TWO IN SERVICES

Mr. Furtado's son Stanley became 17 years of age three months ago and observed the occasion by joining the Navy. A brother, Frank, volunteered for the Army in December, 1941 and is now on active duty somewhere in the South Pacific. Two other brothers, Manuel and John Furtado, hold important positions on the waterfront with Castle and Cooke, Ltd.

Mr. Furtado, known to his friends as Louie, attended Kalihiwaena School and is a graduate of Saint Louis College. He was noted for his playing on the Kalihi football team in the "barefoot league" and captained this organization for several seasons. He has also been keenly interested in other sports.

His brother, William, said last night that "there'll be celebrating when Louie comes home."

"We hardly hoped to see Louie alive again," he said. "This has been a wonderful day for dad and the entire family."

In addition to his son Stanley, Mr. Furtado's children are Mildred, 15, Louis, Jr., 12, and Marian, 13. He also has five sisters residing here, Mrs. Alexandria Almeida, Mrs. Mary Enos, Mrs. Rose Denis, Mrs. Irene Amaral and Mrs. Adele Bortfield.

PRESUMABLY ESCAPED

It is presumed that Mr. Furtado was held in a prison camp on Guam by the Japanese and escaped to the hills a month ago, hiding out there until rescued by the Marines. However, details of his experiences on Guam will be told when he returns to Honolulu, and his father, children, brothers and sisters all hope that his return will be soon.

GIVEN UP FOR LOST, LOUIS FURTADO RETURNS FROM GUAM IMPRISONMENT AND DEATH THREAT—CAUGHT WHEN ISLE FELL, LOCAL MAN ESCAPED FOE—CHILDREN THRILLED BY FATHER'S SOUVENIR BAG

(By Dorothy Benyas)

To a native son, Louis Furtado, Honolulu yesterday looked like paradise regained after it had been lost four years. He was a civil service employe of the U.S. Navy, a chief clerk, on Guam when it fell to enemy invaders on Dec. 11, 1941.

Surrounded by two of his four children, his father, brothers, numerous other relatives who hung on every word and filled their eyes with the sight of their "Louey" home again, he gave a stark account of events from the day he was transferred from Pearl Harbor, July 24, 1941, his 32nd birthday, to October 5, 1944.

"I had been detailed with a group of native navymen to unload gasoline and we were busy unloading when the Japs came at us from two directions," Louis began. "We were caught between two fires, with no chance of getting back to the government house. I saw to it that all the natives got home safe on their farms. That took two days. Then I surrendered. The Japs put up posters in Chamorro, saying all citizens of Hawaii and the Philippines would be set free, and Japan had captured both places, which made them alien citizens of the empire.

"The Menseisho, officers of civil affairs, also told me this. I was the only boy from Hawaii. One other citizen from Hawaii was Mrs. A. L. Cruz who had married a Chamorro. I was always under suspicion because I sang God Bless America. Speaking or singing English was strictly tabu. I got slapped many times for not speaking Japanese."

GUAM PIED PIPER

He soon became the Pied Piper of Guam by herding native youngsters together and leading the singing of his favorite tune, God Bless America, which they knew by heart already, Louis said. "When the Japs came after me for that crime, I was gone," he chuckled. "The words made them mad. But they had music too. Once I heard 'Alekoki' on a recording with Jap words. What brought me real pilikia was a radio, I'd borrowed. Radios were absolutely forbidden everybody. A Spanish priest, educated in the Philippines who was just swell to me, got his head cut off for tuning up his radio and being an American sympathizer. Boy, that nearly beat me.

"Right afterwards, I saw a wholesale murder of American sympathizers. One native who befriended me got his 'neck cut,' as they called it, for having a gun. Then his whole family was lined up to take the same punishment for not turning it in. They never found the gun, anyway. The prisoners weren't eating at all by then, there was no chow for them, so they were ordered home and told they'd be sent for later. Then the Japs found out I was operating a radio and ordered me back in. That's when I did a wrong-way Corrigan. I couldn't get along very well without my neck."

Before his wrong-way takeoff, Louis had enjoyed partial freedom, farming a borrowed piece of property. "Hospitality on Guam works overtime," he explained his good fortune there. "I had a swell place with chickens and pigs and such. I had to kill them for my chow when I ducked into the woods. I kept under cover in the north end of the island. When my chow was all gone I ate wild breadfruit, wild berries and sucked drinking water from the ground. It rained every night, lucky for me.

"Came the day our planes flew over. They were firing all around me. I ran from my hideout, waving my ragged shirt. I was sure they would land somewhere near but American forces had been on the island three weeks before I knew it. I'd heard a shout and some cuss words about a truck in our own lingo. I thought, "Jeez, that's American talk! Was it a swell feeling! Then Marines picked me up and next thing I was putting away some good chow, pork and beans, real coffee. First time in I'd forgotten how long!"

BAG OF SOUVENIRS

Almost beside himself with relief and anticipation of his homecoming, Louis then traded his ragged clothes for Marine Corps handouts. Nothing remained of his possessions but the borrowed clothes he stood in yesterday. However, the bag of souvenirs he had lugged home held his overjoyed family spellbound; an elaboratively marked towel of an enemy officer, a ——— with 'banzai!' lettered on besides a blanket and wads of occupation money. Marian 14, and Louis, Jr., 12, were on deck for the family reunion but Mildred, 10, another daughter who was in school, and Stanley, 18, who is on Navy duty, were missing. His father, Joseph Furtado, two brothers, Manuel and William, helped make the day red-lettered for Louis.

His first concern was over voting for his brother William, a candidate for the House of Representatives from the 5th District, and finding Frank, the kid brother who volunteered December, 1941, and is now an Army private somewhere in the Pacific. When one of the admiring circle around him suggested rather than ordered him to do something, Louis cracked "Pipe that and me a civilian!" But he admitted it wouldn't be for long. As soon as he catches his breath, he wants to join the Army and fight beside Frank.

FOOLED LABOR BOSSES

"It was a tough four years but I can joke about it now," he smiled. "My luck held except once." A long, three-pronged scar on his left under arm will always remind him of the day he was caught "in town" and ordered to report for work on an airfield. The only way he could avoid that and still keep his head fastened on his neck was to have scalding water showered over him. Severe burns on his head, shoulders and arms healed at last with no trace of scar tissue except on his left arm."

SENATE—*Tuesday, June 1, 1971*

The Senate met at 12 o'clock noon, and was called to order by the President pro tempore (Mr. ELLENDER).

The Reverend Dr. Thomas A. Stone, associate pastor, National Presbyterian Church, Washington, D.C., offered the following prayer:

Great God, we stand before Thee at a particular place in the vast reaches of Thy space and at a particular time on the vast plane of Thine eternity. We thank Thee for the purposes of Thy creation still guiding us toward the goals at the end of time. With them in mind we pray for the brotherhood of all mankind under Thy Godhead and Fatherhood. We pray for the Spirit that will give us of Thy kingdom, for comfort for our mourning, for an inheritance with our meekness, for a righteousness to satisfy hunger, and for a mercifulness and a purity of heart to make us peacemakers and Thy children. Thus may we in our strength be ready to stand for right and fight for truth while we love peace in our hearts and minds.

On occasions we have broken Thine eternity into measures of man's time—years, weeks, hours—that we could waste and squander. Let us in this present feel the moment of our time as a part of all time, our action as that for every citizen of our country as under God marching toward the coming Kingdom, and our emotions identified with Thy ministering love and compassion.

And so give us of Thy spirit that this may be truly Thy day and we may be Thy people. May Thy blessing rest on the Members of this body and the work done here this day—as for this we pray. Amen.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

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

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

THE JOURNAL

Mr. MOSS. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, May 26, 1971, be dispensed with.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MOSS. Mr. President, I ask unanimous consent that there be a brief period, not to exceed 30 minutes, for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

LAYING BEFORE THE SENATE OF THE UNFINISHED BUSINESS AT CONCLUSION OF MORNING BUSINESS TODAY

Mr. MOSS. Mr. President, I ask unanimous consent that at the conclusion of morning business today, the unfinished business be laid before the Senate.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

REPORT ON INTERPARLIAMENTARY UNION MEETING HELD IN CARACAS, VENEZUELA, APRIL 12–18, 1971

Mr. SCOTT. Mr. President, this is a report on the Interparliamentary Union meeting which I attended April 12–18 in Venezuela—a meeting of approximately 300 delegates from some 50 countries, including a delegation of six Members of the U.S. Senate and six Members of the House of Representatives.

The Interparliamentary Union is the oldest of the interparliamentary organizations, having originated in 1889 when, on the initiative of Sir William Randal Cremer of Great Britain and Mr. Frederic Passy of France, a first interparliamentary conference for international arbitration, attended by delegates from nine countries, including the United States of America, met in Paris. By 1894 the movement had developed into a permanent organization, with its own statutes and secretariat, named the Interparliamentary Union. Over the years, the Union has pursued and expanded its activities, and the total number of active parliamentary groups now totals 67. Meetings are held twice each year—in the spring, when the work is done in committees, and in the late summer or fall, when there are plenary sessions to discuss the resolutions which come out of the spring committee meetings.

The aim of the Interparliamentary Union is to promote personal contacts between members of all parliaments in order to encourage the development of democratic institutions and promote international peace and cooperation.

At the spring meetings, such as the one we just attended in Caracas, Venezuela, there is a particularly good opportunity in the committees to become acquainted with members of the various parliaments and discuss world problems. I served with Senator LEE METCALF of Montana and Representative ALEXANDER PIRNIE of New York on the Committee on Political Questions, International Security and Disarmament. We discussed a wide variety of subjects with representatives of the parliaments of all areas of the world—Western Europe, the Iron Curtain countries, Middle East, Far East, Africa, Australia, Canada, and Latin America.

The other members of our delegation—Senators LEN B. JORDAN of Idaho, VANCE HARTKE of Indiana, HARRISON A. WILLIAMS, JR. of New Jersey, and JACK MILLER of Iowa and Representatives EDWARD J. DERWINSKI of Illinois, JOHN S. MONAGAN of Connecticut, ROBERT MCCLORY of Illinois, and F. BRADFORD MORSE of Massachusetts—served on the other four committees, the Economic and Social Committee, the Parliamentary and Juridical Committee, the Educational Scientific and Cultural Committee and the Committee on Non-Self-Governing Territories.

Representative EDWARD J. DERWINSKI, Republican of Illinois, was chairman of the U.S. delegation and served as vice chairman. Our delegation was pleased to have Representative ROBERT MCCLORY reelected vice chairman of the Committee on Educational, Scientific, and Cultural Matters.

I was especially impressed not only with the dedication and ability of the individual U.S. delegates as they worked at the conference but also in their other activities during the days in Venezuela. We, of course, learned much about the situation in Venezuela and our relations with that country from briefings we received from our U.S. Ambassador, The Honorable Robert McClintock, and his staff, and from the representatives of American oil companies, who gave us a thorough explanation of the petroleum situation. Making use of the information gained from these briefings individual members of our delegation found time between meetings of their committees to participate in a variety of activities in which they represented the United States and the Congress in a most exemplary way. Representatives HAMILTON and MORSE, both of whom along with Representatives MONAGAN and DERWINSKI are members of the House Committee on Foreign Affairs, took extensive tours of the barrios, the mountain-slope areas of the city of Caracas. Representative DERWINSKI and Senator METCALF visited the American Embassy and spoke with Embassy personnel. Representative DERWINSKI, Senator VANCE HARTKE, and Representatives MORSE and HAMILTON accepted invitations to visit schools and talk with the students. Representative DERWINSKI and I accepted the opportunity afforded us to meet privately with the President of Venezuela, H. E. Rafael Caldera. And on another occasion three of my colleagues and I had a most interesting and enlightening luncheon meeting with a group of Venezuelan intellectuals.

I returned to Washington after a week in Venezuela with the feeling that not only had the U.S. delegation represented our country in a commendable manner but we had learned much from our discussions with the representatives of the parliaments of the world, and with both Venezuelan and American officials and nonofficials in the Caracas area.

EXECUTIVE SESSION

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

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

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE COAST GUARD

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

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

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

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

LEGISLATIVE SESSION

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

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

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, without amendment, Senate Joint Resolution 103, a joint resolution to authorize the President to designate June 1, 1971, as "Medical Library Association Day."

ORDER OF BUSINESS

The PRESIDENT pro tempore. The Senator from Nebraska is recognized.

(The remarks of Mr. CURTIS when he introduced Senate Joint Resolution 105 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

QUORUM CALL

The PRESIDENT pro tempore. Is there further morning business?

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

DISBURSEMENTS UNDER "CONTINGENCIES, DEFENSE" OF THE DEFENSE APPROPRIATION ACT, 1971

A letter from the Deputy Secretary of Defense reporting, pursuant to law, disbursements made against "Contingencies, Defense," of the Defense Appropriation Act for 1971; to the Committee on Appropriations.

APPROVAL OF LOANS BY THE REA

Two letters from the Administrator of the Rural Electrification Administration transmitting, pursuant to law, information regarding the approval of certain loans for the financing of generating and transmission facilities (with accompanying papers); to the Committee on Appropriations.

REPORT ON EXPORT CONTROL

A letter from the Secretary of Commerce submitting, pursuant to law, a report on export control covering the first quarter of 1971 (with accompanying report); to the Committee on Banking, Housing and Urban Affairs.

MAJOR NATURAL GAS PIPELINES

A letter from the Chairman of the Federal Power Commission transmitting a map of the major natural gas pipelines as of December 31, 1970 (with accompanying map); to the Committee on Commerce.

REPORTS OF THE COMPTROLLER GENERAL

Four letters from the Comptroller General of the United States transmitting, pursuant to law, four reports; one dealing with the financial soundness of loans to grazing associations, a report on the inventories at naval shipyards, the excesses and improvements made; a report on the more effective use of manpower and machines recommended in mechanized post offices; and a report on the need for improved review and coordination of the foreign affairs aspects of Federal research (with accompanying reports); to the Committee on Government Operations.

REPORT ON THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

A letter from the Assistant Secretary of the Interior transmitting, pursuant to law, a report under section 511 of the Federal Coal Mine Health and Safety Act of 1969 (with accompanying report); to the Committee on Interior and Insular Affairs.

PROPOSED AMENDMENTS OF THE JOHNSON-O'MALLEY ACT

A letter from the Acting Secretary of the Interior submitting proposed legislation to amend the Johnson-O'Malley Act, and for other purposes; with accompanying papers; to the Committee on Interior and Insular Affairs.

PROPOSED PROJECT FOR GASIFICATION OF BITUMINOUS COAL

A letter from the Assistant Secretary of the Interior transmitting, pursuant to law, a proposed contract for a research project entitled "Renovation and Operation of HRI Coal Gasifier" (with accompanying papers); to the Committee on Interior and Insular Affairs.

PETITION

A petition was laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A joint resolution of the General Assembly of the State of Tennessee; to the Committee on Commerce:

"HOUSE JOINT RESOLUTION 150

"A resolution to memorialize the U.S. Congress to amend the Daylight Saving Time Law to end daylight saving time each year on the Sunday immediately preceding Labor Day

"Whereas, the present nation-wide system of daylight saving time extends for a six-months period, from the fourth Sunday in April until the fourth Sunday in October; and

"Whereas, during the latter part of that period, as the days begin to get shorter and daylight comes later, daylight saving time works a hardship on school children of tender years and inconveniences their families, because in many areas the children have to go out in the dark of night to wait for school buses and in some cases parents are obliged to accompany their children to assure their safety and well-being; and

"Whereas, the period of daylight saving time is too long and should be shortened so that the observance of standard time in the various time zones in the United States will be resumed at an earlier and more realistic date; now, therefore,

"Be it resolved by the House of Representatives of the Eighty-Seventh General Assembly of the State of Tennessee, the Senate concurring, That the Congress of the United States is hereby memorialized and urged to amend the Daylight Saving Time law to provide for the ending of daylight saving time each year in the several times zones of the United States at 2:00 a.m. on the Sunday immediately preceding Labor Day; and

"Be it further resolved, That copies of this resolution be forwarded to the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and to each Member of Congress from Tennessee."

PUBLIC WORKS ACCELERATION ACT—REPORT OF CONFERENCE COMMITTEE (S. REPT. NO. 92-137)

Mr. RANDOLPH, from the committee of conference, submitted a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 575) to authorize funds to carry out the purposes of the Appalachian Regional Development Act of 1965, as amended, which was ordered to be printed.

BILLS AND JOINT RESOLUTIONS INTRODUCED

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. HART:

S. 1969. A bill to suspend the death penalty for 2 years. Referred to the Committee on the Judiciary.

By Mr. PROXMIRE:

S. 1970. A bill to amend the Employment Act of 1946 to provide for an informed public opinion upon price and income behavior which threatens national economic stability. Referred to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SCOTT:

S. 1971. A bill to declare a portion of the Delaware River in Philadelphia County, Pa., nonnavigable. Referred to the Committee on Commerce.

By Mr. MILLER:

S. 1972. A bill to create a National Agricultural Bargaining Board, to provide standards for the qualification of associations of producers, to define the mutual obligation of handlers and associations of producers to bargain regarding agricultural products, and for other purposes. Referred to the Committee on Agriculture and Forestry.

By Mr. HARTKE (for himself, Mr. SCOTT, Mr. SCHWEIKER, Mr. BAYH, Mr. BROOKE, Mr. BUCKLEY, Mr. CRANSTON, Mr. HART, Mr. HOLLINGS, Mr. HUMPHREY, Mr. KENNEDY, Mr. METCALF, Mr. MUSKIE, Mr. NELSON, Mr. PERCY, Mr. PROXMIRE, Mr. TUNNEY, and Mr. WILLIAMS):

S. 1973. A bill to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. CHURCH:

S. 1974. A bill for the relief of Isabel Manestar. Referred to the Committee on the Judiciary.

By Mr. CURTIS (for himself and Mr. HARRIS):

S.J. Res. 105. A joint resolution authorizing the President to issue a proclamation designating 1971 as the "Year of World Minority Language Groups." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HART:

S. 1969. A bill to suspend the death penalty for 2 years. Referred to the Committee on the Judiciary.

DEATH PENALTY SUSPENSION ACT

Mr. HART. Mr. President, I introduce a bill to suspend for a period of 2 years the execution of prisoners under sentence of death in the States. The bill would provide breathing space for Congress to consider whether it should exercise its power under section 5 of the 14th amendment to abolish capital punishment in this country. It would also enable State authorities who are now reexamining this question more time for a thorough reappraisal of their own policies. Before I turn to the constitutional basis for my bill, let me first briefly describe the factual situation which, I believe, makes legislation of this kind imperative today.

Since the Supreme Court has recently rejected several procedural challenges in death penalty cases, I fear a renewal of efforts to carry out many of the 650 executions that have been stayed during the past 4 years. The Court's decisions in the Crampton and McGautha cases, just 3 weeks ago, remove the underpinnings from these stays and reprieves. They thus create the prospect which is, to me at least, deplorable and alarming. If the Congress or the States should determine to abolish the ultimate penalty, there could be no reparation for those who were executed in the meantime.

Surely at no time in our history could we less afford the movement away from reason and compassion toward violence and vindictiveness which such a spectacle would represent. In these circumstances, it seems to me that Congress should not

shrink from its responsibility to consider the remaining constitutional issues raised by capital punishment. There are two main bases for possible congressional action:

Evidence that the death penalty is imposed in a discriminatory manner on minorities and the poor in violation of the 14th amendment; and

A growing basis for congressional determination that, today, executions constitute "cruel and unusual punishment," in violation of the eighth and 14th amendments.

There is considerable basis on either or both of these grounds for Congress to conclude that it should abolish the death penalty under its power to enforce the 14th amendment. At the conclusion of my remarks, I shall insert in the RECORD a legal memorandum prepared at my request by the Washington research project which indicates why Congress might conclude the death penalty amounts to cruel and unusual punishment which it can prohibit under section 5 of the 14th amendment and that the administration of capital punishment in this country has been so tainted by racial and class discrimination that abolition of the death penalty is the only effective remedy to enforce the requirements of the equal protection clause. Let me briefly outline the arguments here.

CRUEL AND UNUSUAL PUNISHMENT

Death—the "ultimate penalty"—is incomparably the harshest punishment known to our law. Not only is life itself taken, it is taken in a manner imposing the most terrible mental suffering, which can lead to insanity or suicide. In "Reflections on the Guillotine," Camus wrote:

> Many laws consider a premediated crime more serious than a crime of pure violence. But what then is capital punishment but the most premeditated of murders, to which no criminal's deed, however calculated it may be, can be compared? For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life.

There is also the suffering inflicted in the execution process itself. For those who regard this horror as trivial, I suggest they read the arresting testimony of Warden Duffy at hearings I chaired on capital punishment several years ago.

Moreover, studies have shown capital punishment to be unnecessarily cruel because there is simply no evidence that it provides any greater deterrent to serious crime than does the threat of life imprisonment. Former Gov. Pat Brown, of California, has observed:

> The naked simple fact is that the death penalty has been a gross failure. Beyond its horror and incivility, it has neither protected the innocent nor deterred the wicked.

Indeed, we are not even consistent, since deterrence presumably suggests maximum publicity. Yet, we have recognized that public killings, whether sanctioned by law or not, whether in the name of agression of defense of country, can brutalize the human spirit, and we carry out our executions in private. New York first prohibited public executions in 1835; Kentucky, the last State to ban them, did so in 1937.

Further, the death penalty has become "unusual" in a constitutionally significant sense. Even before the hiatus of the last 4 years, executions had become infrequent. The few victims of capital punishment have been selected sporadically in part by chance and in part by the vagaries of public opinion. This situation, hardly a model of the rule of law when life and death are at stake, also suggests a finding of an "unusual" punishment within the meaning of the eighth amendment.

Finally, the issue cannot be resolved merely by noting that capital punishment was accepted at the time the eighth amendment was drafted. The framers deliberately chose broad language. The Supreme Court has held that scope of the prohibition must develop with the growth of civilized principles of penology, and "draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

That the Supreme Court has not itself ruled the death penalty cruel and unusual punishment does not mean that Congress could not do so. In Katzenbach against Morgan, the Court upheld our provision in the Voting Rights Act of 1965 which struck down, on equal protection grounds, denial of the vote by the States to citizens literate only in Spanish, even though it had ruled only a few years earlier that English literacy tests did not violate the 14th amendment. The Court said that when Congress finds a constitutional violation, the courts must sustain the finding if they can "perceive a basis" for it—even if they have not yet made the same finding themselves. Today, with the increasingly widespread revulsion at organized murder and violence in the name of society, there is surely more than a "perceptible basis" for a congressional finding that the death penalty is cruel and unusual punishment.

EQUAL PROTECTION

It is beyond question that racial discrimination in criminal sentencing violates the equal protection clause. And there can be little doubt that racial discrimination permeates the whole history of capital punishment in this country. The problem has been most publicized with respect to executions for rape in the South, which call almost entirely on black defendants. But careful studies by criminologists have shown that the problem is indeed nationwide and is not confined to the crime of race. In the Northern States studied, such as Ohio, Pennsylvania, and New Jersey, the figures show that substantially higher proportions of black defendants convicted of capital crimes are executed than are whites convicted of the same crimes.

In these circumstances, Congress may eliminate the discriminatory impact by removing the opportunity for it—the death penalty itself. We are not confined to prohibiting death sentences where specific intent to discriminate can be proved. The best precedent is again the nationwide ban of literacy tests for voting. In the 1965 Voting Rights Act, the Congress suspended literacy tests in certain States on the basis of statistical evidence of racial discrimination. The Supreme Court unanimously upheld our action. In our 1970 voting rights amendments, at the urging of the administration, we extended that ban nationwide, even to States where no showing of discriminatory use of the tests had been made. Again the Supreme Court unanimously approved, noting our power to strike at discrimination broadly and effectively rather than on a case-by-case basis by prohibiting devices which have had a discriminatory impact.

I have only briefly summarized the constitutional arguments here; they are spelled out at greater length and documented in the memorandum from the Washington research project.

To this point, I have been arguing that Congress might constitutionally legislate to abolish the death penalty permanently. The bill I introduce, however, does not go this far. It would merely stay any use of the death penalty for a period of 2 years, so that Congress might calmly and rationally consider the constitutionality of the death penalty and the propriety of permanently legislating against it. Legislation of the sort I have been discussing does impinge upon an area—the setting of criminal punishments—which traditionally has been left to the States, and we should not rush into it.

Quite the contrary, full consideration is in order, and our able colleague, the Senator from North Carolina, and his Subcommittee on Constitutional Rights will provide such deliberation to the questions posed.

Realizing that these constitutional questions are important and deserve careful appraisal, I have sent a legal memorandum and draft bill to more than a dozen distinguished scholars in the field of constitutional law, soliciting their opinions on the constitutionality of the legislation. Without exception, those who have responded—including Prof. Philip Kurland of the Chicago Law School, Profs. Paul Freund and Archibald Cox of Harvard, Profs. Alexander Bickel and Louis Pollak of Yale, Prof. Herbert Wechsler of Columbia and Prof. William Van Alstyne of Duke—have agreed that the proposed legislation is within the power granted to Congress by section 5 of the 14th amendment. Many of them have gone on to endorse this approach as a matter of wise Federal policy, although they note that they do not readily accept the assertion of congressional power to intervene in affairs traditionally left to the States or the courts. Indeed, three scholars who endorse the constitutionality of the bill—Professors Kurland, Bickel, and Pollak—had questioned our power to lower the voting age in State elections and have distinguished that situation from my proposal. I ask unanimous consent that both the letter, and the mem-

orandum be inserted in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HART. But in the meanwhile, Mr. President, I believe it imperative that we prevent any executions from taking place. The reason is obvious. If Congress should eventually determine that the death penalty does violate the constitutional rights of those subjected to it and that it must be abolished by Federal legislation, the constitutional rights of those executed in the meantime cannot be remedied retrospectively. In the language of the courts of equity, "irreparable injury" in the most telling sense will have been done those dead men.

