 Safeguard funds.

Sincerely yours,

JOHN S. FOSTER, Jr.

NEW YORK, N.Y.,
January 27, 1970.

HON. MELVIN R. LAIRD,
Secretary of Defense,
Washington, D.C.

DEAR SECRETARY LAIRD: Enclosed are three copies of the report of the Ad Hoc Group on Safeguard for FY 1971. This report has been reviewed and approved by all members of the group. The members of the group were: Louis M. Branscomb, Director, National Bureau of Standards; Sidney D. Drell, Professor and Deputy Director, Stanford Linear Ac-

celerator Center; Marvin L. Goldberger, Professor of Physics, Princeton University; William G. McMillan, Professor of Chemistry, University of California at Los Angeles; W. S. Melahn, President, Systems Development Corporation; Lawrence H. O'Neill, President, Riverside Research Institute, Professor of Electrical Engineering, Columbia University (on leave of absence); Allen M. Peterson, Professor of Electrical Engineering, Stanford University, Senior Scientific Adviser, Stanford Research Institute.

A number of comments designed to clarify the report have been suggested by individual group members. I am including these in this letter, rather than in the report itself, in order to avoid the need to take the time required to submit the report to the group for another review. In my opinion these comments do not materially affect the advice offered in the report. The additional comments follow:

1. The material referred to on page 4 but omitted to avoid higher classification was taken from the Top Secret versions of the Fall 1969 N.I.E.'s concerning Soviet and Chinese Communist capabilities.

2. In the next to last line on page 4, the word "missiles" should be understood to mean "operational missiles."

3. In numbered paragraph (2) on page 13 the statement concerning the need for a policy decision is not intended to imply that such a decision has not previously been made. Rather it is intended to suggest the need to review policy and update it if necessary as a prelude to particular decisions to be made for FY 1971.

The group respectfully submits its report in the hope that it may be helpful to you and to other responsible officers of the Government.

Sincerely,

LAWRENCE H. O'NEIL,

REPORT OF THE AD HOC GROUP ON SAFEGUARD FOR FY 1971 (U)—SUBMITTED TO THE SECRETARY OF DEFENSE

I. INTRODUCTION (U)

(U) The group was asked to offer advice to DOD concerning the pursuit of a BMD capability by the United States. Its advice was to be based upon the scientific and technical qualifications of its members. Although members of the group hold a range of views concerning the desirability of a BMD deployment and concerning the interactions between a deployment and diplomatic, strategic and political factors, it was not asked for and did not offer advice based on assessment of such things. The members are anxious that their participation in the work of the group not be taken to imply advocacy or opposition to the deployment of ballistic missile defense.

(U) A full day was devoted to attendance at briefings by the SAFEGUARD Systems Command, the Advanced Ballistic Missile Defense Agency, and representatives of DDR&E. The material covered in these briefings included: a threat assessment at the top secret level; a Safeguard status report; Safeguard schedules and budgets for various possible deployment programs; ABMDA advanced study and development programs; a joint Safeguard/ABMDA study of active defense of Minuteman; and a description of possible alternatives to active defense for improving the survivability of Minuteman. (C)

(U) A second full day was devoted to discussion within the group, the definition of points of agreement, and an identification of differences in technical judgments.

(U) A final day was devoted to the preparation of working notes for the group's report and for presentation of its advice to the Deputy Secretary of Defense, the Secretary of the Army, the Director of Defense Research and Engineering, the Principal Deputy Director of Defense Research and Engineering, and the Deputy Director (Strategic and Space Systems) ODDR & E.

(U) A set of possible programs for proceeding with further steps toward the deployment of BMD which had been considered in DOD was described to the group. No proposed program was offered for criticism or assessment by the group. Instead the group was invited to present its opinion in any way which, in its judgment, would be appropriate. It was assured that it was under no obligation to arrive at recommendations concurred in by all members.

(U) The President's statement of March 14, 1969, was provided to the group for guidance. The group was advised that the three purposes* of Safeguard defined by the President were not "weighted," that no one could be considered more important or desirable than any other. The President's statement also expressed his concern that a limited BMD deployment not be subject to misinterpretation as a first step toward the emplacement of a heavy BMD system. The group took note of this concern and was influenced by it during its work. (U)

(U) Advice pertinent to funding action in FY 1971 and FY 1972 was described to the group as being of particular interest.

(U) On the basis of the guidance described above, the group attempted to formulate advice based on scientific, technical, schedule and budgetary considerations, and on the assumption that the President and Congress, after review, decided to continue to approve the obligating of additional funds for BMD. It was not the purpose of the group to judge the wisdom of such an assumed decision.

(U) In the hope that the procedure will improve exposition of the group's reasoning, the results of this review are presented in three parts:

(U) 1. Those pertinent actions that might be taken in FY 1971 if BMD were solely for the defense of Minuteman.

(U) 2. Those pertinent actions that might be taken in FY 1971 if BMD were intended only to provide thin area coverage of the country.

(U) 3. Those pertinent actions that might be taken in FY 1971 if BMD is intended to evolve into a system capable of meeting simultaneously the three objectives defined by the President.

II. MINUTEMAN SURVIVABILITY (U)

(U) The comments offered in this section should be understood to be based upon the assumption that the *only* purpose of deploying BMD is to improve the survivability of the Minuteman force.

(S) On the basis of the size of the Soviet land-based force estimated for mid 1971 as composed of the following weapons: (omitted to avoid higher classification) and of the estimated growth rate of this force, full use of the Soviet land-based force to attack Minuteman could reduce the expected number of surviving U.S. land-based missiles to below ——— by ——— ———. This would require that by that time improvements in delivery accuracy (c.e.p.) be achieved which make each delivered Soviet R/V from an SS11 or SS9 highly effective ——— against a Minuteman silo. The group believes such accuracy improvements are technically possible but, of course, might not occur. Intelligence information provided to the group was not sufficient for it to reach a judgment about the likelihood that Soviet operational missiles would exhibit such accuracy in the next three to five years.

(u) Some members of the group believe it might be possible to eliminate or shorten the period in which the Minuteman force could be very vulnerable to a heavy attack by Soviet SS11's and SS9's by adapting some existing U.S. air defense systems for temporary use as Minuteman defenses. The group was not briefed on this subject, and opinions among its members differ concerning the feasibility and practicality of such a program.

(u) The group believes that techniques other than active defense may be practical and may reduce the vulnerability of Minuteman described above. It believes that alternate basing techniques that increase the number or the hardness of the aim points that a Soviet attack would have to target to achieve high assurance of destroying Minuteman merit careful study and may be practical as replacements for or adjuncts to active defense.

(u) The group believes that a more cost effective system for the active terminal defense of Minuteman than Phase IIA of Safeguard can be devised. Such a system, termed a "dedicated" system, would feature less costly and less technically formidable radars than the MSR and each such radar would cover fewer silos than would be covered by an MSR. The system might, or might not, include some MSR's in addition to the smaller radars. The desirability and cost effectiveness of such a mix cannot be reliably judged at this time. The system's advantage over one featuring a proliferation of MSR's would be particularly important if the size of the Soviet anti-Minuteman force became very large.(u)

(U) The date on which a dedicated system for active defense of Minuteman could be complete depends upon its funding level. It seems unlikely that it could be deployed any earlier than one year or more after the system using only SAFEGUARD components could be deployed. However, it should be realized that if the Soviet missile force suitable for attacking Minuteman grows very large (e.g.* R/V's), the level of protection given the Minuteman force by a dedicated system substantially exceeds that achievable by proliferating SAFEGUARD components, with equal investment in either system.

(U) Against the background of these observations, the group advises that if the President and Congress direct a deployment of an active defense system exclusively designed to protect Minuteman:

(U) 1. If there is a foreseeable termination of BMD deployment at completion of Safeguard Phase I, funds (estimated at $1 B) in FY 1971 should not be obligated for this purpose. Phase I alone is not worth its cost. Obligation of FY 1971 funds for completion of Phase I is justified only if there is a need, or possible need, to continue beyond Phase I.

(U) 2. It is necessary to proceed vigorously with the design of a dedicated HPD system and with advanced development of the radar and other technical components to be used in such a system.

(U) 3. The desirability of using some MSR's in a dedicated system should be resolved as quickly as possible. There are two ways to "hedge" the uncertainty about the need for MSR's in a dedicated system:

(U) a) Continue production of MSR's at minimum pace, accepting the possibility that a conclusion that they were not needed would be reached, say six months into FY 1971. Cancellation of MSR procurement at that point would result in a loss estimated at $250 million to $300 million.

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*These three purposes are: protection of our land-based retaliatory forces against a direct attack by the Soviet Union; defense of the American people against the kind of nuclear attack which Communist China is likely to be able to mount within the decade; protection against the possibility of accidental attacks from any source. (U)

*Omitted to avoid higher classification. (U)

(U) b) Cancel production of MSR's at once, accepting the possibility that procurement might be re-initiated twelve months after that decision. This would delay the date of defense system availability at least twelve and possibly twenty-four months. Some "re-start" costs would be involved in restoring the production facilities, but these were not estimated.

(U) 4. If the only purpose of Safeguard is defined to be to protect Minuteman, Phase IIA as defined in March 1969 should not proceed. Instead, a dedicated system for active defense of Minuteman should replace or, if the need for the MSR is proved, augment, Phase IIA. As a minimum step, the complement of Sprints at Grand Forks and Malmstrom could be increased.

(U) 5. In view of the possibility that the expected number of surviving Minutemen may be low for several years, techniques other than active defense should be vigorously pursued and necessary advanced developments related to such techniques should be undertaken. Among the techniques that should be considered are those of alternate basing, including techniques for increasing the number of aim points at which Minutemen might be placed. Techniques other than active defense should be evaluated for cost effectiveness when used to replace active defense and when used in combination with active defense.

(U) 6. The practicality and effectiveness of an interim active defense system for Minuteman, derived from existing air defense systems, should be appraised by a thorough review of analyses completed in the past by such new work as may be warranted.

(U) 7. Study, research and advanced development funds for the Army's Hard Point Defense Program should be protected from budget cuts because of the great importance of this work with respect to Minuteman survivability.

III. AREA DEFENSE (U)

(U) Comments offered in this section should be understood to be based upon the assumption that the *only* purpose of a continued deployment of BMD is to provide a "thin" area coverage of the country to:

(U) 1. provide protection against a limited attack by the Chinese.

(U) 2. provide against an accidental or unauthorized launch from any source, including submarines.

(U) 3. protect alert SAC bombers, particularly against SLBM's on depressed trajectories.

(U) It is important to recognize an essential difference between a phased deployment of an area defense and a phased deployment of a terminal defense of Minuteman. The latter can, in principle, provide useful protection after partial deployment at a few sites. An incomplete area system provides no protection from "blackmail" by an opponent (e.g., C. P. R.) with a small ICBM force or from an unauthorized attack. It provides only limited protection against accidental launches.

(U) Therefore, initiation of an area defense system is justified only if there is an expectation that it will prove to be necessary or desirable to cover the entire country with such a system.

(U) Againt the preceding background, the group offers the following comments:

(U) 1. If a start on area defense were uninfluenced by work already completed and if deployment at three sites were possible within budget limits, the logical selection of sites for protection against Chinese ICBM attack would be Safeguard sites designated Northwest, Northeast, and Washington, D.C.

(U) 2. Budget limits and schedule advantages resulting from survey and other time-consuming actions authorized under Phase I suggest that a practical start on area defense would involve obligating funds in FY 1971 to establish sites at Whiteman (with an MSR but no PAR) and either N.E. or N.W. (with an MSR and a PAR). Whiteman affords coverage for a substantial population. It can be established relatively early because of survey work already completed. It is relatively inexpensive because it has no PAR.

(S) 3.———

(U) 4. Area defense, even of the thin kind furnished by SAFEGUARD Phase II, has some effect on Soviet estimates of the adequacy of their deterrent because such a defense provides a large number of defensive weapons. Careful assessment of the consequences of the deployment of area defense components on the U.S. relationship with the Soviet Union should be undertaken, especially in the light of the President's expressed concern in this matter.

(U) 5. Some members of the group suggest the need to estimate the "virtual cost" of area defense. The term refers to the cost of assuring that U.S. missiles could penetrate a Soviet area defense. Such a Soviet defense might be deployed in response to a U.S. deployment or as a result of a U.S.-Soviet agreement.

(U) 6. Estimates within the group of the effectiveness of a feasible thin area defense against C.P.R. ICBM attacks vary.* The range of opinions was between the following bounds:

(U) (a) A belief that the probability is high that a thin area defense will be highly effective, possibly achieving damage denial for as much as a decade.

(U) (b) A belief that the C.P.R. would respond to the presence of a U.S. area defense and materially reduce its effectiveness by the use of penetration aids or bypass it entirely by other measures (e.g., clandestine weapons).

IV. THREE OBJECTIVE SYSTEM (U)

(U) Comments offered in this section are based on the assumption that the President and Congress direct DOD to proceed with a BMD system intended to place comparable emphasis on each of the three objectives defined by the President in his statement of March 14, 1969.

(u) Studies conducted by the Army indicate that a system based at seven sites could afford thin area coverage against limited ICBM attacks for all of the contiguous 48 states. The seven sites are among the twelve included in the Safeguard Phase II deployment which the Army has described. The seven site system is more vulnerable to a sophisticated attack than the Phase II system because effective radar coverage is reduced by such an attack. However, it does afford nearly complete defensive coverage against simple ICBM (not SLBM) attack at the lowest cost and earliest date achievable with Safeguard components. It is, therefore, a sensible "way station" to pass through on the way to a complete Phase II deployment. (u)

(u) It is of interest to ascertain which of the Safeguard sites provide terminal defense for Minuteman, contribute to area coverage, and are included in the seven site system. These sites are placed in evidence by the following table:

Site	Contributes to area coverage	Contributes to terminal defense for Minuteman	Is part of 7-site system
Grand Forks	X	X	X
Malmstrom	X	X	X
Northwest	X	----------	X
Michigan/Ohio	X	----------	X
Northeast	X	----------	X
District of Columbia	X	----------	X
Central California	X	----------	
Warren	X	X	
Whiteman	X	X	X
Southern California	X	----------	
Texas	X	----------	
Georgia/Florida	X	----------	

(u) Three sites (Grand Forks, Malmstrom, and Whiteman) have all three features mentioned above. The first two have been authorized, and funding has been obligated in Safeguard Phase I.

(U) Against the preceding background, the group offers the following comments:

(u) 1. Safeguard full Phase II is a system embodying compromises intended to enable the system to achieve, to some extent, the three objectives stated by the President. It provides thin area coverage and some defense of Minuteman. It retains the possibility of including Safeguard technology in a dedicated system for Minuteman defense.

(u) 2. There is a need for a policy decision on whether to give emphasis to Minuteman terminal defense or to divide effort between Minuteman defense and area defense in the next step taken toward Safeguard Phase II.

(u) 3. Obligation of FY 1971 funds for the Safeguard sites at Whiteman and Warren would emphasize protection of Minuteman. Expenditures for these sites would contribute to the growth of a Minuteman defense based on Safeguard technology or on a mixture of the technology of Safeguard and that of a dedicated system.

(U) 4. Obligation of FY 1971 funds for Whiteman would contribute to the evolution of both Minuteman terminal defense and thin area defense.

(U) 5. FY 1971 funding obligations for either N.W. or N.E. would allow continued progress in the evolution of area defense. There is no significant difference between the two with respect to attack from Communist China. Either provides some coverage against SLBM attacks. However, for this latter capability, the PAR used at the site selected (N.E. or N.W.) should have two faces. (U)

(U) 6. It is estimated that FY 1971 funding obligations for Whiteman and either N.E. or N.W. would be within a budget allowance of $1.5 B. It is estimated that obligations looking toward a third site would exceed the $1.5 B allowed in FY 1971.

*Some members of the group feel it important to recognize that ICBM's are not the only and possibly not the "best" way for the C.P.R. to attack or threaten to attack. The use of clandestine weapons is possible, for example. Some members also question the reliance that the President would be willing to rest on an untried complex system in the face of a threatened attack.

EXHIBIT 2

JULY 29, 1970.