Several further questions about this bill may trouble some of my colleagues. First, as a practical matter, is this legislation really necessary to prevent immediate executions in this country? Will not courts and the State officials be able to prevent executions while serious questions of the constitutionality of the death penalty remain?

In some cases, they surely will. I note, for instance, that Governor Gilligan of Ohio has announced that he will stay all executions in his State until the Supreme Court decides the question of cruel and unusual punishment. The point is that we cannot count on this sort of response everywhere. Prof. Anthony Amsterdam of Stanford Law School, perhaps the lawyer most experienced in dealing with capital cases, has written to me that he believes a congressional stay is the only sure protection against executions before every legal question has been explored. He summarizes vividly why enactment of this bill is "literally vital":

> What I have said in the preceding paragraphs is based on considerable familiarity with postconviction litigation in capital cases. Since 1965, I have spent about one-third of every day working on death cases. I have obtained stays of execution for scores of condemned men, and consulted with other attorneys in obtaining scores of additional stays. *In case after case we have gone down to the final hours—an experience of mind-shattering cruelty to the condemned prisoner—and emerged with a stay only through incredible good fortune. One slip in any of a dozen circumstances beyond our control in any of these cases would have killed the man.* (Emphasis added.)

Before relegating this bill to the status of an interesting academic exercise with little real import, I urge my colleagues to read this letter from Professor Amsterdam carefully.

Second, some of my colleagues may wonder whether Congress should leave these basic constitutional questions to the courts. In a word, my answer is "no." We have taken an oath to uphold the Constitution. Congress cannot abdicate to the courts or to the States its own responsibility for assuring the safeguards of the 14th amendment.

Nor, as Professor Freund points out, would this bill improperly breach the principle of separation of powers:

> Since the proposed measure would be general in application, not singling out particular death sentences, there should be no objection on the score of separation of powers between the legislative and judicial branches. Amerlioration of penalties can of course be made retroactive without infringing on the judicial function.

Finally, a nationwide temporary stay of executions would eliminate the need for already congested courts to review a flood of applications for individual stays of execution.

Mr. President, in conclusion, let me emphasize once more that support for my bill does not require a Senator to be prepared to accept now the proposition that capital punishment violates the eighth amendment or is so discriminatory in its actual implementation as to require prohibition to insure equal protection of the law. The question is whether we can and should enact a moratorium on executions to enable Congress to bring its factfinding process to bear on these issues where at least a serious question has been established. I hope Congress will agree with Professor Mishkin's conclusion that—

> The very processes of our constitutional system call for assuring adequate opportunity for wise deliberation by Congress (as well as the States). . . . The process is likely to produce a wiser resolution if it is not under the pressure of a need to act quickly.

Congress has too often passed the buck to the courts when individual constitutional rights were at stake. Now at stake is the decision whether we can still constitutionally accept official killing as a form of criminal punishment. Congress, the elected representatives of the people, should make that choice.

One final note, Mr. President, I realize there are some who will have difficulty supporting such a bill at this moment. All of us have been outraged by the recent brutal murders of several courageous policemen. And the rampages of a homicidal maniac revealed in California have filled us with revulsion. Indeed, since the first public announcement that Congressman CELLER and I would introduce this measure, I have received anguished letters from citizens in my own State and elsewhere who have lost loved ones in brutal killings. They ask how I could possibly seek leniency for anyone committing such crimes. Others in this Chamber, I am sure, will ask the same question.

My reply calls attention, again, to the points I have already made. Were it possible to bring back lost loved ones by killing other humans, I would feel differently. Were there any evidence that further killing deters such crimes in the future, I would feel differently. Were there not the danger of error, if not in these most recent cases, then in others—as long as human fallibility continues—I would feel differently.

Above all, if the American people were clearly willing to implement a uniform and evenhanded penal policy of executing murderers—even for vengeful motives I cannot share—I might feel differently. But America has not done that; I am convinced that in our cooler moments of reflection we are unwilling to see such a uniform policy of wholesale executions actually implemented, and so, we satisfy understandable feelings of outrage and anxiety by infrequent and haphazard imposition of the death penalty, with discriminatory results.

Thus, no matter how much I join in condemning these brutal acts and seeking punishment for their perpetrators, I must also urge Congress to accept its constitutional obligation to protect the rights guaranteed by the 14th amendment and to insure that Congress may effectively do so in this instance.

Mr. President, this Nation is supposed to stand for the proposition that the life of every human being is to be cherished, no matter what his background or his wealth or his color. To take a life without significant justification, to perhaps execute innocent men—humans are fallible—and to force people to play God with the lives of their fellow men, is to cheapen the value of all human life. If the violent events of this past decade teach anything, it is that we can afford such debasement no longer.

EXHIBIT 1

STANFORD LAW SCHOOL,
Stanford, Calif., May 3, 1971.

Re Proposed Death Penalty Suspension Act of 1971.

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

DEAR SENATOR HART: I appreciate your letter of April 21 and the opportunity to comment upon the draft Death Penalty Suspension bill. Before coming to the merits, however, I should make clear that I am not a disinterested observer on the subject of capital punishment. I presently represent a considerable number of condemned men, and have argued the unconstitutionality of the death penalty in several cases in the Supreme Court. You will doubtless want to take these circumstances into account in determining what weight to give my opinions on the questions you ask.

I think that there can be no serious doubt about the constitutionality of the proposed moratorium legislation. No constitutional proposition is plainer than that the Equal Protection Clause of the Fourteenth Amendment forbids racial discrimination in criminal sentencing. The First Civil Rights Act of April 9, 1866, Ch. 31, § 1, 14 Stat. 27 (now 42 U.S.C. § 1981) expressly provided that American citizens "of every race and color, . . . shall be subject to like punishment, pains and penalties [as white citizens], and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding." The Fourteenth Amendment was designed to constitutionalize the 1866 Civil Rights Act; and Congress has acted time and again during the past 100 years—from the Civil Rights Act of 1870 to the Voting Rights Amendments of 1970—to enforce under § 5 of the Fourteenth Amendment the right against state-sanctioned racial discrimination that lies at the heart of that Amendment. Congressional power to enforce the plain constitutional command of racial equality in the conduct of every organ of State government has never been judicially questioned, and is unquestionable.

As the Washington Research Project memorandum points out, there is substantial published evidence of racial discrimination in capital sentencing. In addition to the published evidence, I have access to the results of exhaustive empirical studies conducted

in 1965 under the direction of Dr. Marvin Wolfgang and myself, which demonstrate beyond peradventure that the death sentence has been systematically applied in a racially discriminatory fashion for the crime of rape in the several States we studied. But the question, of course, is not whether Congress is now prepared to accept the conclusions of our studies, or of any other extant studies. It is whether Congress can and should enact a moratorium of executions to enable Congress to bring its own superior fact-finding processes to bear on the question of discrimination.

Surely, the answer to that question is yes. Strong indicators of discrimination have been found by numerous private observers whose studies could provide the starting point for more comprehensive and authoritative factual investigation by Congress; such discrimination, if it exists, would be a flagrant and invidious violation of the Fourteenth Amendment, which Congress plainly can prohibit; and a moratorium to enable Congress to conduct the necessary factual inquiries and to deliberate upon the constitutional and policy questions involved is—as the British experience of the 1960's demonstrates—a wholly appropriate method of legislative approach to such a problem.

Congressional power to enact a moratorium in order to conduct a similar examination of the Eighth Amendment issues raised by the death penalty in contemporary American society also seems to me solidly grounded in § 5 of the Fourteeth Amendment. Admittedly, the Eighth Amendment power assumes some Congressional competence to define—not merely to implement—the rights given by the Eighth and Fourteeth Amendments, and so presents a harder constitutional question than the exertion of Congressional Power under the Equal Protection Clause. But, while harder, it is still not very hard.

Indeed, I do not think that Congress needs to rely upon the full sweep of § 5 power conceded to it by *Katzenbach* v. *Morgan* and the opinions in the *Voting Rights Cases* to act in the Eighth-Fourteenth Amendment area. This is so because the Supreme Court itself, in its very definition of the Eighth Amendment as a precept which "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society," *Trop* v. *Dulles*, 356 U.S. 86, 100–101 (1958) (plurality opinion), has referred Eighth Amendment interpretation to the touchstone of national moral consciousness that Congress is uniquely qualified to express. For this reason, I would say that Congress not merely can, but is morally obliged to, consider the Eighth Amendment implications of the death penalty in this year 1971, when it has become apparent on a worldwide scale that the progressive abolition of capital punishment is a major indicator, a paramount achievement, and perhaps an indispensable condition, of mankind's advance on the long road up from barbarism to civilization. A moratorium to consider that issue is both constitutionally proper and, I think, advisable.

As you know, the Supreme Court has today decided, in the *McGautha* and *Crampton* cases, that procedures for imposing the death penalty employed by most American States which retain capital punishment are not unconstitutional. That decision does not speak to the ultimate constitutionality of capital punishment itself under the Eighth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth. But it does create a situation in which the need for enactment of the proposed Death Penalty Suspension Act is literally vital.

By my count, there are about 620 men on the death rows of the United States at this time. Most of their executions have been delayed pending disposition of *McGautha* and *Crampton*. The decision of those cases adversely to the constitutional claims of the condemned men clears the way—unless Congress acts—for a spate of electrocutions and gassings that is unprecedented in our time. At the very moment in history when dictatorships in Spain and Russia, under the pressure of world opinion, are commuting sentences of death, the United States of America—which has not had an execution in almost four years—is about to resume the killing of human beings by the hundreds. That seems to me to be a stark abdication of our proud national role as leaders in the advance of the spirit of humanity.

I hope that you will introduce the Death Penalty Suspension bill and that Congress will speedily enact it. If I can give you any further, more specific information or assistance, please let me know.

Sincerely,

ANTHONY G. AMSTERDAM.

STANFORD LAW SCHOOL,
Stanford, Calif., May 11, 1971.

Re Proposed Death Penalty Suspension Act of 1971.

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

DEAR SENATOR HART: I appreciate this opportunity to clarify the view stated in my letter of May 3, that Congressional enactment of the proposed Death Penalty Suspension Act is urgently needed to avert the threat of imminent executions. You raise the question whether federal legislative action is in fact necessary, or whether—if, as the legislation supposes, there exist grave unresolved constitutional questions in all of these death cases—courts and state executive officials will not stay the executions. My answer is that, under any system which leaves the matter of stays to individual applications on behalf of individual condemned men, many of these men will die by reason of flukes and vagaries having nothing to do with the merits of their constitutional claims. This is so for several reasons:

(1) Large numbers of men on death row are indigent, functionally illiterate and unrepresented by counsel. In order to obtain a stay of execution, an unrepresented condemned man has to present a stay application to some court or legally empowered authority (such as the Governor in some States, the Pardon Board in others), which is sufficiently articulate to attract the attention of that court or authority. Most men on death row are incapable of doing this. Even were they highly literate—as they are not—they simply cannot know of the complex legal doctrines (such as doctrines limiting the jurisdiction of particular state courts, the exhaustion-of-state remedies doctrine in federal *habeas corpus*, the requirement in some States of a Pardon Board recommendation before the Governor may act) which may disempower the court or authority to which they apply from granting a needed stay. If a lower court should refuse a stay—as frequently happens, in my experience—the condemned man must then apply to a higher court. Usually in a different city and sometimes in a different State. Mail from and to prisons is always delayed and is sometimes lost. Court clerks not infrequently return prisoners' papers for formal insufficiencies (such as failure to use required forms, or to attach pauper's affidavits), or delay submitting the matter to the judge. Uncounseled prisoners may neglect to state the dates of their scheduled executions in their stay applications, so that the clerks do not appreciate the need for haste. The judge himself may be otherwise occupied or out of town when the application arrives. Although there are only a few days or hours remaining, the condemned prisoner has no one to contact the court for him, to learn whether the stay application has been received, whether it is being considered, whether it will be acted upon in time. Under these circumstances, any fluke—a miscarriage of the mails, a clerk's mishandling of a paper, a judge's attendance at a judicial convention—can snuff out a human life.

(2) Some condemned men, indeed, do not even try to put stay applications before courts or other lawful authorities. These include men who are legally unrepresented but do not know it. Attorneys handling capital cases in the post-appeal stages (usually counsel who were court-appointed for the original trial or appeal and have remained in the case as uncompensated volunteers) may suddenly drop the case for many reasons—lassitude, erroneous belief that all remedies are exhausted, professional relocation, illness, death—without notice to the condemned man. In these cases, the death row inmate continues to rely for his life upon a lawyer who is no longer there.

(3) Even where condemned men are represented by counsel, the situation is often almost as perilous. As I have said, most of the lawyers in these cases are uncompensated volunteers. Where they are criminal lawyers, they are often sole practitioners; they may be tied up for days or weeks in another trial, and be forced to let stay applications for a condemned client wait until the last moment, when some quirk can prove fatal even in a lawyer-handled case. (I shall say more about this in the next paragraph.) Oftentimes, counsel are not criminal lawyers, and lack the experience or knowledge necessary to present their client's claims. In recent months, I have encountered lawyers representing death-row inmates who were unaware of the 1968 Supreme Court decision in *Witherspoon* v. *Illinois* which established that their clients' death sentences were federally assailable. I want to make it clear that I am not faulting these attorneys, many of whom have served their clients selflessly and with dedication for years. But they are occupied with other responsibilities, unequipped with the resources necessary to handle a case in which life is at stake, and quite unable to keep abreast of legal developments in areas of law in which they do not generally practice.

(4) That problem is exacerbated by two others, relating to the courts:

(a) Frequently, constitutional issues in capital cases are foreclosed by decisions of the lower courts, and open only at the Supreme Court level. (This is true, in most States, of the Eighth Amendment issue and the issue of racial discrimination in capital sentencing.) Lower court judges, for the most part, will not grant stays of execution on these issues; and stays must be sought in appellate courts or even in the Supreme Court of the United States. In *Maxwell* v. *Bishop*, 398 U.S. 262 (1970), for example, stays were refused by all lower courts and a stay was finally granted by a Supreme Court Justice only twenty-four hours before Maxwell's scheduled electrocution. You will understand that overburdened volunteer attorneys, working under the enormous time pressures of an imminent execution date, uncompensated for their time or even for their out-of-pocket expenses, hundreds or thousands of miles from Washington, D.C., and often totally unfamiliar with Supreme Court practice, simply cannot effectively pursue judicial remedies at this level.

(b) State courts, federal courts and state executive officials ordinarily have concurrent jurisdiction to stay an execution. Iron-

ically, this seeming multiplicity of remedies itself creates a deadly trap into which the unrepresented condemned man, or inexperienced counsel representing a condemned man, may fall. When an execution date is fast approaching, it is necessary to apply to two or three courts and the Governor simultaneously for a stay. I have seen it happen time and again that each court and the Governor then waits for the other to act first. Time and again, I have seen cases go down to the last day without a stay, despite the pendency in several courts of meritorious stay applications. In this situation, again, only experienced counsel with a healthy measure of luck can prevent an execution from occurring.

What I have said in the preceding paragraphs is based upon considerable familiarity with post-conviction litigation in capital cases. Since 1965, I have spent about one-third of every day working on death cases. I have obtained stays of execution for scores of condemned men, and consulted with other attorneys in obtaining scores of additional stays. In case after case we have gone down to the final hours—an experience of mind-shattering cruelty to the condemned prisoner—and emerged with a stay only through incredible good fortune. One slip in any of a dozen circumstances beyond our control in any of these cases would have killed the man.

Unquestionably, the only reason why there have been no executions in the United States since 1967 has been the pendency in the Supreme Court of the United States of the two constitutional challenges to the death penalty which that Court finally rejected on May 3, 1971. The Court granted certiorari on these issues in December 1968 (*Maxwell* v. *Bishop*, 393 U.S. 997), and has had them continually under consideration since (see *Maxwell* v. *Bishop*, 395 U.S. 918 (1969); *Maxwell* v. *Bishop*, 398 U.S. 262, 267 n. 4 (1970); *McGautha* v. *California*, 398 U.S. 936 (1970); *Crampton* v. *Ohio*, 398 U.S. 936 (1970)). Prior to the Supreme Court's agreement to hear these issues, it was exceedingly difficult to procure stays of execution for all condemned men in the lower courts, even though (1) the numbers of men on death row then were far smaller than the comparable number today, and (2) the two constitutional issues then in litigation had been definitively rejected by only two of the eleven federal Circuit Courts of Appeals, and by a handful of state courts, prior to the Supreme Court's grant of *certiorari* upon them. After *certiorari* was granted, of course, stays were far easier to obtain: we could often secure them routinely at the trial level; and, in many States, execution dates were not set at all, pending the Supreme Court's decision. Today, by contrast, (1) the number of men on death row is almost 650 (as compared with 435 in December, 1967, and 479 in December, 1968), and (2) the remaining constitutional issues—that is, principally, the Eighth Amendment and racial discrimination issues—which the Supreme Court has *not* agreed to review, were rejected many years ago by a large majority of the federal Courts of Appeals and the States' highest courts. There is absolutely no doubt in my mind that, unless Congress enacts the proposed Death Penalty Suspension Act, there is going to be a resumption of executions in this country on a scale unknown for decades.

Sincerely,

ANTHONY G. AMSTERDAM.

CENTER FOR ADVANCED STUDY
IN THE BEHAVORIAL SCIENCES,
Stanford, Calif., May 6, 1971.

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

DEAR SENATOR HART: I am temporarily in California, and your letter of April 19 addressed to the Yale Law School reached me here. I regret the consequent delay in answering.

I have examined the proposed Death Penalty Suspension Act, and the memorandum entitled, "The Constitutionality of Federal Legislation Suspending the Use of the Death Penalty in State Courts." In my opinion, Congress is empowered under Section 5 of the Fourteenth Amendment and the Necessary and Proper Clause of Article I of the Constitution to enact legislation imposing a moratorium on executions for a time certain. I say this even though I do not accept, and I do not believe the Court would again accept in its full implications, the doctrine of *Katzenbach v. Morgan*. But in this instance Congress would not, as in that case, without factual foundation, be purporting to issue an authoritative construction of the Constitution differing from a construction arrived at by the Supreme Court. Rather Congress would be proposing to exercise a fact-establishing function which undoubtedly belongs to it, and simply creating the conditions to make effective exercise of this function possible. The relevant precedent seems to me to be *South Carolina v. Katzenbach*.

I would suggest that another, and entirely consistent, action that Congress ought to take as soon as possible is to propose to the states an amendment abolishing capital punishment. The issue is an entirely novel one, but I would be prepared to argue that if Congress had proposed such an amendment to the states, its authority to order a moratorium on executions in the meantime would, under the Necessary and Proper Clause, be additionally enhanced.

Faithfully yours,

ALEXANDER M. BICKEL.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., May 4, 1971.

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

DEAR SENATOR HART: I have read with interest the draft of Daeath Penalty Suspension Act enclosed in your letter of April 19, and also the attached memorandum.

In my opinion, the bill is within the constiutional powers of the Congress.

The necessary and proper clause would seem to give Congress power to preserve the status quo in an area in which it may legislate provided that there is reasonable grounid to believe that facts may be developed establishing the power of Congress to enact substantive legislation on the subject.

Probably, such a stay could also be enacted under the necessary and proper clause upon the ground that the status quo should be preserved throughout the country until the Supreme Court has had time to render a decision upon the basic question whether capital punishment under any circumstances violates the Eighth and Fourteenth Amendments. This constitutional theory seems entirely sound, but resting your bill upon this ground alone might be thought to carry the implication that Congress would be through with the matter once the Supreme Court had rendered a decision.

It seems to me that there is reasonable ground to believe that Congress, upon thorough investigation, would find actual conditions to be such as to lay a foundation for federal legislation under Section 5 of the Fourteenth Amendment. I have some misgivings, after *Oregon* v. *Mitchell*, about the continued validity of the argument that Congress may make a determination as to whether a punishment is "cruel and unusual," within the meaning of the Eighth Amendment.

It seems unnecessary to reach a conclusion on that point, however, because the statistics in the memorandum you enclose, while subject to some criticism, are quite sufficient to raise a serious question as to whether capital punishment in the United States does not presently involve racial discrimination violating the equal protection clause of the Fourteenth Amendment. To my mind, the figures certainly suggest that further investigation might lead Congress to such a finding of fact and, if Congress made such a finding, there could be no doubt of the constitutionality of further federal legislation abolishing the death penalty as a way of preventing continued racial discrimination in the administration of criminal justice.

It is a pleasure to hear from you.

With best wishes.

Sincerely,

ARCHIBALD COX.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, N.Y., April 27, 1971.

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

DEAR SENATOR HART: I am responding to your letter of April 19, which invited my comments on a draft bill which would stay all executions by the United States, the several states and their subdivisions for a period of two years. The stated purpose of this bill would be to enable the federal government and the states to consider, deliberately, what action they might wish to take following the imminently expected Supreme Court decision on an aspect of the death penalty.

In my view the draft bill is both wise and constitutional, and I therefore hope you decide to introduce it and that the Congress enacts it into law.

The wisdom of the bill seems to me evident in view of the importance of the issue concerning the death penalty, the confusion surrounding many aspects of it, its doubtful constitutionality, and the desirability of a careful legislative review unhurried by the pressures to execute that inevitably will follow any Supreme Court decision that does not restrain further use of the penalty.

The question of the constitutionality of the measure calls for somewhat more extended discussion, although I am in no real doubt that prior decisions of the Supreme Court, in their holdings and premises, amply support the validity of the bill. I shall content myself with three points.

1. Section 5 of the Fourteenth Amendment, which authorizes Congress to "enforce by appropriate legislation" the provisions of the Amendment, has been interpreted broadly by the Supreme Court. The Court has held that Congress may enact remedial legislation concerning state laws and practices if it "perceives a basis" for concluding that these laws and practices are unconstitutional. *Katzenbach* v. *Morgan*, 384 U.S. 641, 653 (1966). This it certainly would be free to do, in the case of the death penalty, in light of judicial decisions that have interpreted the Eighth Amendment "cruel and unusual punishment" provision, as incorporated in the Fourteenth Amendment. See, e.g., *Ralph* v. *Warden*, Ct. App. 4th Cir., No. 13757 (December 11, 1970); cf. *Rudolph* v. *Alabama*, 375 U.S. 889 (1965) (Goldberg, J., dissenting).

That the Supreme Court has not held the death penalty to violate the cruel and unusual punishment prohibition is of course not dispositive of the issue. As the *Morgan* case and *South Carolina* v. *Katzenbach*, 384 U.S. 301 (1966) reveal, the Congress may go beyond judicial rulings in asserting the reach of the Fourteenth Amendment. Indeed, the congressional action upheld by the Court in the *South Carolina* case went beyond what the Congress would be asked to do here. In that litigation the literacy provisions of the Voting Rights Act of 1965 were sustained in the face of an earlier decision, *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45 (1959), holding that such tests were not in-

herently discriminatory. No such decision of the Supreme Court has sustained capital punishment against a direct attack on the ground of cruel and unusual punishment.

2. There presently exists considerable evidence, which I shall not detail in this letter, to the effect that the death penalty has been applied in a discriminatory manner against poor persons and nonwhites. E.g., Bedau, Death Sentences in New Jersey—1907–1960, 19 Rutgers L. Rev. 1 (1964). Certainly Congress could "perceive a basis" for concluding that the equal protection clause of the Fourteenth Amendment has been violated by the application of the death penalty. Accordingly, Congress has the authority—some would say the duty—to assure that the most extreme of all penalties is not being employed in violation of the Constitution.

3. The net effect of the above analysis is that under existing precedents the Congress could act to abolish the death penalty by concluding that state executions amount to cruel and unusual punishment or that the death penalty as implemented denies nonwhites or poor persons of the equal protection of the laws. The remaining question is whether the Congress can choose to legislate the lesser remedy—a two year stay which would for this period bar executions while the necessary study was undertaken to determine whether the death penalty should be prohibited in all cases or contain classes of cases.

I find no difficulty in responding to this question in the affirmative. One of the chief advantages of the legislative process is its flexibility. Another is its capacity for fact-gathering to assure, as far as possible, the solid grounding of enactments as well as their long-term acceptability to the public. All of these values would be furthered by a congressional decision to permit itself the time to acquire and digest data, and reflectively debate, the validity of capital punishment. Indeed, I can hardly think of a better means to assure "appropriate legislation" under the Fourteenth Amendment in an area as complex and subtle as the one under consideration. Just as courts of equity for many centuries have used the judicial stay to good effect, so too should the Congress employ it so it may act in a deliberate and fully informed manner.

For the above reasons I endorse the draft bill you have sent me.

Sincerely,

NORMAN DORSEN,
Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 29, 1971.

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

DEAR SENATOR HART: I appreciate your letter inviting my view on a possible bill that would impose a two-year stay of executions in capital cases while Congress and the states decide what action, if any, they wish to take in this area following a decision by the Supreme Court.