Hon. J. WILLIAM FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: We noted with considerable interest the enclosed article in the San Diego Union of Sunday, July 26th. We understand from James Lowenstein, consultant to the Foreign Relations Committee, that the O'Neill Report, mentioned in this article and on which we testified before the Subcommittee on Arms Control, International Law and Organization on June 29th, has been largely declassified. We are writing, therefore, to reiterate the unclassified conclusions and actual emphasis given in this report, and thus to indicate how the report differs from the misleading implications of this story.

According to the *Union* article, the report says that the "full Phase II program would provide protection against the Red Chinese missile attack and some defense against

the U.S. Minuteman missiles from the Russian blow." This statement is taken totally out of context. First of all the O'Neill panel was instructed to base its considerations "on the assumption that the President and Congress, after review, decided to continue to approve the obligating of additional funds for BMD." We were specifically not asked to assess or criticize any one proposed program. We were also told that "it was not the purpose of the group to judge the wisdom of such an assumed decision". Therefore we in no way endorsed full Phase II as a thin area defense against China. Indeed it was explicitly stated in the O'Neill report that there was a broad range of opinions among members of the group as to the effectiveness of the feasible thin area defense against Chinese ICBM attacks. In particular, some of us were recorded as believing that the Chinese could (and would) respond to any area defense and materially reduce its effectiveness by use of penetration aids, or bypass it entirely by other measures. It was on precisely this issue that there was a very broad range of views on the O'Neill panel and, as the report states, there was no consensus that Phase II would provide effective protection against a limited Chinese attack. Against these remarks our full statement in the O'Neill report must be read in context: "Safeguard full Phase II is a system embodying compromises *intended* to enable the system to achieve, *to some extent*, the three objectives stated by the President. It provides thin area coverage and some defense of Minuteman . . ." (Underline added for emphasis).

Concerning the defense of Minuteman missiles from the Russian blow, we recommended that "if the only purpose of Safeguard is defined to be to protect Minuteman, Phase II–A as defined in March 1969 should not proceed." We recommended rather that a dedicated hardpoint defense system should replace Phase II–A for active defense of Minuteman, or, if the need for the MSR is proved, augment it. However, as we noted above as well as in our testimony, the committe was not asked to recommend whether or not to go ahead with ABM in FY '71, but only to advise "on the assumption that the President and Congress, after review, decided to continue to approve the obligating of additional funds for ballistic missile defense." Therefore the above statement is in no way a recommendation to deploy an active ABM for Minuteman. It is a statement to the effect that if it has already been decided to go ahead with additional expenditures for Minuteman defense, then one should not proceed with Safeguard but with a dedicated system instead. At the time of the report there was no analysis proving the need for the MSR as part of the Minuteman dedicated defense, and we are aware of no analysis at this time which does so.

Therefore we stand by the following statement in our testimony before the Subcommittee on Arms Control, International Law and Organization, chaired by Senator Gore on June 29th: *"All analyses of which I am aware make it clear that if defense of Minuteman is the principal or sole mission of Safeguard, its further deployment cannot be justified."*

It is clear from the above that Dr. Foster had no basis for his claim that the O'Neill "report was sent to the Secretary of Defense, and what it said was that this equipment will do the job that the Department of Defense wants to do."

We hope you will find these remarks useful.

Sincerely yours,

SIDNEY D. DRELL,
Deputy Director, Stanford Linear Accelerator Center.

M.L. GOLDBERGER,
Professor of Physics, Princeton University.

[From the San Diego (Calif.) Union, July 26, 1970]

SAFEGUARD WILL DO JOB, REPORT SAYS—PHASE II PLAN WILL PROVIDE LIMITED PROTECTION, PENTAGON PANEL ASSERTS

WASHINGTON.—A security-censored report on the Safeguard antimissile system says the full Phase II program would provide protection against a limited Red Chinese missile attack and some defense of U.S. Minuteman missiles from a Russian blow.

"It provides thin area coverage and some defense of Minuteman," said the report by several civilian scientists to Secretary of Defense Melvin R. Laird.

The January report, secret until now, was the center of a dispute before the Senate disarmament subcommittee last month.

Dr. John S. Foster, the Pentagon's research and engineering director, told the subcommittee the report said equipment proposed for the Safeguard system "will do the job the Department of Defense wants to do."

FOSTER DISPUTED

Two members of the panel—Prof. Sidney D. Drell of the Stanford Linear Accelerator Center, and physics Prof. Marvin L. Goldberger, of Princeton—disputed Foster.

They testified the report's conclusions were misstated.

The 14-page report resulted from a study requested by Foster who, Pentagon officials said, wanted expert technical opinion on the Safeguard before President Nixon made a decision to go ahead with a second phase of the project.

The censored version of the report contained no explicit criticism of any of the Safeguard's components. Defense officials said no criticisms were contained in the sections kept from public view.

The group did say it believes a more cost-effective system can be devised for terminal defense of the Minuteman and urged an approach featuring smaller, less costly and "less technically formidable" radars.

The advisory committee seemed to imply that there are not enough short-range Sprint missiles in the first phase of Safeguard, which was limited to protecting two Minuteman ICBM bases in Montana and North Dakota. Pentagon officials noted this year's Safeguard proposals put more Sprints at these sites.

The report, signifying it was approved by all members, was dated Jan. 27. Nearly a month later, on Feb. 24, the Nixon administration came up with its modified Phase II program.

Falling short of the 12-site plan, it calls for one additional Safeguard site at Whiteman Air Force Base in Missouri to protect more Minuteman missiles, and preliminary work on five additional sites as the administration once again took account of prospects that the Red Chinese may deploy an ICBM system in the 1970's.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The PRESIDING OFFICER. Under the previous order the Chair now lays before the Senate the unfinished business which will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending amendment is amendment No. 819.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Hampshire is recognized.

CHEYENNE—A NEED FOR AN END NOW

Mr. McINTYRE. Mr. President, I would like to review at this time another of the actions recommended by the R. & D. Subcommittee and accepted by the full Armed Services Committee. I have in mind the deletion of all funds requested for the Cheyenne helicopter, an action of the committee which I believe will save the taxpayers of the country over $1.5 billion in unnecessary procurement costs.

The committee's decision was not unanimous and was reached only after a very thorough discussion of the issues involved. A great deal of credit for the quality of the debate within the committee must go to the Tactical Air Power Subcommittee and its able and distinguished chairman, the Senator from Nevada (Mr. CANNON).

Senator CANNON'S arguments against the decision ultimately reached were ably presented and well thought through. I sincerely regret that their strengths are of necessity inadequately captured in this brief review of my own subcommittee's position.

THE PROBLEM IN CONTEXT

The fiscal 1971 R.D.T. & E. budget requested funds for the development of two different close support tactical aircraft. The Air Force requested $27.9 million for work on the fixed wing AX, while the Army sought $17.6 million to continue the development of the Cheyenne.

From the outset of its investigation, the subcommittee was troubled by the fact that funding was requested for two different aircraft designed to perform essentially the same function. Such dupli-

cation seemed inconsistent on its face with our need to eliminate unessential defense spending.

The subcommittee soon learned that the same issue was causing some concern inside the defense establishment itself. Deputy Secretary Packard, it learned, had directed the Secretaries of the Air Force and the Army to study whether both systems were, in fact, needed.

The results of the study were rather interesting. On the one hand, the two Secretaries concluded—not surprisingly—that the systems were more complementary than competitive. At the same time, in a policy recommendation which undercut the force of their primary conclusion, they urged funding of both systems at least through the prototype phase.

What this implied, of course, was a postponement of any hard decisions until further R. & D. dollars had been expended on both systems. One of the prime objectives of the subcommittee's investigation was a determination as to whether such postponement was justified.

Ultimately, the subcommittee decided to recommend a termination of the Cheyenne program. Its decision was based both on a concern over duplication and on inherent doubts regarding the Cheyenne.

THE COMPETITIVE MERITS OF THE AX AND CHEYENNE

The subcommittee's investigation led it to the conclusion that the AX was, in several key respects, far superior to the Cheyenne.

First. It seemed by far the more survivable of the two aircraft, a point which Director of Defense Research and Engineering John S. Foster, Jr. as much as admitted in his testimony before the full committee. As Dr. Foster stated:

> There is no question in my mind about the ability of a fixed-wing aircraft in a close support role to be able to endure a much higher intensity of ground threat than a helicopter.

There are several factors which make the AX, specifically, more survivable than the Cheyenne. One is its greater maneuverability. Others are its selective use not only of armor plate, but also of engine and fuel placement and system redundancy to improve survivability.

The success of Army helicopters in Southeast Asia, the subcommittee felt, had to be placed in its proper context. Southeast Asia has been a far more benign environment than are the prospective battlefields of Europe, where the Cheyenne primarily was to be deployed.

Whatever the Cheyenne's survivability against machinegun fire and SAM's, there was no evidence at all that it could defend itself against enemy interceptors such as it would face in Europe. The AX, at least, would stand a fighting chance.

Second. The AX also seemed a considerably more reliable aircraft than the Cheyenne, an important consideration since both were programed to operate from unimproved air strips for quite some time without overhauls and major repairs.

There seemed several reasons why maintenance requirements were more likely to be small with the AX than the Cheyenne. The Cheyenne was indisputably a very complicated machine. It was scheduled to go into production over a year ago, but serious rotor control problems it experienced—and which are still not completely solved—led to a termination of the original production contract. In addition, the missile system and night vision equipment programed for the Cheyenne were also extremely sophisticated.

The AX, on the other hand, struck the subcommittee as a welcome departure from recent aircraft systems. Rather than incorporate every conceivable useful gadget inside or outside the state of the art, it emphasized the use of proven, off-the-shelf technology to insure that its systems will be reliable.

Third. The AX also appeared to have an advantage on the Cheyenne in its lethality. As far as a capability against tanks was concerned, the subcommittee had grave doubts whether the Cheyenne's complicated TOW missile offered any advantage over the simple 40-millimeter gun as programed for the AX.

With regard to capability against other targets, the AX can carry the full inventory of Air Force weapons—bombs, rockets, missiles, guns, special-purpose weapons—and it has the growth potential for many of the special sensors/fire control systems incorporated in the Cheyenne from the start. The Cheyenne would have been unable to carry the full spectrum of weapons usable by the AX. Its maximum ordnance load would have been less than half that of the AX.

Fourth. A further weakness of the Cheyenne was its far greater cost per copy. According to the most reliable estimate the subcommittee could obtain, the AX was projected to cost about $1.2 million per aircraft, as compared with almost $4 million for the Cheyenne.

A major contributing factor to this price differential was the Cheyenne's greater complexity. Sophisticated and expensive night/bad weather sensors and a complicated fire control system were programed for every aircraft.

The AX, in all honesty, has room to accommodate these devices, and if they are incorporated, its price, too, will grow. But there is no need to incorporate them unless and until they are shown necessary and feasible and then they could be limited to only a fraction of the AX force. After all, granted that a night vision capability could be useful, there is no need for all our close support aircraft to be able to fight at night.

Not only is the AX more favorably priced at present. Given that its technology is well within the state of the art, it is also unlikely to experience the cost growth associated with many recent aircraft development programs. The fact that the AX is being developed under a competitive prototype flyoff approach should also help keep its costs down. Of course some cost growth, due to inflation, will inevitably occur.

Fifth. The cost differentials between the Cheyenne and the AX also had important force structure implications in the subcommittee's judgment. If defense spending does indeed decline over the foreseeable future, it will be very difficult for the services to keep anything like a constant force structure as they phase in new equipment. This task will be made more manageable, however, if emphasis is put on proven, low cost replacements such as the AX.

This emphasis on low cost is a welcome new departure in designing aircraft. Both it, and a prototype flyoff approach, should be encouraged whenever possible in future weapons systems procurement.

These, then, were the reasons for the subcommittee's determination that the AX was the superior aircraft. While the Cheyenne did have some things in its favor, most of the points in question were capable of being answered. Weighted against the arguments just considered, they did not appear to justify either full-scale procurement of both systems or the procurement of a mixed full-scale procurement of both systems or the procurement of a mixed AX-Cheyenne force.

First. The one point significantly in the Cheyenne's favor was the fact that it did possess certain attributes not possessed by fixed-wing aircraft—an ability to operate in more severe weather conditions, an ability to take off vertically from extremely austere landing strips, and the possibility of greater accuracy inherent in its slower speed. The subcommittee felt, however, that the AX will have capabilities in these particular areas far surpassing those of previous fixed-wing aircraft.

It was influenced also by the fact that many of these capabilities are already available to the Army in the Huey Cobra, an attack helicopter now in use in Vietnam.

Incidentally, I saw the Cobra in action during my recent trip to Vietnam. It is, I can assure you, a rather impressive bird. And the Cheyenne missile system could be integrated with the Cobra for only a minor cost.

Second. A second consideration in favor of the Cheyenne was the possibility of its availability for introduction into the inventory 2 to 3 years earlier than the AX. There is no severe shortage at present, however, of aircraft capable of performing the close support role. In addition to the Army's Huey Cobra, the Air Force has the A–1, the A–37, and the A–7, as well as several different gunships.

The subcommittee also felt, incidentally, that the availability of the two aircraft at substantially different times was a further argument against proceeding with both of them through the prototype stage, as the Defense Department had suggested.

Third. Finally, there was the fact that over $168 million had been invested to date in the Cheyenne, money which arguably would go down the drain with a cancellation of the Cheyenne contract.

The subcommittee felt, however, that this $168 million had to be weighed against the over $70 million of remaining R. & D. expenditures, plus more than $1.5 billion of production funds, which continuing with the Cheyenne would have entailed. In view of its doubts regarding the need for the Cheyenne, the

additional expenditures did not seem justified.

The subcommittee also felt that termination of the Cheyenne contract could be effected in such a way as not to lose the value of our previous investment.

It noted that there were eight developmental Cheyenne helicopters already in existence—three flying regularly, one in hot mockup to test equipment, one being prepared for wind tunnel testing, one being used for ground tests, and one serving as a spare for possible use to install equipment for later operational testing.

These aircraft, it felt, could be utilized by the Army in its advanced helicopter development program, for which additional funds had already been requested.

This approach, the subcommittee felt, would remove the constraints of the Cheyenne design, which had been straining technology to the point where requirements under the Cheyenne contract had to be relaxed to accommodate the limitations of Cheyenne performance. At the same time, knowledge gained through the Cheyenne program would be available to solve problems, such as the rotor control mechanism, and perhaps ultimately lead to a cost effective, high performance follow-on helicopter at some later date.

THE LOCKHEED IMPLICATIONS

Throughout its review of the Cheyenne program, the subcommittee was cognizant of the fact that Lockheed Aircraft Corp. held the contract for development work on the helicopter. While its decision to direct a termination of work on the program was made for the reasons indicated above, I feel that it would be useful to speak briefly at this time about the relationship of the Cheyenne program to Lockheed's overall difficulties.

The history of the Cheyenne program is one of continuous cost escalation, as evidenced by the fact that the per unit cost has increased from a preliminary estimate of about $1 million to an admitted present estimate of almost $4 million. Part of this increase, in all fairness, has been due to the incorporation of equipment and capabilities not contemplated in arriving at the preliminary estimate. Even since June, 1967, however, by which time the system was fully defined in its present form, there has been cost growth from a figure of $2.7 million per copy to the current level.

This history of cost growth has been accompanied by a history of technical difficulties. Over 2 years ago—on January 8, 1968—the Army exercised its production option under the original Lockheed contract for 375 Cheyenne. Subsequently, the aircraft did not meet its specs in weight, drag, and performance, and an accident on March 12, 1969, involving the "half-p-hop" phenomenon—a vertical bounce of the helicopter every two revolutions of the rotor—raised doubts as to Lockheed's ability to ever resolve the technical problems. A "show cause" notice was issued on April 10, 1969 and on May 19, 1969, the production contract with Lockheed was terminated for default by the Government, with work on the development program itself continuing. Some time thereafter, Lockheed instituted legal action against the Government as a result of the termination.

With its cost growth and its recurrent technical difficulties, the Cheyenne program has had a history similar to—indeed worse than—that of the C–5A transport.

There is another similarity between the two systems also—both represent programs which Lockheed won only by bidding in low to get the contract. It won the C–5A contract with a bid of $1.8 billion, nearly a quarter-billion less than the bid submitted by Boeing. And its bid in Cheyenne—notwithstanding the fact that it had never built a helicopter—was $77 million, as compared with Sikorsky's $114 million.