I find persuasive the considerations supporting the authority of Congress to enact such a measure. The bill would essentially be an adjunct of the power of Congress to legislate under Section 5 of the Fourteenth Amendment. That power is most clearly established in the field of equal protection of laws with respect to race, and there is at least reason to believe that the death penalty has lent itself to discriminatory application. In addition the power under Section 5 draws support from the guarantee against cruel and unusual punishment, a guarantee that may appropriately be defined by Congress, at least where Congress does not narrow the protection beyond the scope given it by the courts.

A moratorium is a legislative measure that in this context would reflect a tentative finding by Congress, subject to fuller investigation and final determination. It is particularly appropriate where the ultimate penalty is involved and where reparation would be impossible if and when Congress finally determines to abrogate the death penalty. Since the proposed measure would be general in application, not singling out particular death sentences, there should be no objection on the score of separation of powers between the legislative and judicial branches. Amelioration of penalties can of course be made retroactive without infringing on the judicial function.

I trust that these views are responsive to your inquiry.

With kindest regards,

Sincerely,

PAUL A. FREUND.

UNIVERSITY OF CALIFORNIA, BERKELEY,
Berkeley, Calif., May 4, 1971.

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

DEAR SENATOR HART: This responds to your letter of April 19.

I have read the draft bill and its supporting study proposing a two-year stay of executions in all jurisdictions pending Congressional study of the course it might wish to pursue under the implementing clause of the Fourteenth Amendment.

The procedure seems to be novel, but I do not see any substantial grounds for concluding it is unconstitutional. First, the cruel and unusual punishment and equal protection arguments appear to me open and non-trivial. The Court's decisions yesterday, as reported in the press, do not purport to close the cruel and unusual punishment issue. Second, this being so, Congress would have the power under Section 5 of the Fourteenth Amendment, pending a Supreme Court determination, to consider for itself whether the arguments carry weight and what legislation to enact to enforce those constitutional provisions. Moreover, in the circumstances the power to consider these questions must also encompass the power to maintain the status quo by preventing executions in the interim. If executions turn out to be violations of constitutional rights, they are not the kind that can be remedied retrospectively. The analogy to the traditional power of equity courts to enjoin prejudicial change in the circumstances pending the court's adjudication of the merits seems to me persuasive. Congress would be maintaining the total effectiveness of its law making authority, explicitly delegated by the necessary and proper clause as made applicable to the Fourteenth Amendment through its Section 5.

May I suggest two additional grounds you and your advisors might want to consider to shore up even further the case for a two-year stay:

1. The desire by Congress to consider not only whether capital punishment is unconstitutional, but whether it should be made so under a constitutional amendment. This would draw upon Congress' authority with respect to amendments found in Article VI. It would also serve to provide a basis, in addition to the line of thought exemplified in *Katzenbach* v. *Morgan*, for justifying the stay if and when the Court denies the cruel and unusual punishment claim.

2. The appropriate interest of Congress to act in support of the jurisdiction of the Supreme Court and other federal courts by saving the need to obtain individual case by case stays pending the resolution of the issue in these courts.

I hope these observations may be of some use to you.

Respectfully,

SANFORD H. KADISH,
Professor of Law.

THE UNIVERSITY OF MICHIGAN,
LAW SCHOOL,
Ann Arbor, Mich., May 4, 1971.

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

DEAR SENATOR HART: Many thanks for your letter of April 19, inviting comments on the proposal that Congress impose a two-year "stay" of all executions within the United States pending further study of the death penalty.

There is substantial evidence from which Congress may conclude that the death sentence works unfairly against black Americans in practice and thus that a nationwide ban—let alone a suspension—of the death penalty is "appropriate legislation" to enforce the equal protection clause of the Fourteenth Amendment.

To paraphrase Justice Black in *Oregon v. Mitchell*, 400 U.S. 112, 134 (1970), (upholding the literacy test ban of the Voting Rights Act Amendments of 1970), Congress may properly recognize that the administration of the death penalty in a racially discriminatory manner is not confined to the South, but exists in various parts of the country, and may properly conclude that the way to cope with this problem is "to deal with nationwide discrimination with nationwide legislation." Similarly, to paraphrase Justice Stewart, (joined by Burger, C.J., and Blackmun, J.), concurring in the judgment of the Court sustaining the aforementioned literacy test ban, 400 U.S. at 284: because the justification for suspending the death penalty throughout the land need not turn on whether it is discriminatorily enforced in every state, Congress is not required to make state-by-state findings concerning the actual impact of the penalty. "In the interests of uniformity, Congress may paint with a much broader brush than may [the Supreme] Court, which must confine itself to the judicial function of deciding individual cases and controversies upon individual records."

Although the Washington Research Project's memorandum makes a powerful and persuasive argument that federal legislation abolishing or temporarily suspending the use of the death penalty by the states may also be sustained on another ground—Congress could properly conclude that the death penalty amounts to cruel and unusual punishment and (since the Fourteenth Amendment applies to the states the Eighth Amendment prohibition) thus prohibit its use by the states pursuant to the power granted it by Section Five of the Fourteenth Amendment—this strikes me as a closer question. Congress would seem to have the power (and special competence) to make its own findings of fact and evaluation of the competing considerations involved [1] in determining whether the death penalty constitutes "cruel and unusual punishment" or a violation of "due process". Or to put it another way, this issue would seem to fall within "a sort of 'buffer zone' in which Congress has discretion to define" these standards.[2]

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[1] *E.g.*, the injustice wrought by the erratic and discriminatory imposition of the death penalty versus the deterrent value above life imprisonment, if any, of the theoretical availability and rare enforcement of the death penalty.

[2] Cf. Cox, *Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 Harv. L. Rev. 92, 121 (1966).

However, although they agree that Congress has the power "to provide the means of eradicating situations that amount to a violation of the Equal Protection Clause" at least some members of the United States Supreme Court balk at recognizing Congress' power "to determine as a matter of substantive constitutional law what situations fall within the ambit of the clause [and other constitutional prohibitions and requirements] and what state interests are 'compelling,' "[3] and might well regard a determination by Congress that the death penalty amounts to "cruel and unusual punishment" as falling within the latter category.

It seems so clear, however, that Congress may override state death penalty laws "on the ground that they were in fact used as instruments of invidious discrimination even though a court in an individual lawsuit might not have reached that factual conclusion" (see the aforementioned opinion of Stewart, J., 400 U.S. at 295–96), so clear that a two-year Congressional "stay" of all executions would be regarded "an appropriate means of remedying discriminatory treatment" in the administration of capital punishment (id at 295), that other bases for supporting the proposed federal legislation need not be pursued.

Sincerely yours,

YALE KAMISAR,
Professor of Law.

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, Ill., May 7, 1971.

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

DEAR SENATOR HART: I write in response to your inquiry about the constitutionality of your proposed bill calling for a moratorium on the execution of the death penalty for a period in which the Congress can decide whether abolition is desirable and appropriate.

I do not propose to write a brief here. The memorandum accompanying your request and a letter to you from Professor Robert A. Burt, which he was kind enough to show me, are more than adequate analyses of the case law on the subject. My conclusions are simply stated.

1. Congress does have authority under the fifth section of the Fourteenth Amendment to enact legislation enforcing the substantive clauses of that Amendment as it construes them.

2. There is ample evidence to suggest that the death penalty has been and continues to be applied discriminatorily, *i.e.*, in such a manner as to suggest a denial of equal protection of the laws to those upon whom it is imposed. Whether that discrimination is willful or arbitrary remains to be determined, but in either event Congressional action would be justified. I am not troubled by the Voting Rights Cases, for an age question for voting is necessarily arbitrary whether the choice be 18 years or 21 years.

3. It is clear to me that the willful killing of any human being, whether by the state or nation, could be deemed and, I think, should be deemed a cruel and unusual punishment, thus bringing the problem within the scope of Congressional authority under the terms of the Fourteenth Amendment by way of the Eighth Amendment.

My conclusion, therefore, is that the proposed bill is not only constitutional, but highly desirable. Mr. Justice Holmes used to say that the solution for most societal problems was for the nation to become more civilized. In this day and age, I believe that the willful killing of a human being, whatever the nature of his crime, is a step away from civility and can be justified only in terms of primitive laws that should no longer hold us in thrall.

With all good wishes,

Sincerely yours,

PHILIP B. KURLAND.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, N.Y., May 14, 1971.

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

DEAR SENATOR HART: I am most pleased to learn that you are thinking of introducing a bill similar to that prepared by the Washington Research Project proposing a two-year "stay" of all executions. I write now to say that, after examining the excellent memorandum prepared by the Project, I am persuaded of the constitutionality of the proposal.

The matter has a special urgency now in light of the recent Supreme Court decisions upholding procedures now used in capital cases in some states. I do hope you will introduce the bill and that it will pass so that time for further study will be secured on how to solve this vital issue.

Sincerely,

ROBERT B. MCKAY.

UNIVERSITY OF PENNSYLVANIA,
THE LAW SCHOOL,
Philadelphia, Pa., May 12, 1971.

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

DEAR SENATOR HART: This is in response to your letter of April 19, asking my views on the idea of a Federal statute imposing a two-year "stay" of all executions while Congress and the States decide what action, if any, they wish to take in the area of capital punishment, following the Supreme Court's disposition of the "Death Penalty" cases before it.

I have given substantial thought to the question, and in my judgment, Congress has power under the Constitution to enact such a statute. I do not assert that it is clear beyond question that a Congressional Act declaring the death penalty unconstitutional and completely prohibiting its infliction by the States (as well as the Federal Government) would necessarily be upheld as an appropriate exercise of Congress' power to enforce the Fourteenth Amendment. At the same time, there is certainly a reasonable possibility that such an Act would be sustained as valid on the basis of that power confererred by section 5 of that Amendment. Moreover, it is also true that the form and substance of the particular Act—for example, the content of the findings which Congress might make—might well exert substantial influence on the ultimate judgment about the validity of the Congressional exercise of power.

This last point is particularly significant for present purposes. For it indicates the importance of Congress being able to consider carefully, on thorough investigation and full deliberation, whether it wishes to proceed—and if so, how—in this difficult and important area. From this aspect, the very processes of our Constitutional system call for assuring an adequate opportunity for wise deliberation by Congress (as well as the States). Certainly a "stay" of all executions for a specific stated period to allow such deliberation to take place is within Congress' power under the Constitution.

Such a "Stay" also seems to me a wise provision at this point. So long as the "Death Penalty" cases were actively moving toward a Supreme Court decision, Congress and State Legislatures, pressed by much other and urgent business (and perhaps even inhibited somewhat by possible questions of propriety), were not likely to reach out to address the issues of capital punishment. In view of the Court's disposition, the responsibility of the legislative bodies is now greatly sharpened. But, as with any complex institution, it will take some time for that to come into sharp focus, and a bit longer for the issues to be worked through to some sort of resolution. The process is likely to produce a wiser resolution if it is not under the pressure of a need to act quickly. Moreover, and perhaps no less important, these issues are not without a strong emotional component; however, they are resolved, there is likely to be less of a residue of acrimony if adequate time for consideration is definitely known to be assured.

For these reasons, I believe that an Act of Congress imposing a two-year stay of executions by the States as well as the Federal Government is both constitutional and wise at this time.

Sincerely,

PAUL J. MISHKIN,
Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., May 14, 1971.

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

DEAR SENATOR HART: You asked for my opinion on the constitutionality of the legislation you may submit suspending the use of the death penalty in state courts. Rather than reiterate a multitude of possible arguments, I have attempted to present to you the strongest argument in support of constitutionality.

In my opinion the legislation is clearly constitutional. Under the enforcement section of the Fourteenth Amendment Congress is given the power to enforce by appropriate legislation the Amendment's substantive provisions of due process and equal protection. Under this section, and under the similar section of the Fifteenth Amendment, acts of Congress bearing close analogy to the legislation you propose has been upheld by the Supreme Court. In what follows I will describe these Acts and the Supreme court cases upholding them, setting forth the analogies they bear to your proposed legislation.

South Carolina v. *Katzenbach*, 383 U.S. 301, decided by the Supreme Court in 1966, involved the constitutionality of the Voting Rights Act of 1965. The Voting Rights Act was based on a congressional finding that literacy tests and like devices, fair on the face, had been used in the South as the means of discriminating against Negroes in registering to vote. The Act automatically suspended the use of such tests, including all literacy tests, in any State or County in which less than half of the adult population had voted in the Presidential Election of 1964. This, it was thought, gave reason to believe that the tests might be used for racial discrimination.

Thus, the Act was framed to provide a new prophylactic remedy for violations of the Fifteenth Amendment for which prior remedies had been inadequate. These prior remedies, of course, consisted mainly of case-by-case judicial challenges to discriminatory voter-registration practices.

South Carolina argued that Congress had no power to adopt prophylactic remedies in the absence of a judicial finding of discrimi-

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[3] Opinion of Stewart, J. (joined by Burger, C. J., and Blackmun, J.), in *Oregon* v. *Mitchell*, 400 U.S. 281, 296. See also Harlan, J. (joined by Stewart, J.), dissenting in *Katzenbach* v. *Morgan*, 384 U.S. 641, 659 (1966). But compare the opinion of the Court, per Brennan, J., in *Katzenbach* v. *Morgan*.

nation in each case. The issue turned on the enforcement section of the 15th Amendment:

"The Congress shall have power to enforce this Article by appropriate legislation."

Solicitor General Archibald Cox argued that this section gives to the Congress the same discretion in enacting measures reasonably adapted to preventing discrimination in voting as the "necessary and proper" clause confers upon Congress in regulating such matters as interstate commerce. Chief Justice Warren, quoting Chief Justice Marshall, agreed:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

Thus, *South Carolina* v. *Katzenbach* clearly upholds congressional power (1) to determine that the application of literacy tests is often discriminatory and (2) to suspend them as a prophylactic means of ending such discrimination.

The analogy to the measure you propose is clear. Here the source of congressional power would be the enforcement section of the Fourteenth Amendment. Congress could (1) rationally determine that the death penalty, like the literacy test, though fair on its face, has too often been discriminatory in its application, and (2) suspend the death penalty as it suspended the literacy test, as a prophylactic measure to prevent discrimination in its application.

Cases subsequent to *South Carolina v. Katzenbach* have only served to strengthen its authority. *Katzenbach v. Morgan,* 384 U.S. 641 (1966) the Supreme Court upheld the section of the Voting Rights Act which provided that no person who had successfully completed the sixth grade in a Puerto Rican school should be denied the right to vote because of inability to read or write English. The effect of this measure was to enfranchise thousands of Spanish-speaking citizens who had moved to New York from Puerto Rico.

Relying on the enforcement section of the Fourteenth Amendment, the Supreme Court upheld this enactment as an appropriate means of effectuating the rights guaranteed by the equal protection clause. Enfranchisement, said the Court, "will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community."

Morgan strongly illustrates the breadth of congressional power under the enforcement sections. Substantive equal protection violations were not clearly defined in *Morgan,* nor was there any specific judicial or congressional finding with respect to such violations.

On the basis of these cases I come to the firm conclusion that legislation suspending the death penalty would be fully within congressional power as an appropriate means of enforcing the equal protection clause. Congress could rationally conclude that (1) the death penalty is racially discriminating in its application, and (2) that suspension of the death penalty is an appropriate means of eliminating such discrimination.

Your proposed legislation merely suspends the death penalty for a period sufficient to allow Congress to examine its application. That such legislation is constitutional follows *a fortiori* from the discussion above. Just as a court may issue temporary restraining orders to maintain the status quo while it considers the merits of a case, so Congress is authorized by the enforcement section of the Fourteenth Amendment to maintain the status quo while it decides. Indeed this seems an altogether sensible and laudible manner by which to proceed.

I conclude with assurance that the legislation you propose is constitutional.

Yours sincerely,

CHARLES R. NESSON,
Professor of Law.

YALE UNIVERSITY,
LAW SCHOOL,
New Haven, Conn., May 11, 1971.

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

DEAR SENATOR HART: By letter of April 19 you were good enough to send me a copy of the draft bill entitled "Death Penalty Suspension Act of 1971," inviting my comment on the bill:

1. I favor the bill and I hope you will submit it. The bill is, in my judgment, a thoughtful and courageous approach to a tragically difficult national problem. To provide two years' time within which Congress and state legislatures would have the opportunity (and correlative responsibility) to examine the constitutional and other issues presented by the continued use of the death sentence seems to me both "necessary and proper." With hundreds awaiting execution in prisons throughout the country, legislators can no longer responsibly avoid confronting these issues.

2. I am persuaded that Congress is constitutionally empowered to pass a law staying all executions, federal and state alike, for two years. I believe Congress is thus empowered because I think there is a substantial likelihood that extended Congressional investigation would yield data supporting at least one of the two hypotheses tendered by the bill—(a) that the death sentence is (at least as to most offenses[1]) a "cruel and unusual punishment"; (b) that the death sentence is imposed, in a grossly disproportionate number of instances, on blacks and others customarily subject to racial discrimination. Neither such finding would provide a rational basis for Congress to pass a law abolishing the death sentence.[2] Given a reasonable possibility that two years of investigation by Congress would be persuasive to Congress that it should and constitutionally could legislate to end the death sentence, Congress would appear to be fully empowered to declare a two-year moratorium on executions and thereby prevent massive and unutterably calamitous frustration of what Congress may two years hence determine to be in the nation's best interest.

With respect to the power of Congress to ban the death sentence, on the basis of findings of the sort referred to above, I would add these brief comments:

A. The power of Congress to end the use of the death sentence for any and all federal crimes would not appear to require argument, since Congress has plenary power (within constitutional limitations) to define and declare the punishment for all offenses against the United States. With this in mind, I should point out that the draft bill places entire reliance on Congressional power to enforce the Fourteenth Amendment; since this power is irrelevant to federal crimes and punishments, appropriate language relating to Congressional power over the federal criminal process should be added to the draft bill.

B. Whatever power Congress has to end the use of the death sentence in the states flows from the power of Congress, acting under Section 5 of the Fourteenth Amendment, to enforce the guarantees of due process of law and the equal protection of the laws contained in Section 1 of the Amendment. A Congressional finding that the death sentence is a cruel and unusual punishment would call into play Congressional power to promote due process of law. A Congressional finding that the death sentence falls with disproportionate impact on racial minorities would call into play Congressional power to promote the equal protection of laws.

C. Up to now there has, of course, been no determination by the Supreme Court that the death sentence is cruel and unusual (and hence in contravention of due process) or that it denies equal protection. Per contra, the Court has not, in its recent history (including the *McGautha* and *Crampton* decisions, on May 3, 1971), taken occasion to consider and reject either of these constitutional challenges to the death sentence. But even if the Court's recent occasional affirmatives of death sentence, as in *McGautha* and *Crampton,* were viewed as implied rejection of these constitutional contentions (a reading of the Court's opinions which I would not regard as faithful to the Court's limited disposition of the limited questions presented), it would still appear that Congress retains some *legislative* authority to fashion its own more protective definition of the constitutional norms of due process of law and the equal protection of the laws. This would appear to be the teaching of *Katzenbach* v. *Morgan.*

D. I do not pretend to be able to formulate with confidence the scope of the Congressional power, declared by *Katzenbach v. Morgan,* to go beyond the Court in giving content to Fourteenth Amendment guarantees.[3] For immediate purposes, however, it would seem sufficient to make three points in this connection:

(1) Deference to a *legislative* extension of constitutional guarantees would seem most appropriate where the predicate of such legislative action is the sort of detained inquiry into a vast array of institutional practices which Congress is peculiarly well fitted—and courts are peculiarly unfitted—to make. Both of the inquiries which Congress would be expected to undertake, pursuant to the draft bill, would seem to be of this nature.

(2) The propriety of Congressional inquiry into, and legislation protective of, due process rights draws support from Chief Justice Warren's invitation to Congress (and indeed the states as well) in *Miranda v. Arizona,* "to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws," presumably as supplements and/or alternatives to judicially formulated rules.

(3) With respect to the equal protection challenge to the continued use of the death sentence, it seems particularly appropriate to note that *Katzenbach v. Morgan* was a case in which Congress legislated against arrangements which it found to foster racial discrimination. That is to say, it would appear a fair inference that the legislative power sustained in *Katzenbach v. Morgan* is at its greatest when Congress is legislating with respect to discrimination against racial minorities, most especially blacks, since that evil was the chief target of the Fourteenth Amendment. It is in this setting that special weight attaches to the following observations, made by my distinguished colleague, Professor Charles L. Black, Jr., one year ago:

No one can now say how far we may go with the use by Congress, in application to racial problems, of the very same spaciousness of interpretation that is elsewhere applied to Congressional powers. I will only mention what to many of us now is a possibility of prime moral importance. It has been pretty generally assumed that capital punishment can be abolished in the United States only through action by 50 state legislatures. But suppose Congress were to conclude—as I think statistics would force it to conclude—that capital punishment had been administered for a long time in a manner discriminatory against blacks and other minority groups.[4] Suppose Congress were to judge, from this long experience, that this discriminatory administration was likely to continue or to recur. Could these judgments be faulted? If so, how? If not, then why could not Congress abolish capital punishment for the entire nation? Congress could beyond doubt make unlawful a practice whose ad-

Footnotes at end of article.

verse impact on interstate commerce was far less well attested than is the inequality, past and predictable, in capital punishment as actually administered. . . . "but ye more substantial escaped." 6 *W. Holdsworth, History of English Law* 508 (1924). (The reference is to executions following Monmouth's rebellion.)[5]

I am grateful to you for the opportunity to comment on the profoundly important issues presented by the draft bill. I hope that (subject to the modest emendation suggested in paragraph 2A of this letter) you submit the bill. And I hope it is enacted into law: the lives of hundreds of Americans, and also the integrity of the American legal process, are at stake.

Sincerely yours,

LOUIS H. POLLAK.

FOOTNOTES

[1] One could conceivably conclude, for example, that the death sentence was not inappropriate punishment for the single gravest crime—the federal crime of treason—but was barbarious in any other context.

[2] Or permitting it, as was suggested in footnote 1, only in cases of treason.

[3] I tend to take a rather narrow view of *Katzenbach v. Morgan* than many other constitutional lawyers do. For example, I thought (and said) a year ago that the doctrine of *Katzenbach v. Morgan* was insufficient to sustain federal legislation lowering the voting age to eighteen.

[4] A very old phenomenon, in one form or another: "Ye poor and miserable were hanged."

[5] Black, *The Unfinished Business of the Warren Court*, 46 WASH. LAW REV. 3, 19 (1970).

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL,
Ann Arbor, Mich., April 23, 1971.

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

DEAR SENATOR HART: I am writing in response to your letter of April 19 inviting an expression of my views on the proposal that Congress enact legislation imposing a two year moratorium on all executions within the United States. I am wholeheartedly in support of the proposal and hope that you will decide to introduce the necessary legislation.

No one can assert with confidence whether the Supreme Court would sustain such legislation, but in my judgment the legislation is constitutional. The essential reasons which support that judgment are persuasively stated in the memorandum prepared by the Washington Research Project which accompanied your letter. Implicit in my judgment that the legislation is constitutional is the conclusion that it is not unduly intrusive upon federalist values. There are at least two reasons why I believe this to be so notwithstanding the traditional power of the states to set penalties for crime. Initially, the Congress, as the most broadly representative of our governmental institutions, is uniquely competent to give content to the vaguely worded prohibition of "cruel and unusual punishment," a prohibition which, as the Supreme Court has written, embodies "the evolving standards of decency that mark the progress of a maturing society." Secondly, the Congress, as repeatedly recognized in recent years both by it and by the Supreme Court, does not intrude upon the domain of the states when it acts to protect individuals against racial discrimination by the states. The evidence marshalled by the Washington Research Project surely provides ample basis for an inquiry by the Congress to determine whether the death penalty has in fact been administered on a racially discriminatory basis.

If I may offer one suggestion concerning the draft bill which you enclosed, it occurs to me that it might be desirable to include a provision directing the appropriate committees in each House to conduct the investigations mentioned in Section 3. Such a provision would, if the legislation were challenged in court, add strength to the Congressional determination that a moratorium is appropriate.

I hope that this brief statement of my views will be of assistance to you. If there is any way I may be of further assistance, I hope that you will not hesitate to call upon me.

Sincerely yours,

TERRANCE SANDALOW,
Professor of Law.

DUKE UNIVERSITY,
Durham, N.C., April 26, 1971.

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

DEAR SENATOR HART: I am writing in brief reply to your letter and enclosures regarding the proposed bill to suspend the death penalty throughout the United States for a period of two years, pending further study and action by Congress, the courts, and the state legislatures. So far as the bill would affect federal prisoners currently under sentence of death, I believe that the national power to suspend their sentences clearly exists pursuant to the Constitution. So far as the bill would affect state prisoners, a sufficient argument can be made pursuant to section 2 of the thirteenth amendment and section 5 of the fourteenth amendment to sustain the proposed Act within the ameliorative powers of Congress that those otherwise favoring the bill should feel entirely free to vote for it.

I put my second conclusion this way for very simple reasons. A failure of Congress to act solely because there may be some reasonable doubt about the ultimate constitutionality of that act necessarily contemplates that a number of persons may be executed even though no court will have an opportunity to determine whether those executions were beyond the power of Congress to forbid. Action by Congress will insure that none need die solely because of constitutional doubts that may well turn out to be unfounded, even while respectfully reserving to the courts the appropriate authority to resolve all constitutional questions as they may arise in a proper case.

It is not often that this kind of choice is before Congress, and I am not among those who believe that Congress need never be concerned with the constitutional reach of its powers. I rather think that it should be more concerned in general and that Congress' deliberations on the Constitution are important to its own political integrity. Where the issue in question is even fairly debatable as I am positive that it is here (*i.e.*, that Congress may well possess the power to suspend or to abolish the death penalty), where the courts will be open to review that question in due course, and where any congressman's mistaken view regarding the scope of congressional power might well lead him needlessly to contribute to the deaths of several hundred persons that he would otherwise wish to have spared, however, it is unimaginable that the outcome of this bill should prefer the certainty of death to what may well be a wholly constitutional preference for life.

Sincerely,

WILLIAM VAN ALSTYNE,
Professor of Law.

COLUMBIA UNIVERSITY,
SCHOOL OF LAW,
New York, N.Y., May 13, 1971.

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

DEAR SENATOR HART: This has been my first chance to study the draft bill and memorandum on suspension of the death penalty that you were kind enough to send me with your letter of April 19.

I am writing to say that while I do not readily accept the validity or propriety of new federal interventions in affairs traditionally thought to be within the realm of State autonomy, the considerations adduced in the memorandum seem to me to provide reasonable grounds for supporting the authority of Congress.

There is a further point that has much weight with me. Mass executions of hundreds of the prisoners now under sentence of death throughout the country would be a catastrophe of national and international dimensions. The unprecedented accumulation of unexecuted sentences was due primarily to stays ordered or anticipated to be ordered by the courts of the United States, exercising jurisdiction conferred by Acts of Congress. As Congress is authorized to remedy conditions or to deal with dislocations caused by exercise of granted legislative power (see e.g. *Stewart* v. *Kahn*, 11 Wall. 493, 507; *Norman* v. *B. & O. Railroad Co.*, 294 U.S. 240 at 315; *Woods* v. *Miller Co.*, 333 U.S. 138), I should suppose that it is authorized to avert a catastrophe caused in large part by the authorized exercise of federal judicial power.

I should add that I do not feel competent to judge the political wisdom of the proposal. The introduction of the bill may have the unintended effect of distracting effort from pursuit of clemency or of State legislation; and its rejection by the Congress may well fortify the forces that would welcome the blood bath it is your object to avoid.

With high regard, I am

Yours faithfully,

HERBERT WECHSLER.

THE CONSTITUTIONALITY OF FEDERAL LEGISLATION SUSPENDING THE USE OF THE DEATH PENALTY IN STATE COURTS

This memorandum sets forth the constitutional basis for federal legislation abolishing or temporarily suspending the use of the death penalty by the states. In Part I, we argue that Congress could properly conclude that the death penalty amounts to cruel and unusual punishment, and on that ground could prohibit its use by the states under the interpretive power granted by Section 5 of the Fourteenth Amendment. In Part II, we show a factual basis upon which Congress could determine that the death penalty is being administered in a racially discriminatory manner in violation of the equal protection clause, and argue that abolition would be a proper exercise of the remedial power granted by Section 5. Finally, in Part III we argue that Congress could, without determining that the death penalty was cruel and unusual punishment or was discriminatorily administered, suspend the use of the death penalty while it further investigated these constitutional questions.

I. THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT

The Supreme Court has never explicitly upheld the death penalty against a direct challenge on cruel and unusual punishment grounds, though it has several times in dictum suggested that the penalty does not constitute cruel and unusual punishment. Changing circumstances, scholarly commentary, and the trend of Eighth Amendment case law all indicate that these dicta may soon be abandoned by the Court. Even in the absence of a ruling on the question by the Supreme Court, however, established law makes clear that Congress could find that capital punishment constituted cruel and unusual punishment, and prohibit its use by the states on that ground, under the legislative power granted by Section 5 of the Fourteenth Amendment.

Under Section 5, Congress has power to "enforce by appropriate legislation" the provisions of the Fourteenth Amendment. The

Supreme Court has held that power to be very broad. It is well established that Congress may adopt the most sweeping remedies to deal with what the courts have held to be constitutional violations.[1] In addition, it may define certain laws or practices as unconstitutional that would not be held unconstitutional absent the legislation, if the courts can "perceive a basis" for the congressional judgment. *Katzenbach* v. *Morgan*, 384 U.S. 641, 653 (1966).

For example, in Section 4(e) of the Voting Rights Act of 1965,[2] acting under Section 5 of the Fourteenth Amendment, the Congress permitted Puerto Ricans to vote if they were literate in Spanish, despite state law imposing English language literacy as a voter qualification. In supporting the English language literacy requirement the State of New York argued that Congress is without power under Section 5 to broaden the substantive prohibitions of the Fourteenth Amendment. The Court rejected this view, holding that when the Congress, after weighing the competing considerations, exercises its authority to declare a state law or practice violative of Fourteenth Amendment rights, "[i]t is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Katzenbach* v. *Morgan*, *supra*, 384 U.S. at 653. Thus, applying this test and without reaching the question whether the Fourteenth Amendment unassisted by legislation proscribed literacy tests administered *only* in the English language,[3] the Court upheld the congressional determination of a violation of the equal protection clause.

In the recent *Voting Rights Cases*,[4] the Court did not limit Congress powers to define constitutional guarantees as set forth in *Katzenbach v. Morgan*. In the Voting Rights Amendments of 1970,[5] the Congress, acting under Section 5, declared that the limitation of the vote in state election to persons over 21 constituted an invidious discrimination against 18–20 year olds, in violation of the equal protection clause. A fragmented five-man majority of the Court invalidated that provision. An examination of the separate opinions of Justices Stewart (joined by the Chief Justice and Justices Blackmun),[6] Harlan[7] and Black,[8] which made up the majority on this point reveals no majority view contrary to that expressed in *Morgan* concerning Congressional power under Section 5. Rather the decision seems to be based on the majority's conclusion that there was *no basis* for the Congressional judgment that a voting age of 21 constitutes invidious discrimination against 18, 19 and 20 year olds.[9] Four Justices voted to uphold the Congressional judgment—one that is obviously more tenuous than the one proposed here.[10]

The Supreme Court has held that the due process clause of the Fourteenth Amendment incorporates and applies to the states the Eighth Amendment prohibition against the imposition of cruel and unusual punishment.[11] It is thus subject to interpretation and enforcement by the Congress under Section 5. The question thus becomes whether there is a perceivable basis for a congressional conclusion that the death penalty constitutes cruel and unusual punishment. An examination of the case law and of recent scholarship makes clear that there is a strong basis for that conclusion.

In early dicta, the Supreme Court viewed the Eighth Amendment prohibition as applying only to penalties that the framers of the Bill of Rights would have thought cruel and unusual, specifically extremes of torture and maiming. *Wilkerson v. Utah*, 99 U.S. 130 (1878); *In Re Kemmler*, 136 U.S. 436 (1890). On this standard, the death penalty itself was viewed as not prohibited by the cruel and unusual punishment clause.

However, in its first full construction of the clause, in *Weems v. United States* in 1910,[12] the Court rejected the theory that the "cruel and unusual" concept was frozen forever by the penal standards of the eighteenth century. In *Weems*, the Court struck down as disproportionately harsh a Philippine statute which provided a minimum twelve-year sentence at hard and painful labor, for the offense of falsifying government records.[13] The Court made clear that the constitutional standard governing the severity of punishment must grow and change with time: "a principle to be vital must be capable of wider application than the mischief which gave it birth . . ."[14]

Since *Weems*, the Court has adhered to the concept of a developing Eighth Amendment. The principle received its fullest expression in the 1958 case of *Trop v. Dulles*,[15] in which the Court held that deprivation of citizenship was a cruel and unusual punishment for the crime of desertion in wartime. The Court stated that the prohibition against cruel and unusual punishment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[16] At the same time, again in dictum, the Court noted the "forceful" arguments against capital punishment, but stated that *"in a day when it is still widely accepted* it cannot be said to violate the constitutional concept of cruelty."[17]

Since *Trop*, the premise on which the Court's dictum concerning capital punishment is based—the wide acceptance of capital punishment—has increasingly been undermined. Moreover, judges and constitutional scholars have argued in growing numbers that the "evolving standards of decency" of this society no longer can tolerate the taking of human life as punishment for crime. In 1968, the Supreme Court granted certiorari to consider whether the death penalty for robbery was cruel and unusual punishment, but decided the case on other grounds.[18] Only last year, the Fourth Circuit Court of Appeals finally did strike down the death penalty as applied to certain rape cases on Eighth Amendment grounds.[19] Recently, several scholarly commentators, including former Supreme Court Justice Arthur Goldberg, have argued that the Eighth Amendment bars the death penalty altogether.[20]

The case against the death penalty as cruel and unusual punishment is based on three propositions: (1) the penalty is cruel and severe out of all proportion to other punishments exacted by our criminal justice system; (2) it is "unusual", in that it is rarely imposed and even more rarely carried out in contemporary America, and in that its imposition is arbitrary and unfair to the few who actually suffer it; and (3) there is no compelling justification for it in terms of the accepted goals of criminal punishment.

(1) Death—"the extreme penalty"—is incomparably the harshest punishment known to our law. Not only is life itself taken, it is taken in a manner which imposes the most terrible mental suffering, often leading to insanity or suicide.[21] Dostoevsky, who himself once faced the firing squad and was reprieved at the last minute, described the uniquely cold-blooded horror of execution:

"[T]he chief and worst pain may not be in the bodily suffering but in one's knowing for certain that in an hour and then in ten minutes, and then in half a minute, and then now, at the very moment, the soul will leave the body and that one will cease to be a man and that that's bound to happen; the worst part of it is that it's certain. . . . To kill for murder is a punishment incomparably worse than the crime itself. Murder by legal sentence is immeasurably more terrible than murder by brigands. Anyone murdered by brigands, whose throat is cut at night in a wood, or something of that sort, must surely hope to escape till the very last minute. . . . But in the other case [execution] all that last hope, which makes dying ten times as easy, is taken away for certain. There is the sentence, and the whole awful torture lies in the fact that there is certainly no escape, and there is no torture in the world more terrible. . . ."[22]

Camus wrote:

"But beheading is not simply death. It is just as different, in essence, from the privation of life as a concentration camp is from prison. It is a murder, to be sure, and one that arithmetically pays for the murder committed. But it adds to death a rule, a public premeditation known to the future victim, an organization, in short, which is in itself a source of moral sufferings more terrible than death. Hence there is no equivalence. Many laws consider a premeditated crime more serious than a crime of pure violence. But what then is capital punishment but the most premeditated of murders, to which no criminal's deed, however calculated it may be, can be compared? For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life."[23]

Beyond the mental suffering, it is open to serious question whether the methods of execution used today are as humane as we like to think. There is evidence that death by electrocution, lethal gas and hanging is often by no means instantaneous and may be very painful.[24] It is certain that the actual details of execution are degrading to the condemned man, and leave him little chance to die with dignity and self-respect.[25] And, as the Court held in *Trop*, the chief concern of the prohibition against cruel and unusual punishment is with "the dignity of man."[26]

Closely related to the cruelty and severity of death is the "sheer enormity of the punishment."[27] More than the expatriation condemned in *Trop v. Dulles*, execution deprives those subjected to it of their "right to have rights."[28] A convict under life sentence may be freed if new evidence is found which establishes his innocence. Even the guilty man—guilty of the most terrible crime—may some day so reform himself that he can safely be returned to society.[29] All those hopes are extinguished by the finality of execution.

(2) Not only is the penalty of death cruel, it is "unusual" in a constitutionally significant sense. Most American jurisdictions—though a shrinking number—retain the death penalty for murder and for a few other crimes.[30] But in reality the penalty is exacted against only a small and erratically selected proportion of the persons convicted of the crimes.

The number of executions has steadily declined over the years in this country, while the population and crime rate have gone up. In the last few years, there have been no executions, and even before the litigation-inspired stays of recent years, executions had become very rare.[31]

The process of determining who among those convicted of capital crimes will die is a haphazard one. Normally, it is entrusted to the unguided discretion of the jury; and in some states, the judge has the additional discretion to reduce a jury-imposed death sentence to life imprisonment, also without any standards or criteria to guide him.[32] These sentencing bodies are free to act on grounds of whim, caprice, recent public

Footnotes at end of article.

clamor, or prejudice—for they need give no reason for their decision between life and death. Other discretionary elements enter into the decision. The prosecutor can charge a capital crime or a lesser offense. He may or may not ask for the death penalty. If it is given, the executive has total discretion to commute the sentence or not.[33] Each of these factors serves to reduce the number of those actually executed, but each of them also makes more arbitrary and unfair the choice of those who finally do suffer death. Each of the screening devices is more likely to work in favor of the defendant with friends, influence, money or a good lawyer. The end product of the system is predictable: it is the poor, the uneducated, the members of minority groups who are actually executed in this country.[34]

The reason for the increasingly infrequent and arbitrary use of the death penalty is that the public will no longer tolerate the large numbers of executions produced by mandatory death sentences for capital crimes. In some jurisdictions, this reaction has led to outright abolition of the death penalty. In others, however, it has led only to the introduction or wider use of the various discretionary devices—chief among which is jury sentencing discretion—through which most capital defendants can escape execution.[35] The victims of the compromise are the few arbitrarily and often discriminatorily selected capital defendants who actually are executed, although no legally prescribed standard differentiates their cases from those of the defendants whose lives are spared. The public is not sufficiently appalled at these few sporadic executions to force the death penalty off the statute books, though application of the penalty in all capital cases would doubtless lead to abolition.[36]

The Eighth Amendment, if it is to have any independent force whatever, must prevent the rare and arbitrary—the "unusual"—infliction of a punishment which, if applied generally and evenhandedly would shock the public sense of decency by its harshness. It is in this sense that the death penalty is today in America an unusual as well as a cruel punishment. Actual practice in our criminal justice system has undermined the premise of the Supreme Court's dictum approving the death penalty "in a day when it is still widely accepted." [37] In practice, it is widely accepted no longer.

(3) The combination of the cruelty of the death penalty and its arbitrary application might be enough in itself to condemn the penalty under the Eighth Amendment. It seems plain that at the very least it shifts the burden to the state to support the penalty with the kind of "compelling justification" which courts have traditionally required where government policies intrude upon constitutionally protected values.[38] Under this standard, the state has the burden of showing that the death penalty serves some recognized purpose of the criminal law more effectively than any alternative punishment can. This burden cannot be met.

Of course, the function of rehabilitation militates against the death penalty—putting a man to death negates all hope of rehabilitating him. A second important function of the criminal law is protection against further crimes by the particular offender, but there is no reason to suppose that a modern prison cannot adequately serve this function.[39] Offenders can be incarcerated as long as there is danger they might repeat their crimes—for the rest of their lives, where rehabilitation proves impossible.[40]

The justification for capital punishment is normally posed in terms of deterrence. But *none* of the numerous scientific studies on the question has supported the claim that the death penalty is a greater deterrent than life imprisonment.[41] Neighboring states, comparable in history and in social and economic makeup, differing only in that one of them has the death penalty while the other does not, have been shown to have no significant differences in their homicide rates.[42] The crime statistics from states which have abolished capital punishment and then restored it have shown no upsurge in murders during the abolition period.[43] The statistical evidence is such that Professor Thorsten Sellin, perhaps the leading authority on death penalty statistics, has concluded that "[The death penalty] has failed as a deterrent. If it has any utilitarian value, it must rest in some other attribute than its power to influence the future conduct of people." [44]

The reasons why the death penalty is not an effective deterrent are reasonably clear. A large proportion of murders are committed by persons who, either by virtue of mental instability or momentary passion, are oblivious to the consequences. In other cases, it is fair to assume in light of the enormity of imprisonment for life, that the crimes would not occur if the offender did not believe he could escape detection. And where detection is considered likely, the prospect of a sentence of life imprisonment upon conviction or being killed during the course of apprehension is certainly adequate to deter a rational man.[45]

With respect to the question of deterrence there may be another side of the ledger. It has frequently been suggested that persons with suicidal impulses may commit murder to effect their own execution.[46] More generally, it is often argued that execution by the state creates a climate of violence that may increase the occurrence of capital crimes.[47]

In short, evidence and logic strongly indicate that capital punishment does not deter; it may even increase the rate of capital crimes.[48]

"Since the state cannot sustain its burden by showing compelling reason to believe that a legitimate purpose of the criminal law is more effectively served by the death penalty than by a less severe punishment, capital punishment should be held unconstitutional."

Goldberg and Dershowitz, *supra*, at 1797.

For two reasons, the cruel and unusual punishment provision particularly lends itself to legislative rather than judicial definition. *First*, the provision is unique among the guarantees of the Bill of Rights in its generality and vagueness, and probably for this reason it has been infrequently applied by the courts to restrict criminal penalties. Rather than embodying precise standards which the courts can easily apply, it suggests a standard based on the general moral sense of society as a whole—as the Supreme Court has put it, on "the evolving standards of decency that mark the progress of a maturing society." [49]

The courts no doubt feel that the legislatures—answerable as they are to the will of the people—are better suited to define and enforce society's "standards of decency." [50] Under this view Congress, as the branch of government most able to formulate *national* standards of morality and decency, has a special responsibility to define the boundaries of the prohibition against cruel and unusual punishments.

A second consideration supporting congressional action on the death penalty is the superior factfinding power of Congress. Constitutional scholars have suggested that Congress' special power to go beyond the courts in defining constitutional rights is in part based upon its greater ability to gather and evaluate the relevant general social facts.[51] By contrast to the broad investigative powers of Congress, courts are normally confined to the record of a single case—a record limited by rules of evidence designed for the resolution of individual disputes, rather than general questions of social policy.

Intelligent resolution of the constitutionality of the death penalty involves issues of general social fact. How cruel, mentally and physically, is execution as actually administered in this country? How useful is the death penalty as a deterrent to serious crime? How rare and arbitrary is it in its application? Answering these questions requires investigation of the institution of capital punishment as a whole. Plainly, Congress is better equipped to conduct such an investigation than are the courts.

II. EQUAL PROTECTION

The Equal Protection Clause forbids discrimination in the application or enforcement of the laws.[52] The available evidence strongly suggests that the death penalty is discriminatorily applied to black Americans. On the basis of this evidence, Section 5 of the Fourteenth Amendment authorizes Congressional prohibition of capital punishment.

a. The discriminatory enforcement of the death penalty

Of 455 men executed for rape in this country since 1930, 405, or nearly 90%, have been black.[53] In six of the nineteen jurisdictions which impose the death penalty for rape, only black defendants have been executed for that crime.[54] With respect to other capital crimes, there is strong indication of racial discrimination. Blacks constitute 76 per cent of those executed for robbery, 83 per cent of those executed for assault by a life prisoner, and 100 per cent of those executed for burglary in the same period.[55] Of those executed for murder since 1930, 49 per cent have been black, although blacks have made up only about 10 per cent of the population during that period.[56] Of all persons executed since 1930, 53.5 per cent have been black.[57] Of prisoners on death row as of the end of 1968, 52 per cent were black.[58]

The rate of execution of blacks far exceeds the proportion of capital crimes committed by black defendants. This has been most clearly proven with respect to executions for rape. A study of rape cases in Florida between 1940 and 1964 revealed that only 5 per cent of whites who raped white victims were executed. No white man was sentenced to die for raping a black woman. However, 54 per cent of the blacks convicted of raping white victims were sentenced to death.[59] An exhaustively careful study of rape cases in a random selection of Arkansas counties showed similarly gross disparities in death sentences for rape between black and white defendants.[60]

With respect to crimes other than rape, the evidence of discrimination is still strong. A study of all capital cases in New Jersey under a half of the blacks convicted of capital crimes were sentenced to die. In the same period, less than a third of the whites convicted of the same crime received death between 1930 and 1961 revealed that just sentences.[61] A study of homicide cases in 10 North Carolina counties over a 10-year period revealed clear evidence of discrimination in sentencing. Of blacks convicted of killing whites, 37 per cent were sentenced to death. No white defendants received death sentences for killing blacks.[62]

The pattern of racial discrimination continues after sentencing. A study of commutations in Pennsylvania between 1914 and 1958 revealed that whites were twice as likely as blacks to have their sentences commuted.[63] A similar study in New Jersey found almost precisely the same pattern—whites were twice as likely as blacks to receive com-

mutations.[64] A study of executions in the southern states showed that of those sentenced to death, blacks were far more likely than whites actually to be executed; for instance, in North Carolina only 35 per cent of whites sentenced to death were finally executed, while the comparable figure for blacks was 67 per cent.[65]

b. Congressional authority

It was well established before *Morgan v. Katzenbach* and the *Voting Rights Act Cases* that the Civil War Amendments granted Congress broad powers to implement the prohibitions they laid down.[66] The remedies available to Congress include the invalidation of state laws or procedures which, although nondiscriminatory on their face, have been shown to result in violations of rights secured by the Fourteenth and Fifteenth Amendments.

Recent legislation barring the use of literacy tests for voting provides a case in point. The Supreme Court has held that there is nothing inherently discriminatory in requiring literacy of voters.[67] In 1965, however, Congress determined that literacy tests were being used discriminatorily to disqualify black voters in certain states and, by statute, suspended their use for all voters in those states.[68] The Supreme Court sustained the statute in *South Carolina v. Katzenbach*.[69] In 1970 the Congress extended the literacy test ban to all states, including those in which there had been no prior showing of discriminatory application.[70] Again, the Supreme Court unanimously sustained the legislation, holding that administrative convenience and the interest in uniformity justified the nationwide extension of the prohibition to states which had not been shown to have used literacy tests to discriminate.[71] Similarly here, upon the evidence of systematic racial discrimination in the implementation of the death penalty, Congress could prohibit the use of the death penalty, not only in those states for which there is such evidence, but across-the-board.

Both Congress in enacting and the Supreme Court in upholding the literacy test legislation emphasized the difficulty of establishing racial discrimination in court in individual instances.[72] The situation is similar with the death penalty. Just as an individual black citizen found it hard to prove that a literacy test had been used to discriminate against him, so do individual black defendants find it almost impossible to convince a court that they would not have been sentenced to death had they been white.[73] Congress, unlike the courts, may look beyond the question of whether any individual black defendant was sentenced to death discriminatorily to examine the broad pattern. Where evidence of discrimination is clear, it may then embody its general conclusions in legislation invalidating laws and procedures which give rise to the pattern of discrimination. There is ample basis for such action with respect to the death penalty.

III. CONSTITUTIONAL BASIS FOR A STAY OF EXECUTIONS

Since Congress is authorized to abolish the death penalty in the states, it seems plain that it could *stay* executions for a limited period to promote careful consideration of the constitutional and other issues raised by the death penalty, and to prevent irreparable injury to the rights of those under sentence of death in the meantime.

To stay all executions, Congress need not now find that the death penalty is unconstitutional or is used to deny constitutional rights. It need only make the scarcely controversial finding that there exist serious questions of constitutionality, questions which are within Congress' legislative jurisdiction. Such a stay would serve two purposes, both of which lie within the ambit of concern granted to Congress by the Constitution.

First, by declaring a moratorium on executions for a limited time, Congress would be ensuring a period of calm deliberation on the general question of the death penalty both to itself and to other duly constituted authorities during that time. The idiosyncrasies of individual defendants and individual cases would then not assume disproportionate importance, and the death penalty could be properly evaluated on the basis of the whole institution, rather than on the basis of the case most recently brought to public attention by a recent or immediately pending execution—whether that case should involve a particularly horrible crime or a particularly pathetic defendant.

Second, and more important, a congressional stay would prevent the irreparable injury to constitutional rights threatened by each execution, while Congress determined whether those rights require abolition of the death penalty. Congress broad powers to enforce constitutional guarantees surely include the power to preserve the status quo while it determines how far those guarantees reach and to what extent they require legislative protection. Just as a court of equity may issue a temporary injunction to preserve the status quo and prevent irreparable injury pending its determination of the merits of the case, so may Congess suspend a practice while it determines its constitutionality. To hold otherwise would mean that Congress was without power to prevent executions while it was considering the very question whether the death penalty violated basic constitutional rights—an absurdly inappropriate restriction upon the sweeping authorization to enact all "appropriate legislation" for the protection of those rights.

A final point supports the constitutionality of a congressional stay of execution. The question of the death penalty is not only before Congress. The accumulation of record numbers of condemned men on the Death Rows of the nation, and the practical possibility of mass executions raised by the recent Supreme Court decisions, mean that the case for abolition will come before the state legislatures with new force in the next months and years. However, because of the scheduling of state legislative sessions, there is the danger that men will be executed before the legislatures can confront the issue. Many legislatures will not be in session until next year, and some of them will not convene again until 1973.[74] While governors could stay executions in some of these states pending legislative action, in some they lack the power, while in others they may be unwilling for reasons of personal belief or local politics to take such action. In these circumstances, a temporary stay of executions by Congress would preserve the status quo not only for the sake of congressional deliberation, but also would do the same service for the legislatures of the several states.

FOOTNOTES

[1] See *Katzenbach* v. *Morgan*, 384 U.S. 641, 650 (1966); *Ex Parte Virginia*, 100 U.S. 339, 345–346 (1879); and cf. *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966) (Section 2 of the Fifteenth Amendment); *James Everard's Breweries* v. *Day*, 265 U.S. 545, 558–559 (1924) (Section 2 of the Eighteenth Amendment); *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819) (Article I, Section 8, Clause 18).

[2] 42 U.S.C. § 1973b(e).

[3] Existing case law strongly suggested that the Spanish-speaking voters enfranchised by Section 4(e) could not have succeeded in an equal protection challenge to the New York English literacy law unassisted by federal legislation. In *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45 (1959), the Supreme Court unanimously upheld a North Carolina law requiring English literacy as a condition of eligibility to vote against equal protection challenge. The petitioner in *Lassiter* was, however, not literate in another language as were the voters involved in the *Morgan* case. The Court in *Morgan* explicitly distinguished *Lassiter* on the ground of the intervening legislation, 384 U.S. at 649.