At present, the Cheyenne and the C–5A, along with the SRAM missile and various ship claims, are the programs on which a legal dispute exists between Lockheed and the Government.

Ordinarily, work on a program subject to such dispute could continue independently of any resolution of the dispute itself. What makes the present situation unique is Lockheed's financial difficulties.

These difficulties have led already to a request by the Defense Department for a $200 million contingency fund to permit continuation of work on the C–5A. This $200 million is in excess of the money owed Lockheed under the Air Force interpretation of the C–5A contract. But this $200 million—and additional such funding in future years as well—is essential, the Department contends, if the Government is to receive an adequate number of an aircraft essential to our future national security.

I deeply regret that the request for this contingency fund has been made. I fear that the "bail out" it envisages might establish a precedent which would be very unfortunate in the years ahead.

At the same time, I agree with those who contend that the C–5A itself is a badly needed system. I believe that the ability it will afford us to establish a presence quickly in remote corners of the world will permit a sizable reduction in the base costs we would otherwise have to incur. And I see no way in which we can obtain an adequate number of C–5A's without making additional funds in some way available to Lockheed at this time.

Under the circumstances, my major concern is to prevent a recurrence of the type of problem in which we now find ourselves with the C–5A. While a bailout of the C–5A itself appears essential, we must not permit this to become a precedent for the routine bailing out of companies who find themselves unable to live up to their contractual obligations.

It is my fear that the Cheyenne program, if allowed to continue, could give rise to funding difficulties of its own which could lead in turn to just such a precedent.

It is unclear just how expensive it would be to complete development of the Cheyenne. The Army estimates at present that it would require $70.7 million of research and development funds between fiscal 1971 and fiscal 1973, including the cost of work on the TOW missile/night vision system to be installed in the aircraft. The fiscal 1971 request of $17.6 million includes no funds for the TOW/night vision system, but the Army indicated in testimony before the subcommittee that it would like to reprogram another $17 million of its fiscal 1971 funds for this purpose.

In view of the still unsolved technical problems associated with the Cheyenne, there can be no assurance, however, that this $70.7 million estimate is not significantly understated. For some time now, Lockheed has already been spending approximately $3 million per month of its own funds in an attempted resolution of these problems. Should these problems persist, it is highly unlikely that Lockheed itself could continue to bear whatever costs are incurred over and above those provided for in the Cheyenne development contract. The most likely course would be an attempt by the Government—either through a renegotiation of the development contract or the establishment of an inflated production price—to reimburse Lockheed for the costs incurred. The necessity of such a course of action, if the program were to continue, was in fact hinted at by the Army in its testimony before the subcommittee.

In light of the subcommittee's independent conclusion as to our need for the Cheyenne, there would seem to be no need to incur such prospects. The out-of-pocket funds already being spent by Lockheed on the Cheyenne could be better directed now to a partial resolution of the company's financial plight.

FURTHER IMPLICATIONS OF THE AX-CHEYENNE DISPUTE

The fiscal 1971 request for funds for two alternative close support aircraft raises issues which actually transcend the Ax-Cheyenne dispute itself.

One such issue concerns the allocation of roles and missions between the services.

Ever since World War II the provision of close air support to our ground forces has been the responsibility of the Air Force, not the Army. This situation has not been accepted with equanimity by the Army, which would clearly prefer to protect Army ground troops with Army aircraft. On several occasions in testimony before the subcommitte, the Army stressed the importance of having available "organic" fire support for its troops in the field.

The subcommittee questions whether the Army's desire to expand and upgrade its helicopter capabilities would be so great if it had itself the close support mission. Inasmuch as this interservice rivalry is likely to persist, and since the assignment of the close support mission has not been reviewed for over 20 years, the committee report states that the matter warrants further consideration by the Secretary of Defense.

Irrespective of how the mission assignment question is resolved, the Ax-Cheyenne dispute also has implications for the role of the Secretary of Defense in reviewing the program proposals of the military services.

Under the previous administration, considerable emphasis was placed on

providing, within the Office of the Secretary, a detailed analysis of all systems proposed. This centralized control provoked considerable criticism from the higher three services. No doubt it did lead in some instances to unwarranted intrusion into matters which could have been better resolved by the services themselves.

Under the present administration, a policy has been developed under which greater responsibility has been lodged in the services. The AX-Cheyenne controversy, however, highlights the importance of at least some central control.

What the controversy represents is one particular instance of a recurring phenomenon—a situation in which the interests of the individual services may not coincide with the broader demands of our national security itself.

Both the Army and the Air Force could rationally conclude, within their respective budget guidelines, that the Cheyenne and the AX were sufficiently high on their respective lists of priorities to justify continued funding at this time.

Nonetheless, for the long series of reasons which entered the subcommittee's decision to terminate the Cheyenne program, the perspective of national security compels a different judgment.

Centralized review of the services' program proposals is vitally needed if future such situations are not to arise. What is at stake is more than mere size of our overall defense expenditures. It is the need to insure that we get the best value per dollar for whatever level of expenditures we undertake.

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

Mr. McINTYRE. I am happy to yield.

Mr. STENNIS. First, I want to join wholeheartedly in what the Senator has said about the overall problem of cover support for the soldier on the ground. Whatever weapon is used, whether it is a helicopter, or the AX, or whatever, there is nothing more essential, nothing more important; and during my years on the Armed Services Committee I have had the feeling that at times it has been neglected.

There is no easy answer for the service, but, at the same time, it has not had the emphasis and the priority that I think it deserves.

Out of all the matter that the Senator has so ably discussed, I believe the primary contribution we can make is to insure adequacy of that support; and in order to do that, it has got to be given the very highest priority, in my opinion.

I commend the Senator very highly for his concern about this matter and for the work that he has done to that end.

Further, the speech the Senator from New Hampshire has made here today represents further strong evidence of his very fine knowledge of the subject matter of research and development involved here. His commanding knowledge of various items, large and small, is invaluable to the committee and to the Senate.

I have followed closely his cogent reasoning with respect to the missions and comparisons of the functions of these two highly important weapons, the AX, the new plane, and the helicopter that has been giving trouble.

My conclusions rested with the committee on this question. It is a question of which one shall be used, or whether they both shall be used, or if only one. There is another question of when the decision shall be made. Our committee has made that decision as of now.

I wanted the Senator from New Hampshire, as a part of the picture, to enlarge his speech now as to the advanced helicopter of the future, because if Cheyenne is to be abandoned, thought has to be given to the future. The Senator is versed in that subject.

Just what did the subcommittee do with that money? If the Senator mentioned it, I did not catch it, because I was diverted here once.

Mr. McINTYRE. First of all, Mr. President, let me say to the chairman of the committee that I appreciate his tremendous cooperation with and assistance to the subcommittee.

I discussed in my speech the essence of the dispute within the committee. As the Senator knows, we argued the question of the Cheyenne helicopter back and forth for a considerable time before voting on it.

Mr. STENNIS. Most thoroughly.

Mr. McINTYRE. But to answer the Senator's question directly. What the committee did was to make sure that our advanced development program for helicopters will have sufficent funds to permit a continuation of work on the problems that have tied Lockheed up, especially the rigid rotor, to make sure that the knowledge gained to date on these problems is not lost. I am sure the Senator realizes that we have to look also into the problems of greater speed, maneuverability, and heavier lift. So it is important that there be funds in the bill to continue this research, even though we are recommending to the Senate that the Cheyenne development program be canceled, along with the procurement program that was canceled last year.

So I believe that there is about $17 million that will be available for this work.

Mr. STENNIS. Yes.

Mr. McINTYRE. And I think we ought to stress to the Senate and for the RECORD that this was a very close decision, and it was a decision that the distinguished chairman of our Subcommittee on Tactical Air, in his speech, said that he still disagrees with.

But I think the significance of the decision that the full committee has taken should be recognized. It was a hard-nosed decision, in which less emphasis was placed on the $168 million invested to date than on the $1.5 billion of unnecessary expenditures which continuing with the program would have entailed.

Mr. STENNIS. Yes.

Mr. McINTYRE. So I think the decision was a good one. I think it is a significant one, and I hope not only that the Senate will adopt it, but that we can hold it in conference.

Mr. STENNIS. Mr. President, I thank the Senator again for his very fine remarks, his long efforts on this subject matter, and his speech today.