[4] *Oregon* v. *Mitchell*, 400 U.S. 112 (1970).

[5] 84 Stat. 314 (1970).

[6] 400 U.S. at 281, 295–296.

[7] 400 U.S. at 152, 212–213.

[8] 400 U.S. at 119, 129.

[9] See particularly 400 U.S. at 212 (Harlan, J.):

"I think it is fair to say that the suggestion that members of the age group between 18 and 21 are threatened with unconstitutional discrimination . . . is little short of fanciful."

And see 400 U.S. at 296 (Stewart, J.):

"But it is necessary to go much further [than the Court did in *Morgan*] to sustain § 302. The state laws that it invalidates do not invidiously discriminate against any discrete and insular minority."

[10] 400 U.S. at 135 (Douglas, J.); 400 U.S. at 229 (Brennan, White, and Marshall, JJ).

[11] *Robinson* v. *California*, 370 U.S. 660 (1962); *Malloy* v. *Hogan*, 378 U.S. 1, 6 n. 6 (1964).

[12] 217 U.S. 349.

[13] The statute required that those convicted of the offense "shall always carry a chain at the ankle, hanging from the wrists; they shall be employed at hard and painful labor, and shall receive no assistance whatsoever from without the institution." They were also disqualified for life from holding office, voting, receiving retirement pay, and were subject to "surveillance during life." 217 U.S. at 364.

[14] 217 U.S. at 373.

[15] 356 U.S. 86 (1958). Four members of the Court found expatriation a cruel and unusual punishment *per se;* Mr. Justice Brennan, concurring, combined the Eighth Amendment with a concept of substantive due process to void the penalty. See Note, *The Death Penalty Cases*, 56 Calif. L. Rev. 1268, 1336 (1968).

[16] 356 U.S. at 100–101.

[17] 356 U.S. at 99 (emphasis added).

[18] *Boykin v. Alabama*, 395 U.S. 238 (1969).

[19] *Ralph v. Warden*, 4th Cir., No. 13757 (December 11, 1970). Compare *Rudolph v. Alabama*, 375 U.S. 889 (1963) (Goldberg, J., dissenting), in which three justices of the Supreme Court thought the Court should consider whether the death penalty for rape was a cruel and unusual punishment.

[20] Goldberg & Dershowitz, *Declaring the Death Penalty Unconstitutional*, 83 Harv. L. Rev. 1773 (1970); Note, *The Death Penalty Cases, supra;* Bedau, *The Courts, The Constitution, and Capital Punishment*, 1969 Utah L. Rev. 201; Gottlieb, *Testing The Death Penalty*, 34 S. Cal. L. Rev. 268 (1961).

[21] On the psychological consequences of life on death row, see West, "Medicine and Capital Punishment", in *To Abolish the Death Penalty*, Hearings Before the Subcommittee on Criminal Laws and Procedures, Senate Judiciary Committee, 90th Cong. 2d Sess., at 124 (1968) (hereinafter "Senate Hearings"). See also Bluestone and McGahee, *Reaction To Extreme Stress: Impending Death by Execution*, Am. J. Psych., Nov. 1962, p. 393; *Solesbee v. Balkcom*, 339 U.S. 9, 14 (1950) (Frankfurter, J., dissenting). For personal accounts see R. Hammer, *Between Life and Death* (1969); E. Smith, *Brief Against Death* (1968).

[22] Dostoevsky, *The Idiot* 19–21 (1958).

[23] Camus, "Reflections On the Guillotine" in *Resistance, Rebellion and Death* 151–152 (Modern Library, 1960).

[24] The authorities on this point are collected in Note, *The Death Penalty Cases*, *supra* n. 15, at 1339–1341.

[25] See the testimony of Clinton Duffy, for many years warden of San Quentin Prison, in *Senate Hearings* at 19–21.

[26] 356 U.S. at 100.

[27] Goldberg & Dershowitz, *supra*, at 1798.

[28] 356 U.S. at 102.

[29] See, *e.g.*, "The Rehabilitation of Nathan Leopold", *Saturday Evening Post*, June 1, 1963, pp. 66–68; Bailey, "Rehabilitation On Death Row" in Bedau, ed., *The Death Penalty in America* 556 (1967) (hereinafter "*Bedau*").

[30] Sixteen American jurisdictions have either abolished capital punishment entirely, or retain it only for rare crimes such as a second first-degree murder, murder of a prison guard, or murder of a police officer. In the following list, total abolition jurisdictions are italicized, and the date of abolition is given where it is recent: *Alaska* (1957), *Hawaii* (1957), Iowa (1965), *Maine*, *Michigan*, *Minnesota*, New York (1965), New Mexico (1969), North Dakota, *Oregon* (1964), Puerto Rico, Rhode Island, Vermont (1965), *Virginia Islands* (1957), *West Virginia* (1965), *Wisconsin*. The remaining 36 states, the District of Columbia, and the federal jurisdiction retain capital punishment for first degree murder; some of them have it for other crimes as well. The Army and Air Force have capital punishment; the Navy and Marines do not.

[31] There have been 3859 executions in the United States since reliable statistics began to be kept in 1930, 3334 for murder. Only 191 of these were during the 1960's, and there have been no executions since 1967. The trend is shown by the figures for the following representative years:

1930	155
1935	199
1940	124
1945	117
1950	82
1955	76
1960	56
1961	42
1962	47
1963	21
1964	15
1965	7
1966	1
1967	2

National Prisoner Statistics: Capital Punishment, 1930–1968 (1969) (hereinafter "NPS").

By way of comparison, there were 9140 reported criminal homicides in 1960, and 14,590 in 1969. FBI, *Uniform Crime Reports*, 1960, 1969. Criminologists estimate that between 10 and 25 per cent of criminal homicides are capital (first-degree) murders. *Bedau* at 62.

[32] See Knowlton, *Problems Of Jury Discretion in Capital Cases*, 101 U. Pa. L. Rev. 1099 (1953).

[33] In most states the governor has the clemency power; in others it rests in the parole and pardon board; in some it is shared. See generally Abramowitz & Paget, *Executive Clemency in Capital Cases*, 39 N.Y.U.L.R. 136 (1964).

[34] On the race of those executed, see Part II of this memorandum, *infra*. On their poverty and educational status, see, *e.g.*, *Senate Hearings* at 11 (testimony of Michael DiSalle), and at 25 (testimony of Clinton Duffy).

[35] For a historical review of this development, see *Bedau* at 27–30.

[36] "The government envisaged for this country by the Constitution is a democratic one, and in a democracy there is little reason to fear that penal laws will be placed upon the books which, in their general application, would affront the public conscience. The real danger concerning cruel and inhuman laws is that they will be enacted in a form such that they can be applied sparsely and spottily to unhappy minorities, whose numbers are so few, whose plight so invisible, and whose persons so unpopular that society can readily bear to see them suffer torments which would not for a moment be accepted as penalties of general application to the populace." Brief *Amicus Curiae* for the N.A.A.C.P. Legal Defense and Educational Fund, Inc., in *Boykin v. Alabama*, *supra*, at 38–39.

[37] *Trop v. Dulles*, *supra*, at 99.

[38] See, *e.g.*, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Speiser v. Randall*, 357 U.S. 513 (1958); *Shapiro v. Thompson*, 394 U.S. 618 (1969). Justice Goldberg has argued that a compelling interest test should be applied to the death penalty under the Eighth Amendment; Goldberg & Dershowitz, *supra*, at 1794. See also Note, *The Death Penalty Cases*, *supra*, at 1355.

[39] The evidence strongly supports the conclusion of Warden Lawes of Sing Sing that, far from posing a special threat, "as a group [murderers] constitute the most reliable and dependable men in the institution." L. Lawes, *Man's Judgment of Death* 39. See Bedau at 400–401, 494–500; Sellin, ed., *Capital Punishment*, 154–189 (hereinafter "*Sellin*") (1967). Governor DiSalle of Ohio used life-term convicted murderers as his household staff in the executive mansion; see *Senate Hearings* at 17.

[40] Some murderers sentenced to life imprisonment are released on parole, and studies show that they are far better parole risks than any other class of offenders. In general, the recidivism rate for released murderers is very low, and the rate of murder-recidivism is nearly zero. See *Bedau* at 395–405; *Sellin* at 169–188; Stanton, *Murderers On Parole*, 15 Crime and Delinquency 149 (1969); Royal Commission on Capital Punishment, Report at 486–491 (1953) (hereinafter "*Royal Commission Report*"); California Assembly Interim Report, Vol. 20, no. 3, "Problems of the Death Penalty and its Administration in California" at 12 (1957).

[41] The studies are collected in *Bedau* at 258–332, and the relevant statistics are set out in full detail in *Royal Commission Report* at 328–380. More recent statistics are examined by Reckless, in 15 Crime and Delinquency 52 (1969). Most official bodies which have examined the statistics have agreed with the United Nations report that "the data which now exist show no correlation between the existence of capital punishment and lower rates of capital crime." United Nations, Dept. of Economic and Social Affairs, *Capital Punishment* 123 (1968). Cf. *Royal Commission Report* at 18–24, 58–59, 328–330; New York Temporary Commission on Revision of the Penal Law and Criminal Code, *Special Report on Capital Punishment* 2 (1965); President's Commission on Law Enforcement and the Administration of Justice, *Report* 143 (1967); Pennsylvania Joint Legislative Committee on Capital Punishment, *Report* 9, 20–29 (1961); Canadian Ministry of Justice, *Capital Punishment: Material Relating to Its Purpose and Value* 36–37 (1965).

[42] *Bedau* at 279.

[43] *Bedau* at 333–334, 339–343.

[44] *Bedau* at 284.

[45] Sellin reports that over a 20-year period in Chicago, 330 homicide suspects were killed during the crime or while being apprehended, while only 45 murderers were executed. *Sellin* at 251.

[46] See West, "Medicine and Capital Punishment", in *Senate Hearings* at 126–127; and see *Bedau* at 263–264.

[47] The point is put forcefully by Camus; see "Reflections On the Guillotine", *supra*, at 148–149; it is summed up by Shaw's aphorism: "Murder and capital punishment are not opposites that cancel one another, but similars that breed their kind." *Senate Hearings* at 91 (testimony of Attorney General Ramsey Clark). There is even some statistical evidence that the homicide rate rises on nights before scheduled executions; Graves, "The Deterrent Effect of Capital Punishment in California", in *Bedau* at 322, 329.

[48] We have not included retribution among the legitimate objects of criminal punishment. As the British Royal Commission concluded, "[m]odern penological thought discounts retribution in the sense of vengeance." *Royal Commission Report* at 17. Accord: *Williams* v. *New York*, 337 U.S. 241, 248 (1949); *Morrissette* v. *United States*, 342 U.S. 246, 251, (1952); *People* v. *Love*, 53 Cal. 2d 843, 856–857 n. 3, 350 P. 2d 705, 713 n. 3 (1960); *People* v. *Oliver*, 1 N.Y. 2d 152, —, 151 N.Y.S. 2d 367, 373, 134 N.E. 2d 197, 201–201 (1956). Contemporary proponents of the death penalty eschew reliance on retribution, and rely on arguments from deterrence and restraint; see *Bedau* at 120–165. This is not to say that the spirit of vengeance is not an important factor in the continued existence of the death penalty; rather, retentionists do not rely on it when stating arguments; in support of their position, thus recognizing the virtually unanimous societal rejection of vengeance as a proper goal of the criminal law.

[49] *Trop v. Dulles*, *supra*, at 101.

[50] Goldberg & Dershowitz, *supra*, at 1800–1802.

[51] See, *e.g.*, Cox, *Constitutional Adjudication and the Promotion of Human Rights*, 80 Harv. L. Rev. 91, 107 (1966).

[52] *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Fowler v. Rhode Island*, 345 U.S. 67 (1953); *Carter v. Jury Commission*, 396 U.S. 320 U.S. 320 (1970).

[53] NPS at 10.

[54] *Id.* at 10–11.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] Id. at 3.

[59] American Civil Liberties Union of Florida, "Rape: Selective Execution Based on Race" (1964).

[60] Transcript of Pretrial Hearing, *Maxwell v. Bishop*, No. PB66–C–52, August 22, 1966 (E. D. Ark.) (testimony of Marvin E. Wolfgang).

[61] Wolf, *Abstract of Analysis of Jury Sentencing in Capital Cases: New Jersey*, 19 Rutgers L. Rev. 56 (1964).

[62] Garfinkel, *Research Note on Inter- and Intra-Racial Homicides*, 27 Social Forces 369–381 (1949).

[63] Wolfgang, Kelly and Nolde, "Executions and Commutations in Pennsylvania" in *Bedau* at 464.

[64] Bedau, *Death Sentences in New Jersey—1907–1960*, 19 Rutgers L. Rev. 1 (1964).

[65] M. Wolfgang and B. Cohen, *Crime and Race: Conceptions and Misconceptions* 85–86 (1970).

[66] See, *e.g.*, *Ex Parte Virginia*, 100 U.S. 339, 345–346 (1879).

[67] *Lassiter v. Northampton Election Bd.*, 360 U.S. 45 (1959).

[68] Voting Rights Act of 1965, 79 Stat. 437, 42 U.S.C. §§ 1973–1973n (1964, Supp. I).

[69] 384 U.S. 301 (1966).

[70] Voting Rights Amendments of 1970, 84 Stat. 314, 42 U.S.C.A. § 1973aa (1971 Supp.).

[71] *Oregon v. Mitchell*, 400 U.S. 112, 118 (1970). See *id.* at 131–134 (Black, J.); *id.* at 144–147 (Douglas, J.); *id.* at 216–217 (Harlan, J.); *id.* at 231–236 (Brennan, White and Marshall, J.); *id.* at 282–284 (Stewart, J., joined by the Chief Justice and Blackmun, J.).

[72] *South Carolina v. Katzenbach*, *supra*, 383 U.S. at 313–315.

[73] See, *e.g.*, *Maxwell v. Bishop;* 398 F.2d 138, 147–148 (8th Cir. 1968), *vacated on other grounds*, 398 U.S. 262 (1970).

[74] Some 21 states have regular legislative sessions only in odd-numbered years. *The Book of the States: 1970–1971.*

By Mr. PROXMIRE:

S. 1970. A bill to amend the Employment Act of 1946 to provide for an informed public opinion upon price and income behavior which threatens national economic stability. Referred to the Committee on Banking, Housing and Urban Affairs.

PRICE INCOME GUIDEPOST BILL

Mr. PROXMIRE. Mr. President, today I am introducing a bill to amend the Employment Act of 1946. The purpose of my bill is to help establish the new economic policies which the country must have if we are to restore full employment with reasonable price stability.

The bill would contribute to the formulation of these new policies in two ways. First, it would require the President to establish immediately the voluntary price and income guideposts which have long been so urgently needed. Second, it would require the President to study thoroughly all the policy steps which may be needed in order to restore and to maintain full employment without inflation.

The first part of my bill—that calling for immediate enunciation of guideposts—is essentially identical to the bill which Congressman REUSS and I introduced last year. It would make the determination of explicit quantitative price and income guideposts a clear legislative responsibility of the President. The first guideposts would be established as soon as possible after the bill was enacted. Thereafter, guideposts would become a required element in the annual Economic Report of the President. The President would, of course, call on the advice of the Council of Economic Advisers, as well as on other appropriate Federal agencies, in formulating the guideposts. The President and his advisers would also consult fully with business and with labor during the formulation of the guideposts.

The need for guideposts is nothing new. We needed them badly when I introduced this bill last year. Indeed, we have needed them all along. It is most unfortunate that they were abandoned in 1967. However, the main point I wish to make is that we still need them today—and need them more urgently than ever. The inflation problem has not gone away. Much as we would like to see inflation disappear, it cannot be wished away. Nor can it be frightened away by high unemployment. Even if we were satisfied to pay the enormous costs of unemployment in order to get rid of inflation, this approach just does not work. We have tried it for over 2 years, and it has not worked. Unemployment has now been at the 6-percent level for 6 months, yet the rate of inflation as measured by the GNP deflator was higher in the first quarter of this year than it was during 1970. While the Consumer Price Index improved during the first quarter, hopes for future improvement have been clouded by the disturbing rise in the wholesale prices in April.

Most observers have been surprised by the continued strength of inflation. A number of economic forecasts for 1971 have recently been revised upward in current dollar terms, but revised downward in terms of the expected growth of real output. This is the worst of both worlds. There is obviously no satisfaction in seeing GNP reach $1,050 billion in 1971, or $1,055, or even that famous figure of $1,065 if this increase is primarily the result of inflation. Indeed, it would be a disaster if the administration's $1,065 forecast were to be realized in dollar terms, while unemployment continued to rise because the growth of real output was insufficient to provide job openings for a growing labor force.

No one is hoping for a $1,065 GNP just because they like the sound of that number. It is time to forget about $1,065 or $1,055 or any other current dollar number and talk in terms of the growth of real output. Policies must be aimed at expanding our real output at a rate which allows for productivity improvement and for the opening of new job opportunities. This means a real growth rate in excess of 4½ percent per year.

There is widespread agreement on the desirability of encouraging faster real growth. There is increasing agreement that new policies are needed to achieve this goal. Many are coming to feel, as I do, that new steps to promote growth, such as the immediate introduction of the individual income tax cuts now scheduled for 1972 and 1973, must be taken.

At the same time we take these stimulative steps which are so badly needed, we must also take effective steps to control inflation. This is why the immediate introduction of guideposts is so important. Of course, the administration has taken some steps in this direction—such as the effort a few months ago to contain the increase in steel prices. I have supported these steps, but they have been far too timid, too isolated, and too erratic. We need a systematic, continuing incomes policy which would be conducted at all times as a matter of law. And we need to begin this policy now.

Let me stress that I am talking about a policy of voluntary compliance by business and labor, not a system of mandatory price controls. Congress has already given the President the authority to institute mandatory controls on a temporary basis if he feels this is necessary. However, few would argue that mandatory controls would be satisfactory on a long-term basis. Personally, I feel they would be a serious mistake. By contrast, a voluntary incomes policy is, I believe, both feasible and necessary.

Unfortunately, much less is known about how to make a voluntary incomes policy work than we need to know. We need guideposts now. We cannot wait for a lot of studies to be completed before we institute them. However, at the same time that we introduce interim guideposts, we can begin seriously studying the long-term improvements in our economic institutions which will be required if we are to sustain a satisfactory combination of high employment and price stability in the future.

The unsatisfactory combination of inflation and unemployment from which we are suffering has discouraged everyone. The voices of doom and gloom are telling us that full employment and price stability are not compatible. Some say that we must accept the natural rate of unemployment, however high that is. Others say that we must accept high levels of inflation. We are repeatedly told that incomes policies have not worked well in other countries.

Obviously we cannot accept these conclusions. We must look at incomes policies that have worked. We must reexamine income policies that have not worked to discover how they might have been made to work. We must reexamine the structure of the economy, and measure the contribution which removal of import quotas, breakup of monopoly power, improvements in Government procurement, and better natural resource management can make to price stability. The second part of my bill requires the President to study these questions and to transmit his findings and recommendations to the Congress no later than next January 20; that is, no later than the next annual Economic Report.

My feeling is that this study is already long overdue. The problem of price stability must be approached in a positive manner. We have heard too much about policies that will not work. Too little effort has gone into the search for policies that will. The study I am proposing is not intended to answer the question: "Do we need an incomes policy?" We do. The questions is: "How can an incomes policy best be carried out?" This we must discover.

The study is not designed to answer the question: "Do we need to improve the efficiency of our economy?" Of course we do. The question is: "How can the efficiency of the economy be significantly improved?"

The question is not: "Can we have full employment without inflation?" We can, and we must. The question is: "What must we do to achieve full employment without inflation, and how fast can we do it?"

Few questions are more urgently in need of an answer than this one. I respectfully suggest to the President that he need not wait for my bill to be enacted. A concentrated examination of these questions, bringing to bear all the vast resources of the executive branch could and should begin at once.

I ask unanimous consent that the bill I have introduced be printed in the RECORD.

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

S. 1970

A bill to amend the Employment Act of 1946 to provide for an informed public opinion upon price and income behavior which threatens national economic stability

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 "Full Employment Amendments of 1971".

DECLARATION OF PURPOSE

SEC. 2. The Congress hereby declares that a new mechanism is needed to carry out the aims of the Employment Act of 1946 to promote maximum employment, production, and purchasing power (which includes the concept of reasonable price stability). It is the purpose of this Act to establish a mechanism to provide for an informed public opinion in order to restrain price or income behavior when it threatens national economic stability by causing inflation.

DETERMINATION OF PRICE AND INCOME GUIDEPOSTS

SEC. 3. (a) Section 3 of the Employment Act of 1946 is amended by adding at the end thereof the following new subsection:

"(d) The President shall transmit to the Congress (1) as soon as reasonably possible after July 1, 1971, and (2) thereafter annually as part of the Economic Report of the President and on such supplementary occasions as he shall deem necessary or desirable, explicit quantitative guideposts for price and income behavior. Such guideposts shall be arrived at after full consideration of probable productivity increases, and after full consultation with representatives of business and organized labor. These guidepost recommendations shall, when transmitted to Congress, be referred to the joint committee created by section 5."

(b) Section 4(c) of the Employment Act of 1946 is amended by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon, and by adding at the end thereof the following new paragraph:

"(6) to conduct such consultation with business, organized labor, and other appropriate persons, and such productivity, price, and income studies as may be required to make recommendations to the President regarding the price and income guideposts to be transmitted to Congress."

DETERMINATION OF PRICE AND INCOME BEHAVIOR INCONSISTENT WITH GUIDEPOSTS

SEC. 4. The Employment Act of 1946 is amended by adding at the end thereof the following new section:

"RECOMMENDATIONS ON PRICE AND INCOME GUIDEPOSTS

"SEC. 6. The President, through appropriate agencies of the Federal Government, shall review actual or imminent price or income behavior which is inconsistent with the price and income guideposts and which threatens national economic stability, and shall make such recommendations to the parties concerned as he determines to be in the public interest."

RECOMMENDATIONS FOR THE CONTINUING EXECUTION OF PRICE AND INCOME POLICIES

SEC. 5. The President shall transmit to the Congress no later than January 20, 1972, his recommendations for an appropriate administrative mechanism to carry out the purposes of the Full Employment Amendments of 1971 on a continuing basis and for other structural and institutional reforms designed to promote the aims of the Employment Act of 1946 relating to maximum employment, production, and purchasing power. Before transmitting these recommendations, the President, through appropriate agencies of the Federal Government, shall conduct a thorough evaluation of (1) past and present experience with income policies both in the United States and elsewhere; (2) the role of structural reforms, including but not limited to, the removal of import restrictions and the reform of Federal procurement and regulatory policy, in promoting greater price stability; and (3) the future prospects for achieving and sustaining full employment with reasonable price stability. The study shall include, under clause (3) of this section, a comparison of prospects for realizing the price and employment goals, with and without price and income guideposts, including an estimate of the time required to reach the price and employment goals. The complete results of the study to be conducted shall be made available to the Congress not later than January 20, 1972. For the purpose of this section, "full employment" means an aggregate unemployment rate no higher than 3 percent, and "reasonable price stability" means an annual rate of increase in the deflator for the Gross National Product of not more than 2 percent.

By Mr. SCOTT:

S. 1971. A bill to declare a portion of the Delaware River in Philadelphia County, Pa., nonnavigable. Referred to the Committee on Commerce.

Mr. SCOTT. Mr. President, I introduce, for appropriate reference, a bill to eliminate a Federal navigational easement at Penn's Landing along the Delaware River in Philadelphia. Today in more and more of America's cities, the long-present image of decaying waterfronts is undergoing a change. Increasingly, State, and local governments are awakening to the fact that its dirty, polluted, rundown, congested harbors need not remain that way but can and must be restored to the places of activity and enjoyment that they once were.

Such a project is underway in Philadelphia in the historic area of Penn's Landing—an area that stretches the length of 1 nautical mile along the Delaware River. Once the center of activities in the Port of Philadelphia, this section of the city's waterfront has since fallen into disuse as its piers and facilities have grown obsolete. Over the past several years, however, the city and the State governments have expended massive amounts of public funds in acquiring the unused cargo piers and in authorizing demolition, dredging, and filling operations in an effort to eliminate the blighted conditions that were exerting a serious negative influence on the adjacent historic city and central business district. The result has been the creation of a strategic development site occupying slightly over 75 acres.

Through the interacting of the public and private sectors of the community, the city of Philadelphia has programed the renewal and rehabilitation of the entire area in a manner that will exploit its unique locational assets in order to transform it into a center that will provide commercial, cultural, educational, and recreational benefits to the citizens of all age groups and all income levels who live in or visit the surrounding metropolitan area. In an effort to restore public identification to the Port of Philadelphia, Penn's Landing creates a people-oriented waterfront environment which will offer its visitors any number of opportunities to become involved in diverse and exciting activities focusing on the geographic and ecological importance of the Delaware River to the quality of life of the entire region. This natural resource will provide the thread that will tie together activities highlighting the international flavor of the port with its import/export activities to those calling forth the historical significance of Penn's Landing as they complement and support existing and evolving activities of the adjoining areas of Society Hill, the national historical area, and the old city areas.

Both these types of activity, recreational, and commercial, address themselves to two important issues of urban centers throughout the country—that of creating a pleasant environment in which to live and that of obtaining the revenues with which such an environment may be realized. By providing for an integration of both types of activity in a variety of forms, Penn's Landing will develop an expanded base for economic returns to both the city and the State. Through the return of either direct or indirect tax revenues, the net benefit in terms of economics is projected well over and above the cost of the public capital expended. At a time when the Nation's cities are in search of funds to allow them to continue providing services to the citizens, this project can only be seen as valuable.

In order to achieve the creation of this type of vital and exciting waterfront activity center, one capable of serving the city's residents as well as regional, national, and international visitors, the investment of private and institutional capital in addition to public funds is imperative. The attraction of such investment will enable the project to develop into a stimulus for increased commercial activity both on the site and throughout the nearby business communities. Development of Penn's Landing has progressed to the point of its marketing program launched this spring. While it is possible at this time to acquaint developers and potential users with the opportunities afforded by Penn's Landing, formal solicitation of development proposals is blocked by the existence of a Federal navigational easement, applicable to the area of Penn's Landing currently occupied by landfill.

The existence of the easement poses two problems. First, because the area is presently classified as a Federal waterway, the city cannot obtain title to the land and, therefore, arrangements for disposition of any portions of the development site to the State or to private developers cannot occur. Second, because potential developers could not possess clear title to the land, they would find it impossible to obtain long-term financing commitments.

Please note that this problem is by no means unique to Philadelphia, but has been faced by many cities, such as New York, San Francisco, and Baltimore, that have sought to improve their waterfronts. As long as this servitude remains, however, developers can have no assur-

ance that improvements made on the site will not be removed should they be considered an obstruction to navigation. such a determination is totally unlikely to occur, however, because the striking of the easement will not in any way reduce the navigable area of the river. In fact, the elimination of the piers which formerly occupied the area has caused an increase of approximately 80 feet in the effective cross section of the river that can be used by boats and ships. This is due to the fact that the former piers extended 550 feet into the river, whereas the land area and embarcadero replacing them extend only 470 feet. Permits for the landfill had been obtained from the U.S. Army Corps of Engineers in 1967. The Corps has been informed of the provisions of this legislation which would eliminate the easement in this area and has taken no exception to it.

Mr. President, this bill has a tremendous amount of community support. As one example, the former executive vice president of the Greater Philadelphia Chamber of Commerce, Thacher Longstreth, indicated to me early last February that unless this bill is passed, the Commonwealth of Pennsylvania:

> Will not be able to market the land to the various organizations which have been selected to develop it. This is because long-term financing will not be available while the title to the land is clouded.

In Mr. Longstreth's letter, he further noted:

> The importance of this tract of land, not only to the citizens of Philadelphia as a recreational resource, but also to the hundreds of thousands of persons who come each year from all over the Nation to visit the historic shrines in and around Independence Hall. Penn's Landing is an important part of this historic area.

Mr. President, I look forward to early and favorable consideration of this legislation which is so essential to Philadelphia's continued development.

By Mr. MILLER:

S. 1972. A bill to create a National Agricultural Bargaining Board, to provide standards for the qualification of associations of producers, to define the mutual obligation of handlers and associations of producers to bargain regarding agricultural products, and for other purposes. Referred to the Committee on Agriculture and Forestry.

NATIONAL AGRICULTURAL BARGAINING BOARD

Mr. MILLER. Mr. President, I send to the desk a bill for the purpose of establishing a National Agricultural Bargaining Board, providing standards for the qualification of associations of producers, defining the mutual obligation of handlers and associations of producers to bargain regarding agricultural products, and for other purposes.

I ask unanimous consent that the bill be printed in the RECORD at the conclusion of these remarks, be printed and appropriately referred.

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

(See exhibit 1.)

Mr. MILLER. For several years, the prices received by farmers have not kept pace with increases in their costs of production. The resulting cost-price squeeze has had serious economic and social consequences to millions of farmers and their families and to the rural areas of our country. What counts in the farmer's bank account is his net income—not his gross receipts. Inflation has had a staggering impact on his costs of production. The fact that his prices have not kept pace is revealed by statistics showing that 10 years ago 20 percent of the consumer dollar went for food; whereas today less than 17 cents of each consumer dollar goes for food. It is true that food prices are higher, but there are more consumer dollars being spent by the average consumer. Also, the prices to the farmer do not increase by the same amount that prices to the consumer increase in the retail market. There are various middlemen and labor costs which enter into the picture.

Farmers are not comparable to members of labor organizations, because each of them is an independent businessman with his own capital investment. Even tenant farmers often have a substantial investment in machinery. Accordingly, bargaining power for farmers can only be achieved through organizations of producers. More and more farmers have joined such organizations, and these have been helpful. However, the effectiveness of these organizations has been curtailed by limitations on the obligation of handlers to bargain with them—and I use "bargain" in the sense of meaningful negotiations without the danger of being undercut by unfair tactics. I am satisfied that most handlers do not engage in these tactics, but some of them do.

The bill I am introducing today would give producers of farm commodities, through their cooperative organizations, greater ability to obtain fair prices for their products. It would do this generally by requiring handlers to engage in bargaining with associations of producers which meet certain qualifications. The bill would establish in the U.S. Department of Agriculture a National Agricultural Bargaining Board composed of three members. This Board would "qualify" associations of producers which meet certain qualifications designed to assure that the association is producer-owned and controlled, has binding contracts with its members, is financially sound, and represents a sufficient number of producers with respect to a sufficient quantity of agricultural products to make it an effective agent for producers in bargaining with handlers.

Handlers would be required to bargain with qualified associations whose producer members have had a prior course of dealing with that handler. The bargaining would cover such items as price, terms of sale, compensation for commodities produced under contract, and other contract provisions. The Board would have the power to bring a complaint against a handler who refused to engage in bargaining with a qualified association of producers, to issue an order requiring the handler to engage in bargaining, and to enforce such orders through the courts.

My bill also follows the milk-marketing order approach which has been helpful to dairymen and also to consumers over the years. It covers all agricultural products. For an agricultural product to be covered, however, there would have to be a referendum by a majority of the producers voting in the referendum. If the majority vote took place, it would require a two-thirds vote to effectuate the marketing order—a requirement which, in my opinion, would be very difficult to obtain in the case of such national commodities as food, and feed grains, cattle, and hogs. However, there are many other crops which could feasibly come under the new bargaining program, and the very least that would happen would be to assure more orderly production and marketing of these crops than often occurs.

For too long, there are too many who fail to recognize that to have a sustained healthy national economy, there must be a healthy economy involving our basic industry of agriculture. My bill is introduced in recognition of this fact of economic life.

EXHIBIT 1

S. 1972

A bill to create a National Agricultural Bargaining Board, to provide standards for the qualification of associations of producers, to define the mutual obligation of handlers and associations of producers to bargain regarding agricultural products, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AGRICULTURAL MARKETING AND BARGAINING

LEGISLATIVE FINDINGS AND PURPOSE

SEC. 101. The Congress reiterates its finding that, because agricultural products are produced by numerous individuals farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. The Congress further finds that membership by a farmer in a cooperative organization can only be meaningful if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of its members who have had a previous course of dealing with such handler. The purpose of this title, therefore, is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products, and to provide for the enforcement of such obligation.

SHORT TITLE

SEC. 102. This title shall be known and may be cited as the "National Agricultural Marketing and Bargaining Act of 1971."

DEFINITIONS

SEC. 103. When used in this title—

(a) "Qualified association" means an association of producers accredited in accordance with section 105 of this title.

(b) "Association of producers" means any association of producers of agricultural products engaged in marketing, bargaining, shipping, or processing as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141(a)), or in section 1 of the Act entitled "An Act to authorize association of agricultural producers" approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

(c) "Board" means the National Agricultural Bargaining Board provided for in this title.

(d) "Handler" means any person other than an association of producers engaged in the business or activity of (1) acquiring or receiving agricultural products from producers or associations of producers for processing, grading, packaging, handling, storing, or sale; (2) contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or (3) acting as an agent or broker for a handler in the performance of any function or act specified in (1) or (2) above.

(e) "Person" includes one or more individuals, partnerships, corporations and associations.

(f) "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable, or nut grower.

NATIONAL AGRICULTURAL BARGAINING BOARD

SEC. 104. (a) There is hereby established in the Department of Agriculture a National Bargaining Board, which shall administer the provisions of this title.

(b) The Board shall consist of three members who shall be appointed by the President with the advice and consent of the Senate. The original Board shall be composed of one member for a one-year term, one member for a three-year term and one member for a five-year term. The President shall indicate the length of term when making the appointment of the original Board. Thereafter, as the term of each member expires, the President shall, with the advice and consent of the Senate, appoint a successor to serve for a term of five years. Any individual chosen to fill a vacancy caused by other than expiration of the term shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall select one member of the Board to serve as Chairman.

(c) Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office but for no other cause.

(d) A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board. Two members of the Board shall, at all times, constitute a quorum of the Board.

(e) All of the expenses of the Board, including all necessary traveling and subsistence expenses incurred by the members of the Board or the employees of the Board under its orders, shall be allowed and paid in the same manner as payments of such expenses for employees of the Department of Agriculture.

(f) The Board shall have authority from time to time to adopt, amend and rescind, in the manner prescribed by subchapter II, chapter 5 of title 5 of the United States Code, such rules and regulations as may be necessary or appropriate to carry out the provisions of this title.

QUALIFICATION OF ASSOCIATIONS OF PRODUCERS

SEC. 105. (a) Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this title.

(b) An association of producers desiring qualification shall file with the Board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be reasonably required by the regulations of the Board to enable it to carry out the purposes of this Act.

(c) The Board shall provide for a public hearing upon such petition. The Board shall qualify such association if, based upon the petition for qualification and the evidence at such hearing, the Board finds—

(1) that the association is directly or indirectly producer-owned and controlled;

(2) the association has contracts with its members that are binding under State law;

(3) the association is financially sound and has adequate resources and management to carry out the purposes for which it was organized;

(4) the association represents a sufficient number of producers with respect to a sufficient quantity of agricultural products to make it an effective agent for producers in bargaining with a handler or handlers; and

(5) one of the authorized functions of the association is acting as principal or agent for its producer-members in bargaining with handlers for prices and other terms of contracts with respect to the production, processing, sale or marketing of their product.

(d) After the Board qualifies such association, it shall give notice of such qualification to all known handlers which, in the ordinary course of business, purchase, process, or market the agricultural commodities produced by the members of such association.

(e) A qualified association shall file an annual report with the Board in such form as shall be required by the regulations of the Board. The annual report shall contain such information as will enable the Board to determine whether the association continues to meet the standards for qualification.

(f) If a qualified association ceases to maintain the standards for qualification set forth in subsection (c) of this section the Board shall, after notice and hearing, revoke the qualification of such association.

BARGAINING

SEC. 106. (a) As used in this title, "bargaining" is the mutual action and obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced under contract, and other contract provisions with respect to the commodities produced by the members of such association and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession.

(b) A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any one of the preceding three years.

(c) Nothing in this Act shall be deemed to prohibit a qualified association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

(d) It shall be unlawful for a handler to negotiate directly or indirectly with other producers of a product with respect to the price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to such product while negotiating with a qualified association which is able to supply all or most of the requirements of such handler for such product.

(e) It shall be unlawful for a handler to purchase a product from other producers under terms more favorable to such producers than those contained in an existing agreement with a qualified association.

(f) Whenever it is charged that a qualified association or handler refuses to engage in bargaining as that term is defined in subsection (a) of this section, the Board shall investigate such charges. If, upon such investigation, the Board considers that there is reasonable cause to believe that the person charged has refused to engage in bargaining in violation of this Act, the Board shall issue and cause to be served a complaint upon such person. The complaint shall summon the named person to a hearing before the Board or a member thereof at the time and place therein fixed.

(g) The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise at the hearing and give testimony. In the discretion of the Board, or the member conducting the hearing, any person may be allowed to intervene to present testimony. Any hearing shall, insofar as practicable, be conducted in accordance with the rules of evidence applicable under section 556 of title 5, United States Code.

(h) If, upon a preponderance of the evidence, the Board determines that the person complained of has refused to engage in bargaining in violation of this title, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to engage in bargaining as that term is defined in subsection (a) of this section and shall order such further affirmative action, including an award of damages, as will effectuate the policies of this title.

(i) If, upon a preponderance of the evidence, the Board is of the opinion that the person complained of has not refused to engage in bargaining in violation of this title, it shall make its findings of fact and issue an order dismissing the complaint.

(j) Until the record in a case has been filed in a court, as hereinafter provided in section 107, the Board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

ENFORCEMENT OF ORDERS AND JUDICIAL REVIEW

SEC. 107. (a) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the refusal to engage in bargaining occurred or wherein the person who engaged in such refusal resides or transacts business, for the enforcement of its orders made under section 106 and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board or the member before whom a hearing was conducted shall be considered by the court unless the court finds that the failure to present such objection should be excused because

of extraordinary circumstances. The findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence at the hearings before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, or a member thereof, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken and it shall file with the court such modified or new findings, which findings with respect to the questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive; and the Board shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive, and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(b) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the refusal to engage in bargaining was alleged to have occurred or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (a) of this section and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. The findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall in like manner be conclusive.

(c) The commencement of proceedings under subsections (a) or (b) of this section shall not stay enforcement of the Board's decision but the Board or the reviewing court may order a stay upon such terms as it deems proper.

MISCELLANEOUS PROVISIONS

SEC. 108. The Board shall at all reasonable times have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any refusal to engage in bargaining. The Board is empowered to administer oaths and to issue subpenas requiring the attendance of witnesses or the production of evidence.

SEC. 109. In case of contumacy or refusal to obey a subpena issued to any person, the district court, upon application by the Board, shall have jurisdiction to order such person to appear before the Board to produce evidence or to give testimony relevant to the matter under investigation, and any failure to obey such order may be punished by the court as a contempt thereof.

SEC. 110. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 111. Complaints, orders, and other processes and papers of the Board may be served personally, by registered mail, by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of such service. Witnesses summoned before the Board shall be paid the same fee and mileage allowance that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 112. All processes of any court to which an application or petition may be made under this title may be served in the judicial district wherein the person or persons required to be served reside or may be found.

SEC. 113. The provisions of this title are severable and if any provision shall be held unconstitutional or invalid by a court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions.

SEC. 114. The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract, or other contract terms relative to agricultural commodities produced by the members of such qualified associations shall be deemed not to violate any antitrust law of the United States. Nothing in this title however, shall be construed to permit handlers to contract, combine or conspire with one another in bargaining with qualified associations.

TITLE II—ASSIGNMENT OF ASSOCIATION FEES

SEC. 201. If any producer voluntarily executes and causes to be delivered to a handler, either as a clause in a sales contract or other instrument in writing, a notice of assignment of dues or fees to a qualified association, by which the handler is directed to deduct a sum from amounts to be paid to such producer and to pay the same over to such association as dues or fees for the producer, then such handler shall comply with said notice.

SEC. 202. An assignment of dues or fees as described in section 201 may not exceed 2 percent of the total value of the product which is delivered by the producer to the handler.

SEC. 203. Payment need not be made under an assignment of dues or fees pursuant to section 201 until the handler has available and under its control funds owing to the producer that are sufficient in amount to make the payment of the amount involved. In the case of an annual product, such payment need not be made until the end of the product year.

TITLE III—MARKETING ORDERS

SEC. 301. The Agricultural Adjustment Act of 1933, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, and subsequent legislation, if further amended as follows:

"Section 8c(2) is amended by inserting after the third sentence ending with the words 'Southwest production areas.', the following: 'Notwithstanding any of the commodity, product, area, or approval exceptions or limitations in the foregoing sentences hereof, any agricultural commodity or product (except canned or frozen products) thereof, or any regional or market classification thereof, shall be eligible for an order, exempt from any special approval required by the preceding sentences hereof, if after a referendum of the affected producers of such commodity the Secretary finds that a majority of such producers favor making such commodity or product thereof, or the regional or market classification thereof specified in the referendum, eligible for an order: *Provided, however,* that such referendum shall not be required for any commodity or product for which an order otherwise is authorized under the preceding sentences of its subsection (2) and for which no special approval or area limitation is specified therein'."

By Mr. HARTKE (for himself, Mr. SCOTT, Mr. SCHWEIKER, Mr. BAYH, Mr. BROOKE, Mr. BUCKLEY, Mr. CRANSTON, Mr. HART, Mr. HOLLINGS, Mr. HUMPHREY, Mr. KENNEDY, Mr. METCALF, Mr. MUSKIE, Mr. NELSON, Mr. PERCY, Mr. PROXMIRE, Mr. TUNNEY, and Mr. WILLIAMS):

S. 1973. A bill to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

THADDEUS KOSCIUSZKO HOME NATIONAL HISTORIC SITE

Mr. HARTKE. Mr. President, it is always gratifying to honor those individuals who have committed themselves to the preservation of freedom and independence in America. The legislation which I am proposing today to establish the Thaddeus Kosciuszko Home National Historic Site in Pennsylvania would properly distinguish such a man.

Thaddeus Kosciuszko, a Polish American who fought in the American Revolution, made substantial contributions to the success of the American struggle for independence. His expertise in constructing fortifications at West Point and Yorktown and his knowledge of military strategy resulted in the historic victory at Yorktown. In addition, Kosciuszko was instrumental in securing similar freedoms for his own people in Poland and worked as a diplomatic emissary to France to insure harmony between two young nations.

A true American patriot, Thaddeus Kosciuszko exhibited those qualities of unselfish dedication to a cause and persevering courage which have remained as the foundation of human freedom.

Mr. President, I am pleased to be joined in sponsoring this legislation by Senators SCOTT, SCHWEIKER, BAYH, BROOKE, BUCK-

LEY, CRANSTON, HART, HOLLINGS, HUMPHREY, KENNEDY, METCALF, MUSKIE, NELSON, PERCY, PROXMIRE, TUNNEY, and WILLIAMS. On my behalf and theirs, I ask unanimous consent that the text of the bill and a brief explanation be printed in the RECORD.

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

S. 1973

A bill to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to preserve in public ownership the historically significant property associated with the life of Thaddeus Kosciuszko for the benefit and inspiration of the people of the United States, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire by donation, purchase with donated or appropriated funds, or exchange in accordance with the provisions of 35(b) of the Act of July 25, 1958 (16 U.S.C. 460 1–22 (Supp. V)), the land and interests in land, together with buildings and improvements thereon, located at, or in the vicinity of, 301 Pine Street, Philadelphia, Pennsylvania, together with such other lands and interests in lands, including scenic easements, as the Secretary shall deem necessary for the administration of the area. The Secretary shall establish the Thaddeus Kosciuszko Home National Historic Site by publication of a notice to that effect in the Federal Register at such time as he deems sufficient lands and interests in lands have been acquired for administration in accordance with the purposes of this Act.

SEC. 2. Pending establishment and thereafter, the Secretary shall administer lands and interests in lands acquired for the Thaddeus Kosciuszko Home National Historic Site in accordance with the Act approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), as amended and supplemented, and the Act approved August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.), as amended.

SEC. 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

BRIEF EXTENSION

Section 1 of the bill authorizes the Secretary of the Interior to acquire by donation, purchase with donated or appropriated funds, or exchange, the Kosciuszko Home and related lands and improvements thereon located in Philadelphia, Pennsylvania, together with such other lands as the Secretary may deem necessary for administration of the area. The bill also provides that the Secretary shall establish the Thaddeus Kosciuszko Home National Historic Site by publication of a notice in the Federal Register at such time as he deems sufficient lands and interests in lands have been acquired for administration in accordance with the purposes of the Act. Administration of the site, as provided in section 2 of the bill, shall be in accordance with the authorities contained in the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4) as amended and supplemented, and the Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.), as amended.

Section 3 of the draft bill authorizes the appropriation of such sums as may be necessary to carry out the purposes of this Act.

By Mr. CURTIS (for himself and Mr. HARRIS):

S.J. Res. 105. A joint resolution authorizing the President to issue a proclamation designating 1971 as the "Year of World Minority Language Groups." Referred to the Committee on the Judiciary.

YEAR OF WORLD MINORITY LANGUAGE GROUPS

Mr. CURTIS. Mr. President, there are, around the world, some 2,000 minority tribes that do not have a written language. They comprise an estimated 160 million people.

In the last few decades, great progress has been made in regard to this. This year, the 500th tribe will have been reached not only with a written language but also with translations of great importance.

This work is brought about by dedicated individuals who engage in missionary efforts. They go to a tribe in some remote corner of the world, live with them and learn their language, and then they create for them an alphabet and a written language. As I said, these efforts have reached the 500th tribe.

In connection with this work, there has been created a Summer Institute of Linguistics, where linguistic scholars are trained at the Universities of Oklahoma, North Dakota, Washington, Michigan, Indiana, California, Pennsylvania, Texas, and elsewhere.

Mr. President, this work is of vital importance for the well-being of all the people on earth. It is also of vital importance to the cause of peace and understanding as well as for the betterment of mankind.

Because of the great work that has been done in this regard, and the accomplishments already obtained, a bill has been prepared which I send to the desk on behalf of myself and the distinguished Senator from Oklahoma (Mr. HARRIS). This bill would authorize the President to issue a proclamation designating 1971 as the year of world minority language groups.

ADDITIONAL COSPONSORS OF BILLS

S. 1528

At the request of Mr. HART, the Senator from Nevada (Mr. CANNON), the Senator from New Jersey (Mr. CASE), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 1528, the Wholesome Fish and Fishery Products Act of 1971.

S. 1775

At the request of Mr. CURTIS, the Senator from Kansas (Mr. PEARSON) was added as a cosponsor of S. 1775, the National Agricultural Marketing and Bargaining Act.

ADDITIONAL COSPONSORS OF AMENDMENTS TO THE MILITARY SERVICE ACT

AMENDMENT NO. 68

At the request of Mr. EAGLETON, the Senator from Utah (Mr. MOSS) was added as a cosponsor of amendment No. 68, intended to be proposed to H.R. 6531, to amend the Military Selective Service Act of 1967, and for other purposes.

AMENDMENT NO. 113

At the request of Mr. EAGLETON, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of amendment No. 113, intended to be proposed to the same bill (H.R. 6531).

ANNOUNCEMENT OF HEARINGS BY DISTRICT COMMITTEE ON NOMINATIONS TO THE DISTRICT OF COLUMBIA CITY COUNCIL

Mr. EAGLETON. Mr. President, I wish to announce that the Senate Committee on the District of Columbia, at 10 a.m. on Wednesday, June 9, 1971, in room 6226 New Senate Office Building, will hold public hearings on the nominations of Margaret A. Haywood, Joseph P. Yeldell, and Henry K. Willard to be members of the District of Columbia City Council. Persons wishing to testify or submit statements on these nominations should notify Robert Harris, staff director of the committee, 6222 New Senate Office Building, by Friday, June 4.

ANNOUNCEMENT OF HEARINGS BY DISTRICT COMMITTEE ON THE SCHOOL FARE BUS SUBSIDY BILLS (S. 1340 and H.R. 6638)

Mr. EAGLETON. Mr. President, I wish to announce that the Senate Committee on the District of Columbia, at 9 a.m. on Wednesday, June 9, 1971, in room 6226, New Senate Office Building, will hold public hearings on the school fare bus subsidy bills, S. 1340 and H.R. 6638. Persons who wish to testify or submit statements on this legislation should notify Mr. Robert Harris, staff director of the committee, 6222 New Senate Office Building, by Friday, June 4.

NOTICE OF HEARING IN SOUTH BEND, IND., ON UNEMPLOYMENT AMONG OLDER WORKERS

Mr. CHURCH. Mr. President, the Senate Special Committee on Aging—at the suggestion of Senator RANDOLPH, our chairman of the Subcommittee on Employment and Retirement Incomes—is conducting a study of the effects of widespread unemployment among older workers.

Our first hearing on that subject will take place on June 4, 1971, in South Bend, Ind., at 9 a.m. at the South Bend Public Library, 122 West Wayne Street. Senator VANCE HARTKE will preside.

ADDITIONAL STATEMENTS

ANOTHER REASON

Mr. HART. Mr. President, there is more than one reason why this Nation should speed withdrawal of its troops from Vietnam.

Columnist Stewart Alsop, writing in the May 24 edition of Newsweek magazine, cites the growing use of drugs by our men in Vietnam as a compelling reason to withdraw our troops quickly.

Mr. Alsop put his conclusion this way:

The United States has no obligation to continue to field a big non-fighting army in which tens of thousands of young men are becoming heroin addicts. The bulk of that non-fighting army must be withdrawn from Vietnam quickly and urgently, for the same reason that people in a burning house have to be gotten out quickly and urgently.

While Mr. Alsop and I might disagree on the extent of our withdrawal, I believe that the drug problem is one more important reason why we should set a date certain and bring all our troops home.

Mr. President, I ask unanimous consent that Mr. Alsop's column be printed in the RECORD.

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

WORSE THAN MYLAI

(By Stewart Alsop)

WASHINGTON.—In addition to the 55,000 Americans who have died in Vietnam, there are now many thousands who might almost as well be dead. For according to a new and authoritative estimate—vividly supported by NEWSWEEK reporters (page 26)—there are between 30,000 and 40,000 servicemen in Vietnam who are heroin users. Most of these men, on return to civilian life, are condemned to a life of crime and an early death.

The horrifying new estimate was provided by the Provost Marshal's office in Saigon to an emissary of the House Foreign Affairs Committee, Rep. Robert Steele of Connecticut. If you think about its real meaning, it is the worst horror to emerge from the war—worse even than My Lai.