I see now, from the Senator's added remarks, that the subcommittee has provided this advance development money, a relatively small amount, that still is going forward on this problem of the helicopter of the future.

Mr. McINTYRE. It will be zeroed in right on the problem.

That has plagued Lockheed, and that is the rigid rotor.

Mr. STENNIS. Yes. And we will have the benefit of all the research that has already been done on this very problem of the rigid rotor.

Mr. McINTYRE. Yes.

Mr. STENNIS. That is one of the great blessings of research; and even if you call it waste or failure, either term is incorrect, because the advance research is bottomed upon the deficiency of the present situation.

Mr. McINTYRE. That is true. The knowledge we gain will be there to be built upon.

Mr. STENNIS. One thing moves to another.

I trust the Senate will sustain the position of the subcommittee and the committee on this matter. Frankly, I feel that it will.

I think also, Mr. President, this represents a case where research has to continue. For example, on the ABM, we have a situation where almost everyone agrees that if these SS–9's are going to continue, we have to keep trying to do something. What are we doing? We have the Safeguard system, but in addition to that, we are looking at the problem even farther on over the horizon, with a relatively modest amount of money put in for research on more advanced possibilities. I believe that $158 million was requested.

Mr. McINTYRE. On this advance research on ABM, I think we are recommending $138 million this year for the ABMDA budget. So it is not just a drop in the bucket.

Mr. STENNIS. Yes.

Mr. McINTYRE. This is beyond Safeguard.

Mr. STENNIS. That is beyond the Safeguard; yes.

I thank the Senator again, and I appreciate his yielding to me.

Mr. McINTYRE. I thank my distinguished chairman.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GOLDWATER. Mr. President, I regret that I was not present in the Chamber when the distinguished Senator from New Hampshire made his re-

marks relative to the Research and Development Subcommittee which he heads, working under the Armed Services Committee. I would like to have pointed out something at that time which I shall point out now, which is that one of the major problems I think we find in this whole field of tactical air support is that the services seem to be overlapping again. Where we once had decided upon a tactical air doctrine, where, in effect, the Air Force would supply tactical air support, we now have, in my opinion, a very expensive experience going on, with the Marines using the Harrier, which is a vertical takeoff and landing aircraft being made in England; we have the Navy with their A–7; we have the Army wanting to develop the Cheyenne helicopter, which has run into difficulties, as was pointed out this morning; and we have the Air Force using several aircraft in tactical air support, but seeking funds, which we are going to give them, for the development of the AX, which will be another tactical support aircraft.

We have discussed this matter in the committee, and I wanted to emphasize here on the Senate floor the importance that I attach to an immediate study by either the Joint Chiefs of Staff, the National Security Council, or the committees of Congress, into this whole matter of who is to supply tactical air support for the ground troops.

Tactical air support means just that. It means giving the ground troops the same type of support that the artillery used to give—support that can hit accurately as close as 50 feet in front of the lines, and be able to interdict roads, railroads, and so forth, which supply material to the front line troops.

If we are going to continue with this very expensive procedure we are now engaged in, I am afraid we are going to have more and more difficulty each year in providing the four services with tactical air support, where we could have one service doing the whole thing. That would mean, I think, ultimately one aircraft. I think as good an example of tactical support as we can find in air history was in the Luftwaffe of World War II, when they used the Stuka dive bomber, as they called it. They had one aircraft to do one job, and they did a superb job of it.

I think we can achieve the same results, but to do that, Mr. President, I feel that we have to reestablish a tactical air doctrine. We have one, but it is not being followed.

I have been assured by the chairman of the Armed Services Committee, the distinguished Senator from Mississippi (Mr. STENNIS), that we in the committee will pursue this question, and I am hopeful that when we meet next year for the authorization bill, we will be able to report to the Senate and to Congress that we have studied the matter, that we have suggestions to make, and even hopefully that the Services themselves will have arrived at a combined role that one or not more than two Services can provide in this important field.

I say again, I regret that I was not here, because I would have enjoyed discussing this matter with the chairman of the subcommittee.

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

Mr. GOLDWATER. I yield.

Mr. STENNIS. I am certainly pleased that the Senator from Arizona could come to the Chamber in time to make his very timely remarks, especially at this time, when they go right along in the RECORD with the remarks made on the subject by the Senator from New Hampshire.

I do not believe that anyone in public life is more qualified than the Senator from Arizona to speak on this subject. I have heard him many times express his concern about the proper ground support for the Army, for the Marines—for whatever branch of the service is fighting on the ground. Because the Senator from Arizona has a distinguished career in the Air Force, he is sometimes thought of as being the "Air Force." But it is not that way at all. This is another illustration of it. He takes a very broad view of the matter, and he makes quite a contribution to the committee on this point as well as others.

I commend the Senator as well as thank him. There will be a future to our activity in the committee, and the Senator will have a major part in it, as I see it, and we will work this thing out.

The Senator gave his opinion, as I understood, that this matter could be worked out on the basis that only two of the services could be prepared to do this job. I wish he would develop that a little more.

Mr. GOLDWATER. A discussion on tactical air doctrine could prove that the Navy has a role. I think that as long as the Navy has carriers, as long as they can prove the need for carriers, there could be a tactical role, where they would supply close tactical support for amphibious landings or for marine operations on land. I must say that the Marines developed with the Navy a very, very fine tactical support in the Second World War and in Korea.

I would think, though, with all charity toward the Army—I have to admit that my first love was the Army; I belonged to it for a long time—that the Air Force should have the dominant role in air support of ground troops. I am thinking of the infantry.

If the Army itself is going to have the Cheyenne or some other type of support aircraft and the Air Force is going to have a different type of aircraft, if we have this duplication on the ground, I see an increasingly expensive role. The A–7 is coming into the inventory; but we have been using the F–100—we have been using all our aircraft, in fact, the fighter types—for close support, and some are better than others.

We are no longer talking about aircraft that sold at prices we had during World War II. I can think of a good tactical support aircraft in World War II, the P–47, which I believe I am correct in saying never cost more than $50,000, and we think today of developing a new tactical support aircraft that we hope can be kept under $3 million. We run into the real problems that we are faced with on the committee and that we are faced with throughout the Military Establishment—the tremendously increased cost of building the things we need.

When we think back in history to World War I—my figures may be off a small percentage—when we contracted and passed appropriations for 22,000 aircraft that were to cost $243 million, and we appropriated and authorized the purchase of 43,000 or 44,000 aircraft engines at a cost of $245 million, we begin to realize what we are running into. We see, for example, one shell, such as the proposed 30-millimeter shell, that will cost more than $5 apiece, and the comparable ones used to be produced at a greatly reduced cost.

This is the reason why I have asked the chairman—and the chairman and I have discussed this in committee, along with other members of the committee—that we ask the Joint Chiefs of Staff to go into this matter and to come up with a tactical air doctrine that will make sense and will provide the support that has to be provided but will get away from all four services having their own tactical support aircraft. That is my thinking on it at the present time.

I thank the chairman for his very generous remarks about me. I appreciate it very much.

Mr. STENNIS. I thank the Senator.

Mr. GOLDWATER. I yield the floor.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, notified the Senate that, pursuant to the provisions of section 2 (a), Public Law 91–332, the Speaker had appointed Mr. ROGERS of Colorado, Mr. OLSEN, Mr. SAYLOR, and Mr. SKUBITZ as members of the National Parks Centennial Commission.

The message also notified the Senate that, pursuant to the provisions of 14 U.S.C. 194(a), the Speaker had appointed Mr. MONAGAN as a member of the Board of Visitors to the U.S. Coast Guard Academy, to fill the existing vacancy thereon.

The message announced that the House insisted upon its amendments to the bill (S. 2846) to assist the States in developing a plan for the provision of comprehensive services to persons affected by mental retardation and other developmental disabilities originating in childhood, to assist the States in the provision of such services in accordance with such plan, to assist in the construction of facilities to provide the services needed to carry out such plan, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. JARMAN, Mr. ROGERS of Florida, Mr. SPRINGER, and Mr. NELSEN were appointed managers on the part of the House at the conference.

The message also announced that the House insisted upon its amendments to the bill (S. 3586) to amend title VII of the Public Health Service Act to establish eligibility of new schools of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, and podiatry for institutional grants under section 771 thereof, to extend and improve the program relating to training of personnel in the allied health professions, and for other purposes, disagreed to by the Sen-

ate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. JARMAN, Mr. ROGERS of Florida, Mr. SPRINGER, and Mr. NELSEN were appointed managers on the part of the House at the conference.

RECESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair, but not later than 3 p.m.

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

Thereupon, at 1:55 p.m., the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 2:52 p.m. when called to order by the Presiding Officer (Mr. TOWER).

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The Senate continued with the consideration of the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

PHASE I OF THE SAFEGUARD ANTI-BALLISTIC MISSILE SYSTEM

Mr. HUGHES. Mr. President, 1 year ago today, phase I of the Safeguard antiballistic-missile system was approved. This year—and $800 million later—we are being asked to approve the next installment of more than $1 billion.

As Senator HART pointed out yesterday, we are not only considering the expenditure of certain funds, we are making a decision on whether or not to accelerate the momentum of a weapon system that is, in the minds of many, ineffectual and dangerously provocative, as well as quite costly.

I wish to express my deep appreciation to the majority leader and the minority leader for making it possible for me to express a viewpoint here that is shared by million of Americans.

I do not pose as an expert on weapons systems. I address myself, rather, to the commonsense judgment regarding this dubious and enormously expensive enterprise and to its relation to the progress of the SALT talks and to the acceleration of the arms race.

It should be recognized, I believe, that all of us in this Chamber share common objectives—the full protection of our national security, and peace among nations.

In the course of this debate, the esteemed minority leader, the Senator from Pennsylvania (Mr. SCOTT), the chairman of the Armed Services Committee, the Senator from Mississippi (Mr. STENNIS), and others, such as the Senator from Washington (Mr. JACKSON) and the Senator from Kansas (Mr. DOLE), have given us a lucid and informed exposition of the administration's viewpoint regarding the expansion of the Safeguard deployment and development.

My esteemed colleagues, the Senator from Kentucky (Mr. COOPER) and the Senator from Michigan (Mr. HART), have done an equally impressive job of outlining a middle-ground position on behalf of a bipartisan group of Senators who have severe misgivings about proceeding with the expansion of the ABM at this time.

Many of that group, I believe, would prefer the full halting of everything except the research and development phases.

However, they have presented, in the interest of arriving at a tenable common ground, an amendment which represents what Senator HART has termed a "modest but important effort to help stem the ever-escalating arms race and, specifically, to stop the momentum of this particular weapons system." I share this view.

While the Cooper-Hart amendment has much to recommend it and would receive my support as a second choice, it does leave one important and widely held conviction unrepresented in this debate—the conviction that all deployment of the ABM should be arrested at this time.

I therefore plan to offer, later in the course of this debate, an amendment that will eliminate all funding for the ABM except for the research and development funds.

I recognize that the Senate decided last year by the narrowest of margins to proceed with deployment of phase 1 of the Safeguard program. But no significant major construction has been completed.

The reasons that moved 50 Senators to vote against deployment last year are still valid. For many of us, events of the past year have only served to reinforce our conviction that to proceed with this dubious weapon system is not in the national interest.

Consideration of the ABM issue would not be complete without an opportunity for a vote on this devout conviction.

I am convinced that, basically, those who believe that the interests of national security and world peace are best served by deescalation of the arms race are united.

This is perhaps the most important fact to be remembered on this day, which is the 25th anniversary of Hiroshima.

Mr. President, it is our intention to offer this amendment later in the debate. It is our hope that as all the sides of this great issue are explained to the American people, we can show that nothing in the last year has changed to the extent that it should change the minds of the 50 Senators who voted against the initial phase of ABM. In the interest of informing the American public, it is absolutely essential that we take the opportunity to make sure that there is a clear understanding among the Members of this body that the conditions that existed last year have only been reinforced by activities of the last year.

We intend, in the debate of the next few days, to explain that position, and we look forward to the opportunity to work, hopefully, so that a total enlightened decision can be made by this body on the basis of the information presented.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 17070) to improve and modernize the postal service, to reorganize the Post Office Department, and for other purposes.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess subject to the call of the Chair, with the understanding that the recess not extend beyond 3:30 p.m. today.

The motion was agreed to, and at 3:04 p.m., the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 3:14 p.m. when called to order by the Presiding Officer (Mr. SAXBE).

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. It is so ordered.

CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE NARROWS UNIT, MISSOURI RIVER BASIN PROJECT, COLORADO

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Washington (Mr. JACKSON), I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3547.

The PRESIDING OFFICER (Mr. SAXBE) laid before the Senate the amendment of the House of Representatives to the bill (S. 3547) to authorize the Secretary of the Interior to construct, operate, and maintain the Narrows unit, Missouri River Basin project, Colorado, and for other purposes, which was to strike out all after the enacting clause, and insert:

That the Narrows unit, heretofore authorized as an integral part of the Missouri

River Basin project by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented, is hereby reauthorized as a unit of that project for the purposes of providing irrigation water for one hundred and sixty-six thousand acres of land, flood control, fish and wildlife conservation and development, public outdoor recreation, potential future municipal and industrial supplies, and for other purposes. The construction, operation, and maintenance of the Narrows unit shall be subject to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal features of the Narrows unit shall include the Narrows Dam and Reservoir, fish hatchery and rearing ponds, acquisition and development of the existing Jackson Lake Reservoir, including some rehabilitation of Jackson Lake Dam, for public outdoor recreation and fish and wildlife enhancement, and other necessary works and facilities to effect its purpose: *Provided*, That all identifiable return flows of water from any of the project purposes, features, necessary works and facilities, authorized herein shall be treated for the purpose of abating pollution and improving water quality, in such manner as determined by the Secretary of the Interior.

SEC. 2. The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Narrows unit shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 3. The Narrows unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented: *Provided*, That repayment contracts for the return of construction costs allocated to irrigation will be based on the irrigator's ability to repay, as determined by the Secretary: *Provided further*, That the terms of such contracts shall not exceed 50 years.

SEC. 4. For a period of ten years from the date of enactment of this Act, no water from the unit authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

SEC. 5. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

SEC. 6. There is hereby authorized to be appropriated for construction of the Narrows unit as authorized in this Act the sum of $68,050,000 (based upon January 1969 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the unit.

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Washington (Mr. JACKSON), I move that the Senate disagree to the amendment of the House on S. 3547 and ask for a conference with the House 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. ANDERSON, Mr. CHURCH, Mr. BURDICK, Mr. ALLOTT, and Mr. JORDAN of Idaho conferees on the part of the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

ANNOUNCEMENT BY DEPARTMENT OF DEFENSE RELATING TO POLICY OF ANNOUNCEMENTS ON CONTRACT AWARDS

Mr. WILLIAMS of Delaware. Mr. President, earlier this week the Senate unanimously approved an amendment to the pending bill, the purpose of which was to stop the practice of announcing awards for defense contracts to Members of Congress in advance of making the public announcement. I pointed out the danger of this policy and the fact that the procedure would lend the impression that there was some influence being exercised.

I was very much encouraged that the Blue Ribbon Panel studying the Defense Department took the same position and recommended that the practice be stopped.

I offered the amendment, which was cosponsored by the majority leader (Mr. MANSFIELD) and the Senator from Kansas (Mr. DOLE) and which was unanimously adopted by the Senate.

I have just been informed that the Defense Department is implementing this policy this afternoon by Executive order.

I have a copy of the order, which I would like to read to the Senate. I congratulate Secretary Laird on his prompt implementation. The order reads as follows:

The Blue Ribbon Panel has commented on the adverse effect of giving notice of contract awards to Members of Congress in advance to public announcement.

I would like for you to revise the Defense policies and procedures with respect to announcements of contract awards to insure that there is no premature notification prior to public announcement.

It is recognized that there is a legitimate requirement to advise interested Members of Congress of significant Defense action which affects their constituencies. The awards of large contracts to business firms located in their states or districts fall within this category.

It has been the standing policy of the Department of Defense to release major contract award announcements in the late afternoon, normally at four o'clock P.M. It is my desire that this policy continue and in the absence of unusual circumstances major Defense contract announcements be made at that time. As recommended by the Blue Ribbon Panel, appropriate Members of Congress should be notified concurrently with such public contract award announcements.