According to the estimate, between 10 per cent and 15 per cent of the American troops in Vietnam are on hard drugs—meaning heroin in almost every case. This can only be an estimate, since where heroin is easily available, as it is in Vietnam, it is not hard to conceal an addiction. But the Provost Marshal's estimate is borne out by other evidence, including a study, based on anonymous polling techniques, of addiction in the Americal Division.

SKYROCKETING USE

In this study, 6.4 per cent of those polled admitted taking "heroin or opium," and 5.5 per cent said they took "cocaine." There is virtually no cocaine in Vietnam, and the word is undoubtedly a misnomer for heroin, which the GI's call "skag." This indicates a total of almost 12 per cent on heroin. The figure is very probably low, for two reasons. First, the poll was taken last September, and since then the use of heroin in Vietnam has skyrocketed. Second, even when promised anonymity, a good many GI drug takers undoubtedly play safe and deny that they take drugs.

Moreover, a considerable proportion of the GI addicts are unaware that they are addicts, and some do not even know that they are taking heroin. Among the young draftees in Vietnam, who are the chief victims of the heroin epidemic, there is a widespread belief that the Vietnamese skag is not addictive if it is smoked or "snorted."

In a study of servicemen addicts undergoing voluntary treatment it was found that 51 per cent of those who used heroin smoked it, mixed with tobacco in ordinary cigarettes, 43 per cent snorted (sniffed the powder out of the cupped hand), and only 6 per cent "mainlined," injecting the stuff directly into the veins. The notion that smoking or snorting is not addictive is tragically untrue.

It is especially untrue of "Number Four White," the brand of heroin produced for "the American market" in Burma, Laos and Northern Thailand. ("Number Three Smoking Heroin," produced for the Asian market, is purplish in color.) Number Four White is 94 per cent to 97 per cent pure heroin, compared with 4 per cent to 6 per cent in heroin sold in the U.S.

EASY TO GET

The price in Vietnam varies widely, but it is very much lower than the New York price. Getting the stuff is no trouble at all. Representative Steele let it be known that he might be interested in buying a bag of skag, and in a twenty-minute walk in Saigon he was approached nine times.

Because the stuff is strong, cheap and easy to get, and also because of the myth that smoking or snorting does not cause addiction, there have been cases of young GI's taking leaves where heroin is not easily available—and suddenly suffering, to their own amazement, the horrors of withdrawal. According to the study of servicemen-addicts, their average age is a pathetic 20.5, and their average "length of habit" is only five months.

Secretary of the Army Stanley Resor and Narcotics Bureau director John Ingersoll both flew to Saigon recently to press the Thieu government to curb the heroin traffic. There is no doubt that highly placed Laotians and Vietnamese profit from the traffic, and some disciplinary gestures will doubtless be made. But the gestures can only be palliative—President Thieu can no more effectively control the drug traffic in Saigon than Mayor Lindsay can in New York.

More than gestures are needed. The first thing that has to be done is to deal with the problem of the servicemen who are already addicted, or are in danger of becoming so. Consider the situation of these men. With plenty of strong, cheap heroin available, they have no trouble supporting their habit in Vietnam. When they return to the United States, to support their addiction they will have to mainline, and they will have to find at least $40 a day. For most of them, the only way to get that kind of money is to steal.

Heroin addiction can be detected by urinalysis. It is the clear responsibility of the services to give urine tests to all Vietnam servicemen before returning them to civilian life, and to establish compulsory hospitalization centers to cure those who are still curable. But the cure rate is very low, and thousands of young men who have served in Vietnam are already, in effect, sentenced to a life of crime in the urban jungles.

Something else must also be done. Those young draftees who are the chief victims of the Vietnam heroin traffic must be gotten out of Vietnam as fast as possible. The heroin epidemic, which is a new phenomenon, reflects the erosion of discipline and morale in our forces in Vietnam.

NOTHING TO DO

The American forces in Vietnam no longer have a genuine combat mission, and an army without a combat mission is an army without a real purpose. Of the more than 260,000 American troops now in Vietnam, only about a fifth are combat troops, and their principal mission now is to avoid combat. If you ask at the Pentagon what in heaven's name the other 200,000 are doing, you hear generalities about an "orderly withdrawal," or you are told the answer is secret.

In fact, what most of the 200,000 are doing is virtually nothing, other than going mad with boredom. Under the President's withdrawal program, there will still be around 150,000 noncombat troops in Vietnam next November, still going mad with boredom. Soldiers will choose almost any escape from an army that has lost discipline, morale and purpose, and this has a lot to do with the heroin epidemic.

This country has a profound moral obligation to provide logistic support for the million-man South Vietnamese forces, which have been made pathetically dependent on American support for the defense of their country. But the United States has no obligation to continue to field a big non-fighting army in which tens of thousands of young men are becoming heroin addicts. The bulk of that non-fighting army must be withdrawn from Vietnam quickly and urgently, for the same reason that people in a burning house have to be gotten out quickly and urgently.

SENIOR CITIZENS MONTH, STATE WHITE HOUSE CONFERENCE ON AGING DAY, SPECIAL RECOGNITION DAY

Mr. MILLER. Mr. President, I ask unanimous consent to have printed in the RECORD a proclamation issued by Hon. Robert D. Ray, Governor of the State of Iowa, on April 27, 1971.

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

PROCLAMATION

Whereas, 1971 has been proclaimed by President Nixon as the year in which Older Americans, including Older Iowans, speak out; and

Whereas, the White House Conference on Aging will be held November 28 through December 1, 1971, to develop a more realistic, comprehensive National Policy on Aging; and

Whereas, May 1971 marks the culmination of almost sixteen months of community and state activities in the State White House Conference on Aging to be held May 13; and

Whereas, our Senior Citizens have helped create the communities in which we live, and we are deeply grateful to these leaders who have made Iowa a better place in which to live and retire:

Now, therefore, I, Robert D. Ray, Governor of the State of Iowa, do hereby proclaim the month of May, 1971, as "Senior Citizens Month" and Thursday, May 13, 1971, as "State White House Conference on Aging Day" and Sunday, May 16, 1971, as "Special Recognition Day" for Senior Iowans whose role and activities in their church and community life are vital to our society.

I express my thanks and congratulations to the groups working for these Senior Citizens, and to the Senior Citizens themselves for their many varied and continuing contributions to the life of our state and nation.

In testimony whereof, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 27th day of April in the year of our Lord one thousand nine hundred seventy-one.

ROBERT D. RAY,
Governor.

POW ISSUE MISSTATED

Mr. CHURCH. Mr. President, the POW controversy surrounding the "set a date to end the war" debate swirls around in a circle. The issue is misused; according to Murrey Marder in his column, "The POW's in Political Crossfire," the issue is misstated.

The official U.S. Army history of the Korean war states the case, that through most of the history of war, the "common practice" has been "to exchange all prisoners of war at the end of a conflict." This, too, is true of the Indochina war. Therefore, when President Nixon says he intends to maintain a residual military force in South Vietnam until the North Vietnamese release our men being held as POW's, he places these prisoners in a vicious political circle.

I ask unanimous consent that Mr. Marder's column of May 21 from the Washington Post be printed in the RECORD.

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

A DEBATE OVER DIFFERENT ISSUES: THE POW'S IN POLITCAL CROSSFIRE

(By Murrey Marder)

Each side in the growing political crossfire over the release of American prisoners in the Indochina war claims that history is on its side. They are talking at cross-purposes, however, about different issues: partial exchanges of prisoners vs. total exchanges. But this controversy within a controversy is characteristic of a confusing debate packed with emotion, recrimination—and possibly votes or high political damage in the 1972 election.

In the Senate, a vote is approaching on an amendment to the military draft extension bill, tacking on the recurring proposal to require a total U.S. troop pullout by Dec. 31, 1971. Locked into this approach is the claim, which the Nixon administration adamantly challenges, that setting a withdrawal date provides the only real prospect for gaining the release of prisoners held by North Vietnam.

This week a Republican National Committee publication, "Monday," fired a broadside at Sen. Vance Hartke for what it called his "cruelly misleading" recent testimony before the Senate Foreign Relations Committee.

Hartke accused the Nixon administration of perpetuating "a cruel hoax" in continuing to pretend that there is some other solution to the prisoner of war problem than an agreement to end the war on a fixed date. "In this as in every other war in human history," said Hartke, "prisoners are exchanged when the war is over."

"Wrong," charged the GOP publication. To back up its counter-charge, "Monday" selected portions of a report prepared in the Library of Congress for a House Foreign Affairs Subcommittee to challenge what "Monday" called the "set the date to get the POWs back" line.

The report, the party publication stated, showed numerous cases of POWs being released during time of war" in conflicts extending from the Revolutionary War through World Wars I and II, the Korean war, and the war in Vietnam. However, the GOP account omitted several key facts in the Library of Congress report. The report showed partial releases or exchanges of prisoners while hostilities were under way but with the important notation in the summary that in World War I and since, "for the most part, however, prisoners had to await the end of hostilities before being repatriated."

During the Korean war, for example "Monday" noted that 6,670 North Korean and Chinese Communist prisoners were exchanged for 684 members of United Nations forces, including 149 U.S. military personnel. But it omitted the next sentence in the report: "However, by far the greatest number of POWs, a total of 88,596 to be exact, were not exchanged until after the armistice agreement was signed on July 27, 1953."

What is at issue in the "set the date to get the POWs back" debate is not partial prisoner releases, but a total release. As the official U.S. Army history of the Korean war reports, through most of history the "common practice" was "to exchange all prisoners of war at the end of a conflict," with provisions added in more recent times through international conventions for exchange of sick or wounded prisoners during hostilities.

Secretary of State William P. Rogers acknowledged that during a "Meet the Press" televisioned interview last Sunday. Rogers said he could cite no war in which there had been a general POW release before the end of hostilities. Rogers said, however, "I think this war is a little different. It is *sui generis*."

The POW issue has become so enmeshed in disputed and selected facts that even President Nixon has sometimes mis-spoken the record. Nixon said on March 4 that "there are 1,600 Americans in North Vietnam jails under very difficult circumstances at the present time." This figure, however, mixes up captured and missing in action, and U.S. experts believe a majority of the missing are dead.

Vice President Agnew this week used a more acceptable approximation: "Some 1,650 American military personnel are missing or captured in Indochina. We know that at least 450 of these are captured. The total is probably higher, but how much higher and which men are captured is not known because of the other side's refusal to identify all prisoners."

Defense Department statistics, as of May 1, 1971, listed 1,170 U.S. personnel as missing in action and 460 as prisoners of war for Vietnam, Laos and Cambodia.

The core of administration strategy at this stage, as President Nixon indirectly acknowledged last month when he expanded the U.S. rationale for maintaining forces in South Vietnam, is not how to bargain over prisoner release now. As the President indicated, U.S. policy is based on maintaining some American forces in South Vietnam long enough to give Saigon's government more of "a chance to prevent a Communist takeover."

Beyond that objective, the President said, the United States will maintain "residual" U.S. forces in South Vietnam "until we get our prisoners released." Critics have attacked that portion of the administration's case as illogical, on grounds that North Vietnam would have no reason to retain prisoners after a total U.S. withdrawal from Vietnam.

But administration strategy in fact is not based on a total withdrawal of the U.S. presence from Vietnam. The administration currently plans to retain American power to strike Communist forces from U.S. airbases in Thailand and from aircraft carriers. Even if the United States should decide to forgo that intention, administration plans call for continuing U.S. military and economic aid to South Vietnam for years to come, which would require some U.S. physical presence in the country. The POW release issue, therefore, is only a small portion of the total U.S. objectives, on which emotions feed.

Vice President Agnew on Monday came closer than any U.S. official has so far to acknowledging this crux of the underlying Hanoi-Washington dispute.

"North Vietnam," he said, "thinks that, by holding our men hostages, they can compel the President to cave in to their demands—demands for a United States pullout, abandonment of the present elected government of South Vietnam, an end to all U.S. military activity—in effect to the turning over of South Vietnam to the aggressors."

Whether Hanoi would agree with that formulation or not each side knows what it is competing over is not merely some 400 or 500 U.S. prisoners—despite what the public may think—but larger stakes which each is unready to surrender.

AMERICAN ASSURANCES TO EGYPT, DANGER TO MIDDLE EAST PEACE

Mr. RIBICOFF. Mr. President, last week, the distinguished Senator from Indiana issued a statement concerning alleged U.S. Government assurances to President Sadat of Egypt that the United States would ask "no further compromises from Egypt."

I recall the briefing I and a number of my colleagues received from the Secretary of State the end of March. At the time, he gave his own assurances to 67 Members of the Senate that the United States would not insist that Israel accept the principle of total withdrawal from the Sinai as a condition for a final settlement with Egypt. I hope that the recent revelations from Cairo do not indicate there has been a change in this policy.

In his statement, Senator BAYH makes the very valid point that "peace can only come to the Middle East when the parties involved reach an agreement without having a solution imposed upon them." This principle should continue to guide our policies in this region.

I ask unanimous consent that the text of Senator BAYH's statement be printed at this point in the RECORD.

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

STATEMENT BY SENATOR BIRCH BAYH

Press reports of Egyptian President Sadat's address on Thursday to the Egyptian National Assembly raise disturbing new questions about the Nixon administration's Middle East policy. I am referring to President Sadat's demand that the United States "squeeze" the Israeli's—that this country apply pressure to Israel for a complete withdrawal from occupied territories by threatening suspension of military and economic assistance.

I urge the Nixon administration to resist such demands. But I must admit that my confidence in its ability and willingness to do that is shaken by President Sadat's account of his talks with Secretary Rogers. President Sadat says that the Secretary of State assured him that the United States would ask "no further compromises" from Egypt, that the United States government feels that the Egyptians have done all that they can for peace.

I hope that the Administration has not given any such assurances or even hinted that all that remains now is for the Israelis to give in. I would be at a loss to understand how our government could believe it was promoting meaningful negotiation between Egypt and Israel when it tells the Egyptians that they have done all they need to, that they need not be flexible, that they need not negotiate anymore. It not only would be counterproductive for our government to tell either side that it has done enough—but that should hardly be our role to begin with.

Peace can only come to the Middle East when the parties involved reach an agreement without having a solution imposed upon them. And such an agreement will not be reached if the Nixon administration continually puts itself in a position of deciding beforehand what the positions of either side should be.

These reported assurances of the Secretary of State to President Sadat should give the Israeli's—and many of us here—legitimate concern about our role in the Middle East. And that can only make the path to lasting peace more difficult.

CHARLES CAMPBELL

Mr. TALMADGE. Mr. President, those of us in the Senate who know and have worked with Charles Campbell, formerly administrative assistant to the late Senator Richard Russell, and now administrative assistant to the junior Senator of Georgia (Mr. GAMBRELL) regret very much to learn Mr. Campbell will soon leave Washington to return to Georgia.

During some 5 years that Charles was administrative assistant to my distinguished senior colleague, Mr. Russell, it was my privilege and pleasure to work with him on many varied matters. I have come to know Charles Campbell as a man of impeccable integrity, great ability, and devotion to his duties. He has proven himself to be a valuable senatorial staff member, not only to the late Senator Russell and his successor Senator GAMBRELL, but he is also friend and adviser to other Members of the Senate.

Charles plans to take the Georgia bar exam this summer, and I understand eventually to enter the practice of law in the State of Georgia. I want to take this opportunity to wish Charles well and to thank him for the friendship and assistance he has afforded me.

FORMER SENATOR DODD'S ENDORSEMENT OF GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, we were all saddened last week to hear of the death of our former colleague Thomas Dodd of Connecticut. In his long career he served in many capacities, not the least of which was his role as a prosecutor at the Nuremberg trials after the Second World War. The Genocide Convention is a direct result of the events that necessitated those trials, and of the principles that were established there. When he testified before the Senate Foreign Relations Committee in 1950 Tom Dodd endorsed the Genocide Convention. It was his opinion that had it been in existence when Hitler first came to power the tragic events of his regime might have been prevented. None of us wish to see another Nuremberg. Let us act now to end the crime of genocide.

Mr. President, I ask unanimous consent that former Senator Dodd's statement be printed in the RECORD.

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

STATEMENT OF THOMAS DODD, MEMBER, SPECIAL COMMITTEE ON PEACE AND LAW THROUGH UNITED NATIONS OF THE AMERICAN BAR ASSOCIATION

Mr. DODD. My name is Thomas Dodd of Hartford, Conn.

I appear primarily as a private citizen, but I am also a member of the American Bar Association special committee on peace and law through United Nations, which was heard here this afternoon through Messrs. Rix, Finch, and Schweppe.

I would like to tell you, sir, that I am a new member of the committee, having been appointed in October. So that I did not participate in the deliberations of the committee or in its recommendation to the bar association, and I have had no opportunity to do so since my appointment to the committee.

I am also, as you will recall, one who served with Justice Jackson as his executive trial counsel at the first major Nuremberg trial, so I have a triple interest in this proposed convention—in my private capacity as a citizen; now a member of the bar association on peace and law, and also as one who had something to do with the proceedings in the first and so-called major trial at Nuremberg. I will not take but a few minutes, because I realize the hour is late and that much has been covered with respect to what I might say, but I would like to point out a few things that occurred to me while I was listening.

Senator MCMAHON. I might add you had a very distinguished record in the Nuremberg trial.

Mr. DODD. Thank you, sir. Because we have mentioned the Nuremberg trial, let me say this: It is a little bit out of place from what I had planned so far as my presentation is concerned.

At Nuremberg, we laid down the doctrine that individuals are responsible for some offenses, such as aggressive warfare. You will recall that there was some hue and cry raised in some places about the application of that doctrine. It always seemed to me that it is the people who make up the government, individual people, and I think the only way that we can effectively do anything in the field of international law is to hold individuals responsible, and as I read this proposal, I note that article 4 I believe it is specifically refers to persons committing genocide or any of the other acts enumerated in article 3 shall be punished, whether they are constitutional rulers, public officials, or private individuals. It doesn't seem to me that there is too much to ask that we move along and implement, so to speak, the Nuremberg doctrine with respect to this Genocide Convention.

CONVENTION ELIMINATES UNCERTAINTY

Parenthetically, let me say it intrigues me a little bit, some of the people who heaved at us at Nuremberg the charge that we were guilty of prosecution on an ex post facto basis are some of the same people who are now in opposition to the ratification of this convention. At least, it occurs to me that they ought to be consistent. I don't concede that there was anything ex post facto in the proceedings at Nuremberg, but assuming for the sake of this side of the thing that there is something to what they have claimed against us. I should suppose that there is something to what they have claimed against us. I should suppose that they would be among the foremost in suggesting that now, in time of peace, we join with the other good-intentioned people of the world in trying to establish a firm basis in law for the prevention of this kind of thing.

Now it has been suggested here, Senator, and I want to emphasize it again, that at Nuremberg, it was not possible for us to punish the defendants for many of the terrible things they did to people in peacetime, things that they were clearly genocidal in character. That is one of the reasons why I am interested in seeing this convention adopted.

WILLING TO SETTLE FOR WHAT WE HAVE

Now I don't suppose that this is perfect; most of the things that fall from the hand of man are not. We are entering into a new field. It fascinates me that the members of the committee upon which I am privileged to serve offer as one of their objections that it does not go far enough, and I am inclined to agree. I wish it included political and economic groups, but I know we can't have everything at once in the nature of international cooperation. I am willing to settle for the good things that we can get, in the hope that later on we will be able to enlarge this field and perhaps get political and economic groups included. But I can't understand opposition, if you are for this thing, opposition that it doesn't go far enough.

MIGHT HAVE DETERRED HITLER

You have been asked what good this would have been against Hitler. I am one of those who believe, after living 18 months over there among the Hitler regime, that had this Genocide Convention been in existence in the early days of the Hitler regime, what happened might not have happened. For one thing, the Nazi state would have stood condemned. Its ministers and ambassadors would not stand in the same position as those of other nations not in violation of a genocidal convention, and great numbers of people inside Germany would have taken heart and might have been more vigorous in their resistance to the regime itself.

You have been asked what can we do about the Russians, who are perhaps and probably doing this same sort of thing behind the iron curtain now. Well, at least we will have the moral influence of the covenant of the convention. Russia in its plan, as I see it, wishes to influence people all over the world. If people all over the world see Russia as a nation which does not subscribe to or adhere to the Genocide Convention, she will be severely affected in her efforts to influence people everywhere, and the forces of good thinking and of right conduct in the world will be immeasurably strengthened.

I am not going to dwell upon the constitutional difficulties. I am one of those who believe with the Solicitor General that there are no insurmountable constitutional difficulties. These kinks can be worked out. I think, furthermore, that the good advice that you and your committee, the Senate, will get from capable constitutional lawyers will help to work that out.

MENTAL HARM

I would like to take just 1 minute to tell you that on this question of mental harm, I know what that means, having heard it from the mouths of people who knew what it meant subjectively. It was an established mechanism of the Nazi state, and it is practiced in other places as well, that the destruction, the disintegration of the human mind was a planned thing. It was one of the worst things that was done probably to individuals by the Nazis, and it is not too difficult for people who want to learn about it to read the records at Nuremberg, and they will have a very clear concept, when they have done so, as to what happens to people under a planned program of destroying their minds. There are all kinds of ways of doing it, and there are many, indeed.

I think we need to adopt this and ratify this convention, because the world needs that moral support. I can't imagine the United States refusing to do so, in a world

that looks to us for moral leadership, and we will give hope to people everywhere in the world if we do ratify it, and I, as an individual, urgently suggest to your committee that it favorably view this ratification proposal.

BAD POLICY TOWARD GOOD NEIGHBORS

Mr. HARTKE. Mr. President, earlier this year I had occasion to address the Indiana Council of Churches on the subject, problems of economic development in Latin America. In the nearly 3 months since then, my hopes for a more innovative and imaginative policy toward our Latin neighbors on the part of the Nixon administration have not—to put it mildly—been realized.

In the more modest hope of stimulating new consideration of these problems by this body, I ask unanimous consent that the text of my remarks be printed in the RECORD.

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

PROBLEMS OF ECONOMIC DEVELOPMENT IN LATIN AMERICA

(A speech by Senator VANCE HARTKE, Mar. 13, 1971)

It is good to have the opportunity to talk with you today about problems of economic development in Latin America. It is altogether appropriate for the Indiana Council of Churches to concern itself with Latin America's problems. For in a very real and immediate sense, we are all involved in those problems. The vast physical distance between Valparaiso, Indiana, and Valparaiso, Chile, should not obscure the close interdependence of Latin America and the United States. I am especially pleased to see the interest of the Council of Churches in the development of Latin America, for as Robert Kennedy once observed, the aspirations of the Latin American people are only in part material: "Above all, they are demands of the spirit." Unless we are able to cope with the economic needs of Latin America in a way that recognizes its peoples' aspirations for a better life, with justice, dignity, and self-sufficiency, all of our material aid will count for little.

The radical changes which are shaking much of Latin America to its core today are far too serious to ignore. Both the direction of the change and the intensity of its leaders should concern us as North Americans. And I would suggest that the United States should be assigning a much higher priority to the problems facing Latin America. Regardless of how we choose to relegate Latin America to a secondary place in our priorities, to favor a remote and mistaken war in Southeast Asia, we will soon have to pay for that neglect. Our fortunes, our economic life, and our security are all closely tied to the future of Latin America.

Let me talk for a few moments about some of the peculiar aspects that make economic development of Latin America difficult. In spite of the complex variations between the nations of Latin American, there are many common threads and characteristics shared by most of the countries. The weight of the past lies heavy on present-day Latin America and sets enormous barriers in the path of development. Part of the legacy of an almost feudal economic system is a serious inequity in the ownership of land, degrading income levels for a majority of the people, abysmally low achievements in education, and widespread disease and malnutrition. Statistics tell only part of the story, but an important part: only 10 percent of the landowners control 90 percent of all the land; nearly 50 percent of all Latin Americans are illiterate; the per capita income averages about $250 per year; in spite of great progress in public health, the number of children who never reach their fifth year of life is shockingly high (almost 4 times the U.S. rate) in most countries of the region, and the average life expectancy is only 57 years.

As a further example, in comparison using 1966 figures, the World Bank indicated in a recent report the serious disparities in the GNP per capita of the United States and the Latin American area. Opposed to our GNP per capita of $3,520 is Haiti's appallingly low $70. Even the highest GNP in Latin America—that of Venezuela at $850 per capita—clearly shows the great gap between the United States and the Latin American countries in terms of production and economic development.

These statistics are discouraging in themselves, but they do not adequately convey the magnitude of the problems facing the Latin American countries. To such statistics must be added others which further aggravate the difficulty. For example, the Latin American area now has the world's highest birth rate. In many parts of Latin America, the population is increasing at a rate of over 3 percent each year—a rate which would cause a doubling of the population in about 25 years.

Such rapid population growth outruns the ability of Latin American countries to provide necessary support in housing, health facilities, jobs, and education. This population increase presses relentlessly on the area's ability to feed itself—in a number of countries, agricultural production per capita has declined in recent years. All major Latin American cities face urban problems of crisis proportions. As in the United States, the great shift of people from rural to urban areas brought enormous problems with it, and Latin American cities are far more poorly equipped to deal with them.

Although about one-half of the Latin American people still depend on agriculture for a livelihood, many cities of the area have mushroomed in recent years. This growth has reached the point where great cities like Buenos Aires, Montevideo, and Santiago contain nearly one-third of their countries' populations—and completed overshadow the rest of the country.