MELVIN R. LAIRD,
Secretary of Defense.

With the announcement of the implementation of the order, there will, in the future, be no premature notification to Members of Congress or anyone else connected therewith before public announcement.

Again I compliment the Secretary of Defense on his prompt action in recognizing the sentiment of the Senate in taking this step. At the same time, I express the hope every agency of the Government will adopt the same procedure as their general practice.

The old practice of giving advance notice of these contracts to Members of Congress and letting them announce it first gives the impression that congressional influence may have been a factor in making the award. This is wrong, and I am glad that the practice will now be stopped.

Mr. MANSFIELD. Mr. President, may I join the distinguished Senator from Delaware in commending our former colleague, the Secretary of Defense, for issuing this order. We think it is long overdue. We are delighted that the unanimous position of the Senate has thus been reinforced and that this particular practice will henceforth be done away with.

Mr. WILLIAMS of Delaware. I thank the Senator.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I send to the desk a proposed unanimous-consent agreement, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the proposed unanimous-consent agreement.

The legislative clerk read as follows:

Ordered, That the vote on adoption of the pending Hart-Cooper amendment occur at 3:30 p.m. on Wednesday, August 12, 1970, and that on that date immediately following the disposition of the Journal the time on said amendment be equally divided and controlled by the Senators from Kentucky (Mr. COOPER) or Michigan (Mr. HART) for the proponents and the manager of the bill, the Senator from Mississippi (Mr. STENNIS), for the opponents; provided, however,

That any amendment to the Hart-Cooper amendment pending on that date which may be offered prior to 3:30 p.m. on that date shall be subject to a limitation of debate of one hour except the amendments, to be offered by the Senator from Iowa (Mr. HUGHES), and the Senator from Massachusetts (Mr. BROOKE), on which there shall be two hours allocated, the time to be equally divided and controlled by the sponsor and the manager of the bill, except

That if the manager of the bill supports any such amendment, the time in opposition will be controlled by the Senators from Kentucky or Michigan (Mr. COOPER or Mr. HART); provided further,

That if any amendment to the Hart-Coo-

per amendment is offered subsequent to 2:30 p.m. on said date, the time on that amendment shall be equally divided as aforesaid but limited to the time remaining prior to 3:30 p.m., if any; provided further;

That the vote on the adoption of the Cooper-Hart amendment shall occur at 3:30 p.m. on August 12 or immediately after the disposition of any amendment thereto pending at that time as provided in this agreement.

Mr. JAVITS. Mr. President, will the Senator yield for a question? I shall not object, of course.

Mr. MANSFIELD. I yield.

Mr. JAVITS. I thoroughly agree with the proposal, but I did not hear the part which relates to the right to offer any amendment upon the Cooper-Hart amendment even though it precedes 2:30 on Wednesday.

Mr. MANSFIELD. That is in there.

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

Mr. MANSFIELD. I yield.

Mr. HUGHES. Is the offering of a substitute amendment included as an amendment in that proposal?

Mr. MANSFIELD. Yes, it is.

The PRESIDING OFFICER. Is there objection to the proposed unanimous-consent agreement?

Mr. STENNIS. Mr. President, reserving the right to object, I make one point. I do not intend to object. Does this proposal add up to the fact that all amendments will have to be disposed of by 3:30 Wednesday and we will have to vote on the Cooper-Hart amendment in its present form?

Mr. MANSFIELD. Yes, that is correct, an amendment must be offered by 3:30 p.m. to be considered. If one is pending at 3:30 p.m. it will then be voted on and then immediately a vote on the Cooper-Hart.

Mr. HUGHES. So what does the time on the Hughes amendment and the Brooke amendment contemplate? They would have to come in by a certain time, as I understand.

Mr. MANSFIELD. They would have to come in before the hour of 3:30 on Wednesday next. On the Brooke and Hughes amendments there would be a limitation of 2 hours, and there would be a limitation of 1 hour on all other amendments.

Mr. STENNIS. Of course, if the Hughes amendment or the Brooke amendment were not called up early enough prior to 3:30 p.m., they could not get their time in.

Mr. MANSFIELD. I am sure the Senators concerned will make it quite clear that they will call up their amendments in plenty of time. That will be understood.

Mr. STENNIS. I thought so.

Mr. JAVITS. Mr. President, if the majority leader will yield, is it his intention that all votes on amendments, substitutes, and so forth, take place at one time?

Mr. MANSFIELD. No. Whenever they want to.

Mr. JAVITS. Fine.

Mr. ALLOTT. I think my question was similar; whether these votes would all occur at 3:30 on Wednesday.

Mr. MANSFIELD. No, I would hope not.

Mr. ALLOTT. The votes are to occur on the amendments as they are brought up?

Mr. MANSFIELD. Yes.

Mr. JAVITS. Mr. President, could I ask the Senator from Montana one further question on the time of voting? That may present a little problem, not to me, but to others. Votes may come at any time on amendments or substitutes; they might come Monday, Tuesday, or Wednesday morning?

Mr. MANSFIELD. That is right, but the big vote will be at 3:30 on Wednesday.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. BYRD of West Virginia. Is it the majority leader's plan to recess on Tuesday evening, and if so, until what time on Wednesday?

Mr. MANSFIELD. Yes, it is the plan of the joint leadership to recess on Tuesday and come in at 10 o'clock on Wednesday, and the time after the Journal has been disposed of will be equally divided on the basis of the situation which exists at that time for the rest of the day. When we dispose of the Hart-Cooper amendment, we will have a period for the transaction of morning business.

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

Mr. MANSFIELD. I yield.

Mr. HUGHES. It is my intention to call up the Hughes amendment at whatever time is convenient, early enough on Wednesday that it can be disposed of and voted on Wednesday. So the Senator from Montana will understand, I do not intend to call it up on Monday or Tuesday.

Mr. MANSFIELD. That is fine. We will have five and a half hours on Wednesday, and hopefully some of the other amendments may be disposed of before that time.

Mr. STENNIS. Mr. President, reserving the right to object, if everyone is going to wait until Wednesday with all these prospective amendments, there certainly will not be time to vote on all of them by 3:30.

Mr. MANSFIELD. As far as I know, there will be only two amendments. There may be others. But those two are 2-hour amendments, and even if they are called up on Wednesday, there will be plenty of time to vote on them before 3:30, because we will already have had enough time to vote on that double amendment.

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

Mr. MANSFIELD. I yield.

Mr. TOWER. Reserving the right to object, and I shall not object, the Senator has said there will be no morning hour on Wednesday until after the vote is taken; therefore, we will have 5½ hours to dispose of these amendments?

Mr. MANSFIELD. Exactly.

The PRESIDING OFFICER. Is there objection to the unanimous consent agreement proposed by the Senator from Montana? Without objection, the order is entered.

Mr. STENNIS. Mr. President, I thank the Senator from Montana and the leadership of the minority, and Senator COOPER, Senator HART, Senator HUGHES, as well as all the other Senators who have been concerned. I think they have been very reasonable indeed in reaching an agreement which will move this bill along.

I think the majority leader knows also that I think there is a good prospect for this to be followed by a very reasonable agreement with reference to the McGOVERN amendment, and if that can be worked out as we hope it can—and I have conferred with the Senator from South Dakota—that will move this important bill along in a very fine way.

I have plenty of time, myself, but the Appropriations Committee cannot act on these matters until this measure goes on to conference and is at least partly worked out there. So that is another point. I know the Senator from Montana has that in mind, but it certainly will mean a big part of the picture is out of the way for the rest of the session.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, if no Senators wish to speak on the pending business, I ask unanimous consent that the pending business be temporarily laid aside, so that further morning business may be transacted, with statements limited to 3 minutes.

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

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

Mr. BYRD of West Virginia. Mr. President, if no Senators wish to transact further routine business, I ask unanimous consent that the Senate proceed to the consideration of the unfinished business.

The PRESIDING OFFICER (Mr. SAXBE). Without objection, the Senate will proceed to the consideration of the unfinished business, which the clerk will state.

The LEGISLATIVE CLERK. A bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

ADJOURNMENT TO 10 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 10 o'clock tomorrow morning.

The motion was agreed to; and (at 3 o'clock and 45 minutes p.m.) the Senate adjourned until tomorrow, Friday, August 7, 1970, at 10 a.m.