How did this situation arise? And what are the solutions? Why are so many Latin American countries, as one writer put it, "beggars on golden stools"? Why does the area remain poor and underdeveloped despite the great natural resources it contains? Answers to these questions do not come easily, but we must face up to them. Perhaps more important, we need to attempt to see the problem as Latin Americans perceive it. And we must be tolerant enough to appreciate the values which Latin Americans attach to different solutions.

To begin with, it is probably no exaggeration to state that most Latin Americans believe that the fundamental objective of the United States is the economic domination of the Western Hemisphere. Considering the history of the region, its long colonial subjection to Spain and Portugal, and its dependence upon the industrialized nations of the world, such a view should not be surprising. The economic role of Latin America has always been, and continues to be, essentially one of supplying raw materials and agricultural commodies to the rest of the world—mainly to Western Europe and the United States. Latin Americans protest—justifiably so—that their situation remains a semi-colonial relationship, especially with the United States.

Their dependence upon a limited number of basic commodities which are sold to more developed countries ties their economies closely to those countries and makes them painfully subject to sometimes radical fluctuations in world market prices. The result is a dependent, semi-colonial condition, difficult to escape from economically, frustrating to live with politically.

That frustration leads frequently to violent denunciation of the United States as the principal cause of Latin America's virtual economic slavery. And even a cursory review of our relations with Latin America indicates how that economic dominance has so often led to political control as well.

Need I remind us of our repeated interventions in Cuba, our long domination of the Dominican Republic and Haiti, the frequent incursions into virtually all of Central America, and a long history of attempts to dominate many South American countries? Indeed, we are political innocents if we expect Latin Americans to cast aside their suspicions of us just because we undertake an Alliance for Progress or any number of similar programs.

I think we will better understand the Latin American point of view if we interpret it in the light of Latin America's generally unhappy relationships with the United States.

For the remainder of my time with you, let me examine briefly several of the principal issues in the economic development of Latin America. In doing this, I will attempt to bridge the gap between Latin American and North American thinking on these issues. Serious conflicts of opinion exist on such issues as land reform, market pricing, foreign investments, economic integration, and foreign aid. If the United States expects to develop any kind of lasting and productive partnership with Latin America, we must somehow reconcile the opposing viewpoints on these issues.

I have already alluded to the *Problem of Land Ownership* in Latin America. These inequities provide one of the major causes of unrest and violence in the region—the cry for land dominates revolutionary rhetoric throughout the area. The Mexican Revolution of 1910, the 1952 revolution in Bolivia, the Cuban revolution under Fidel Castro—all the agrarian reform as a major objective. Somehow—because better use of the land is essential to economic development and because land is a symbol of a brighter future for millions of Latin Americans—someway, the United States must make unequivocally clear its full support for equitable agrarian reform in Latin America.

Another sensitive issue to Latin Americans is the *operation of the world market and pricing of its primary products*. As much as any other factor, this appears to Latin Americans as the chief cause of its semi-colonial condition. It is academic and hyprocritical to praise the virtues of a "free market" when in reality the market favors the wealthy nations and discriminates against the poor nations. The Latin Americans' case against adverse terms of trade is a well-founded complaint. It is a fact that the prices received by Latin American countries for their main products—such as coffee, sugar, tin, copper, and petroleum—have not kept up with the prices they pay for manufactured goods. Not only have the terms of trade turned against Latin America, but widely fluctuating prices of primary products make economic planning very difficult.

In addition, the United States has placed restrictive quotas on a number of primary products, and set high tariffs on processed raw materials (such as soluble coffee), seriously impeding trade in the hemisphere. The

United States must be willing to pay a fair price for Latin American raw materials and should insure reasonable stability of such prices by means of intergovernmental agreements on primary products.

A third critical issue is foreign investment in Latin America. Regardless of the strong cases which can be made for the importance of such investment to economic development, foreign capital has earned a black name for itself in the area. American companies in particular epitomize imperialism to many Latin Americans. Foreign enterprise symbolizes extraction, taking away national resources, despoiling the rightful wealth of Latin America.

Regrettably, that image fits many Amerıman companies which have been insensitive to the nationalistic fervor in most Latin American countries. It is high time for the Government of the United States to quit treating American corporations in Latin America as extensions of the State Department and giving official support to companies that defy the laws and policies of the Latin American states.

Unless this is made very clear, we can expect an acceleration in the expropriation and nationalization of American companies in the area. The result would damage the economic development of Latin America as well as our own economy.

A fourth subject of conflict is economic integration. One of the principal reasons for underdevelopment in Latin America is the limited scale of domestic markets. Through regional arrangements such as the Central American common market and the Latin American free trade area, tariffs are being gradually reduced and markets expanded.

Although neither of these arrangements provides a panacea for economic problems of the area, much progress has been achieved through them. It is in the long-range interest of the United States to lend its support to such attempts at regional integration, even if the short-run effects may appear undesirable with respect to our export markets.

The post-war rehabilitation of Europe clearly indicates the importance of healthy economies of other nations to the economic vigor of the United States. There is no reason not to expect the same effect from economic development in Latin America.

Many of my remarks to this point have focused on external factors affecting economic development. I do not wish to imply the absence of domestic problems internal to Latin America. Numerous social, economic, and political barriers impede broad-scale development. Factors such as archaic and inequitable tax systems, monopolistic control of key economic sectors, unwillingess to diversify and expand production, and runaway inflation all create serious obstacles to growth. However, I have chosen to emphasize aspects which are more susceptible to external influence than these more domestic factors.

What can be said of future development in Latin America? The events we are witnessing today indicate, above all, a new determination by the Latin Americans to become masters of their own house. The signs of that resolve appear on all sides: for example, the Peruvian expropriation of International Petroleum, Chile's takeover of the copper industry, the Bolivian action against Gulf Oil, and new commercial agreements by many countries with the Soviet Union.

Increasingly, these and similar actions will demand difficult choices by the United States. Change will come, now or later, with us or without us. We do no service to the economic development of Latin America or the national interest of the United States when we simply dismiss these changes as being Communist-inspired we should encourage and promote change which strentghens the autonomy, the economic health, and self-sufficiency of the region.

Toynbee has commented, "revolution is a mettlesome horse. One must either ride it or be trampled to death by it." If we allow vested interests to dominate our policy toward Latin America, we shall surely lose sight of more noble aims. If we truly believe our own rhetoric about self-determination of Nations, we will support genuinely nationalistic struggles in Latin America toward the goal of partnership and a higher quality of life for all the people of the hemisphere.

THE PRESIDENT'S WELFARE PROGRAM

Mr. RIBICOFF. Mr. President, President Nixon and the House Ways and Means Committee deserve great credit for their long and diligent efforts to reform and improve the welfare system of this country. The bill reported out by the Ways and Means Committee last week and now available for detailed analysis incorporates many of the improvements we proposed in the Senate last year and goes beyond them.

While additional changes are still needed, those favoring welfare reform must now work together to continue the momentum generated by the President and the Ways and Means Committee. There can be no disagreement about the sad state of our welfare system. No one supports it—and it supports no one adequately.

The time has come for America to enact a welfare system designed to eliminate poverty in America by 1976, our Nation's 200th anniversary. Achievement of this goal will truly be a declaration of independence for 25 million Americans now living in poverty.

Passage of H.R. 1, as reported by the House Ways and Means Committee, together with the changes I am suggesting today, will enable us to meet that goal.

Once H.R. 1 is before the Senate for consideration, I will introduce amendments to provide:

First. Assistance for childless couples and those who are single, categories not now covered by H.R. 1.

Second. Increased support under H.R. 1 for those on welfare by cashing out food stamps at an adequate level and requiring State supplementation.

Third. Fiscal relief for State and local governments by gradual Federal assumption of all costs of public assistance with payment levels reflecting regional variations in the cost of living.

Fourth. Greater work incentives by increasing the percentage of income earned that can be retained.

Fifth. Sufficient job training opportunities and actual jobs at the minimum wage for all those able to work.

Sixth. Expanded and enriched day-care programs for mothers entering the working force.

Seventh. Uniform assistance and equitable treatment for all categories of those in need.

As the welfare bill moves through Congress, we must remember that no welfare reform bill by itself will end or substantially reduce the welfare burden in this country. We presently spend less than 1½ percent of our trillion dollar economy on welfare and less than 5 percent of Government spending at all levels. This is a small overhead to pay for the inadequacies and inequities of our system. The millions on welfare are a confession of our society's failures in education, employment, and housing.

Nor should we expect that we will ever get everyone off the welfare rolls simply by imposing stringent work requirements. Not all welfare recipients are able to work. In fact, the vast majority are unable to accept jobs.

In January 1971, 12.9 million people were receiving Federal welfare assistance of some kind. Two million people—15.5 percent—were receiving old-age benefits, over 900,000—7 percent—got disability payments, 80,000—6 percent—were blind, and 7.1 million—55 percent—were children. Only 2.6 million—20 percent—of those on welfare are adult recipients who would be even eligible for work.

Of the estimated 2.6 million possible workers, however, only 500,000 are fathers, and only about one-fifth of these men, 100,000 people, are able-bodied and jobless. The other 2 million are welfare mothers, 60 percent of whom have preschool children and are now exempted from work registration. Of the rest, HEW estimates that, because of factors such as health and education, only 50 percent or 400,000, are actually employable.

In short, only 500,000 of the 12.9 million people on welfare would be employable under present work training requirements.

Nor should we expect that more stringent eligibility requirements will eliminate the supposed "cheaters" on welfare and save us billions of dollars. Figures show that fraud is detected in less than 1 percent of all cases, a figure corresponding to middle-class fraud in areas such as filing income-tax returns.

Ultimately, to save money on welfare we will have to spend money—money to provide a system that opens opportunity for this generation's welfare children to become the next generation's productive citizens. This will require an end to the devastating effects of poverty: Hunger, malnutrition, sickness, poor housing, and inferior education.

The present welfare system only perpetuates this environment of poverty. Forty States now provide cash and food stamp benefits which do not bring families of four even up to the poverty level. Only one-fifth of the States even have standards of need which reach the poverty level and only a handful of these States provide payments which meet their own inadequate standards. Food stamp benefits are set at a level which even the Federal Government describes as nutritionally inadequate.

Our society has fulfilled its promises to millions of Americans and as a result we are a wealthy nation. But as the perquisites of citizenship have increased, so too have our responsibilities to society and

our fellow man. As a nation we can no longer tolerate a system of public assistance which fails to meet the most basic principles of dignity, adequacy, and equity. This is a national problem that requires a national solution.

A number of proposals I advanced last year are already contained in H.R. 1. Included are:

First. Federal administration of all welfare programs;

Second. Provision of public service jobs—sponsored jointly with Senator HARRIS;

Third. Authorization for construction of child-care facilities;

Fourth. Increased Federal financing of assistance programs for the aged, blind, and disabled;

Fifth. A minimum wage for public sector jobs;

Sixth. Prohibition of recovery of overpayments to a recipient where he was not at fault;

Seventh. Simplified application procedures for those eligible for assistance.

I will work for the following additional changes that are needed this year:

COVERAGE FOR CHILDLESS COUPLES AND SINGLE PERSONS

The administration some time ago expressed concern for the forgotten Americans in this country. The forgotten people of H.R. 1 are the 1.8 million persons under 65 in families without children and the 2.3 million single persons who live in poverty but are not eligible for public assistance.

The incidence of poverty reaches the highest levels among persons not connected with a family unit. About 561,000 have no cash income at all. Moreover, it makes no sense to deny assistance to a couple without children and provide $2,000 to a couple with one child.

Childless couples and single persons in need should be covered by any national program of assistance.

INCREASED ASSISTANCE: FOOD STAMP CASH-OUT

The proposed level of assistance, $2,400 for a family of four, while on its face better than last year's $1,600, is still woefully inadequate. In fact, it is $1,500 below the poverty level.

The proposed income level is already surpassed by all but a handful of States. Only about 7 percent of America's welfare recipients would receive higher benefits under H.R. 1. All other recipients, whose cash and food stamp benefits already exceed $2,400, would suffer.

The $2,400 income level is inadequate in another respect. The $800 increase over last year's $1,600 proposal is the cash-out value given to food stamps. Yet it is an inadequate substitute. As a result of the Food Stamp Amendments of 1970, all recipients were required to be provided with food stamps in an amount "determined to be the cost of a nutritionally adequate diet." The Department of Agriculture set an "economy diet" of $108 per month—$1,276 per year—as its guideline while admitting that such a level would not provide adequate nutrition.

Knowing what we do about the vicious cycle of poverty, malnutrition, sickness, and welfare, it would be irresponsible to eliminate our existing food program while providing the poor with an inadequate substitute. The Bureau of the Budget in its 1969 study of cost-benefit ratios relating to hunger and welfare pointed out that it would cost only $457 annually to feed a poor child properly while it would cost the Government $1,516 a year in welfare, hospitalization, and other expenses to care for the child's later ailments if he went unfed.

INCREASED ASSISTANCE: STATE SUPPLEMENTATION

Under the provision of H.R. 1, the States will be relieved of $1.6 billion in welfare expenses in fiscal 1973. As a political gesture the formula is a success, providing relief for every State in the Union. Praise is heard for these cost savings from every interest group except the members of the poverty population whose fate is even bleaker under H.R. 1 than it is under present law.

The ways and means welfare proposal provides for optional State supplementation of the $2,400 up to present State levels. The Federal Government would assume the administrative duties and costs of States which voluntarily chose to make supplementing payments and would guarantee that States would have to pay no more than their calendar year 1971 costs if they decided to supplement.

This provides little incentive to raise benefits to existing State levels. State economic problems are of such magnitude that cutbacks are being made across-the-board in State budgets, welfare programs included. Cost savings will be sought wherever possible. A State could save administrative costs and supplemental payment costs if it chose not to supplement. H.R. 1 would not relieve the pressure on State revenues sufficiently to persuade a State government to plow its savings back into even a reformed welfare system.

At best, optional State supplementation will merely perpetuate the present payment inequities between the States. The States which in the past have virtually ignored the poor would be rewarded by this mandatory ceiling on State expenditures while the States which have made strong efforts to provide adequately for the welfare of all their citizens, even at the cost of severe budgetary strain, would be required to bear their burden for another 5 years.

We must insure that, while State welfare expenses do not go above their 1971 amounts, they continue to equal those amounts pending full Federal assumption of all welfare costs.

FEDERAL ASSUMPTION OF WELFARE COSTS WITH REGIONAL VARIATIONS

Welfare payments should be based on objective and measurable standards of need. This necessitates a recognition that benefit levels should differ according to regional variations in the cost of living. To simply provide $2,400 or $5,500 or $6,500 for everyone ignores this regional variation.

In addition, while we can provide interim relief to recipients by assuring that assistance levels are not cut back for those presently receiving high welfare benefits, an equitable and enduring welfare program should provide full Federal assumption of administration and payments based solely on variable regional needs.

Individual cities and States should not be required to administer or fund this Nation's welfare program. No city or State is responsible for generating their welfare population. If the economy of this country is unable to provide adequate support for its citizens, the Nation as a whole should undertake the responsibility of meeting their needs.

If the initial cost burden is too heavy for the Federal Government, Federal assumption can be phased-in over a number of years. In view of our trillion dollar economy and new census data which indicate that an expenditure of $11.4 billion in 1970 would have raised the income of all poor families and unrelated individuals above the poverty line, the argument that the Federal cost would be unbearable is unconvincing.

By 1976, the Federal Government should be financing America's welfare system at a level that brings all needy Americans up to a poverty-level income.

IMPROVED WORK INCENTIVES

Comprehensive welfare reform must include the working poor. Both President Nixon and the Ways and Means Committee have recognized that full-time employment does not necessarily eliminate poverty. In fact, four out of 10 poor Americans live in families headed by full-time workers.

Coverage of the working poor will eliminate one of the major inequities in present law by making it more worthwhile financially to continue working than to become completely dependent on welfare. As the working income of these families increases, benefits would be phased out according to an "earning disregard" formula.

A careful balance must be struck between maintaining an incentive to work and a full phasing-out of benefits at a reasonable level. H.R. 1 allows the working poor to keep the first $720 of earnings plus one-third of the remainder. Last year I proposed a $720 retention of earnings plus one-half of the remainder which I will offer again this year.

EXPANDED JOB TRAINING PROGRAMS

The family assistance plan as revised by the Ways and Means Committee emphasizes work training requirements and incentives. This is importance since most Americans would prefer to play a productive role in American society rather than to live on welfare. Experience in New York, for example, has shown that 98 percent of the working poor continue working under New York's assistance program for the working poor.

Under H.R. 1, as many as 2½ million welfare recipients would be required to register with the Department of Labor for manpower services, training, and job placement. H.R. 1 would provide training for 225,000 people, 200,000 public service

jobs, and expanded day-care facilities. Federal matching funds for the Department of Labor's work incentive program—WIN—would be increased from 80 to 90 percent to help provide additional work-training services.

Unfortunately, these proposals will accomplish very little. They provide too little money for programs which have never worked. H.R. 1 requires greatly increased registration for job training programs which cannot even accommodate the smaller numbers now required to enroll. In the 2 years of WIN's operation, for example, it has handled a minscule proportion of the eligible AFDC population, in fact, fewer AFDC recipients even than the slots allocated. Less than 20 percent of the enrolled participants got jobs through WIN, for the most part low-paying, dead-end, and short-term positions in the private sector at an average cost per successful WIN participant of about $4,000.

As Finance Committee Chairman RUSSELL LONG pointed out last year, the record of the Department of Labor in administering the WIN program is dismal. Yet we now are proposing to more than double the responsibilities of this program.

If job training programs are to succeed, present programs must be drastically reformed and expanded.

INCREASED SUPPORT FOR PUBLIC SERVICE JOBS

The most effective job training program will be useless if no jobs are available. The provision of 200,000 public service jobs proposed in H.R. 1 is a major improvement over last year's bill.

However, we are deluding ourselves if we believe that this will provide enough jobs for the 2.6 million welfare recipients required to work under H.R. 1. The bill emphasizes private sector employment while discouraging permanent public service jobs through a gradual reduction of Federal funding for public jobs which will supposedly "provide employability development for entry into regular jobs."

There is no logic in providing "employability development" through public jobs for entry into "regular" jobs, when in many cases the public service jobs will provide more meaningful work, better opportunities for advancement, and higher salaries. Moreover, 5 million people are already unemployed and seeking work in the private sector.

By its emphasis on private employment, H.R. 1 adopts the myth that public service jobs are make work, dead end positions while private employment is meaningful. But there is little of a make work quality in urgently needed public service jobs in health, social services, education, environmental protection, rural and urban development, public safety, child care and other local and State services. These are jobs with a future that deserve greater support.

PROVIDING JOBS WITH THE MINIMUM WAGE

H.R. 1 provides two standards for wages—one for the private sector and one for the public sector.

While public service employment would provide jobs at no less than the Federal minimum wage, private sector jobs would be payable at not less than $1.20 an hour, or three-fourths of the Federal minimum wage.

I believe we must settle for no less than the Federal minimum wage for all welfare beneficiaries. There is no more simple and direct way to help the poor than to provide them with at least a minimum wage, thereby increasing the possibility they will be able to live a decent life free from poverty and potential welfare dependence.

In addition, if the minimum wage were increased to at least $2 an hour as has been proposed, 9 million workers presently earning less than that amount could reach the poverty level of income, thereby reducing welfare costs significantly.

IMPROVED DAY CARE PROGRAMS

H.R. 1 promises day care for those required to accept work training and jobs. But it cannot fulfill that promise.

The basic Federal day care programs for the poor provided services for 250,000 children in 1970. No more than 700,000 day care slots exist throughout the Nation for families of all incomes. Yet the Department of Health, Education, and Welfare estimates that 1,262,400 children between the ages of 3 and 6 will need day care if H.R. 1 is passed.

HEW estimates that such day care will cost $1,600 per child while the National Day Care and Child Development Council estimates the cost at $2,000 per child. Under the HEW figures, adequate day care would cost over $2 billion. Yet H.R. 1 provides less than half that amount for child care services, inadequate for even simple custodial day care service.

Countless studies by experts such as Jerome Bruner have indicated that the first 5 years of a child's life are the most important in his development. They show that young children need intense, individualized care for proper emotional, social, and intellectual development.

If a mother is not available to provide this attention, day care must act as a surrogate mother to provide a learning environment, adequate medical care, nutrition, and social, mental and psychological services.

We are not even in a position to provide adequate day care facilities for welfare children over the age of 6, much less over the age of 3. The day care program under WIN, for example, has been described by the Department of Labor as the most serious single barrier to the success of the work incentive program. The 2-year grace period requiring work only of mothers with children over age 6 will not provide a sufficient opportunity to develop a quality national day care program.

We must provide the funds necessary to insure adequate day care for all those in need and we must not require mothers with children to enter job training unless adequate day care facilities are available.

PROVIDING UNIFORM ASSISTANCE AND EQUITABLE TREATMENT FOR ALL RECIPIENTS OF PUBLIC ASSISTANCE

Our welfare system should provide the same assistance for all those in need, whether they qualify under the adult categories or other provisions of the law. H.R. 1, however, perpetuates a double standard of assistance; one for the aged, blind, and disabled, and another for other welfare recipients.

For example:

As already discussed, under the adult categories, aged, blind or disabled single individuals and couples with and without children are eligible. The family assistance plan provides nothing for single people and childless couples.

Benefit levels in the adult categories approach or surpass the poverty level. Family assistance does not come within $1,000 of the poverty level.

Benefits in the adult categories for single individuals would be set at a level increasing from $1,560 to $1,800. Under family assistance, benefits are set at only $800 each for the first two-family members, $400 for the next three-family members, and declining amounts for remaining members. Those about whom we should be most concerned—children whose futures can be influenced by adequate aid—receive the least assistance.

For couples in the adult categories, benefits would be set between $2,340 and $2,400. Yet $2,400 would have to be spread among four people under the family assistance plan, including those in their growth years for whom adequate nutrition is indispensable.

The "earnings disregard" for blind and disabled benefit recipients is $85 per month plus one-half of earnings above that level. The aged and families with children can disregard only $60 plus one-third.

An automatic cost-of-living benefit escalator is provided for social security beneficiaries. No such provision is included in the family assistance plan. In fact, the program would be frozen at present levels for the next 5 years.

We should recognize objective differences in the needs of different types of welfare recipients, but insure a statutory framework that provides adequately and humanely for all those in need in this country.

EXCESSIVE SPENDING FOR INTER-AMERICAN DEVELOPMENT BANK ANNUAL MEETING

Mr. PROXMIRE. Mr. President, information provided me clearly shows that the Board of Governors of the Inter-American Development Bank spent exorbitant sums in connection with their 1970 and 1971 annual meetings.

I received the information as chairman of the Subcommittee on Foreign Operations of the Senate Appropriations Committee which has jurisdiction over requests for U.S. subscriptions to the Inter-American Development Bank's capital and special fund.

There are only 23 members of the Bank's Board of Governors. But the Bank spent $332,000 in 1970 and $345,000 in 1971 for travel and expenses for themselves and their international entourage to 5-day meetings in Punta del Este, Uruguay, and Lima, Peru, respectively.

The list of directors, alternates, personal secretaries, managers, administrators, coordinators, editors, supervisors, accountants, receptionists, and information specialists flown to the meeting is so extensive it is amazing the Board did not attempt to emulate Gilbert and Sullivan and fly in their sisters and their cousins

and their aunts as well. Altogether the Bank flew in 175 people in 1970 and 134 people in 1971 to attend or staff the meetings.

Among the more questionable expenditures were $39,000 for "representation" in 1971, and $38,000 in 1970 and $51,500 in 1971 for per diem services of locally hired personnel recruited "to assist in providing administrative services." Transportation of documents cost $34,000 in 1970 and $28,900 in 1971.

The purpose of the Inter-American Development Bank is to help the poor and the weak in the underdeveloped areas of the Western Hemisphere to pull themselves up by their bootstraps. Last year U.S. taxpayers were asked to provide $487 million in capital subscriptions and special funds for its operations. In the next 2 years the administration will request an additional $436 million. Not all of this is a direct charge on the Treasury, but some of it is in the form of callable capital.

It is not necessary that officials of organizations which are financed by public subscription and whose purposes are to raise the standard of living of the poor should be required to wear sackcloth and ashes. But they should live and travel simply and economically when on the public's business.

Unless this is done, officials—especially international officials—soon lose touch with the daily difficulties of those they are appointed to help. This may in fact explain the very small proportion of the Inter-American Development Bank's loans going for housing and education—none from its ordinary capital operations and only 13 percent from its special fund—and the very high proportion—73 percent of its loans from ordinary capital and 36 percent from its special fund—which go for big projects such as highways, powerplants, industry, and mining.

In both the nature of its loans and the expenditures for its annual meetings, the Bank could become more discriminating in its judgment about what activities are important and what programs should have higher priority.

I ask unanimous consent that factual information provided to the committee concerning the meetings with respect both to the costs involved and the personnel who attended be printed at this point in the RECORD.

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

INTER-AMERICAN DEVELOPMENT BANK, BOARD OF GOVERNOR'S MEETINGS, 1970 AND 1971

Expense item	Punta del Este, Apr. 19–23, 1970	Lima, Peru, May 10–14, 1971
Travel	$198,000	$170,024
Local personnel	38,000	51,500
Publications	6,000	6,000
Supplies and equipment	23,000	17,000
Space rental	19,000	21,000
Transportation of documents	34,000	28,900
Miscellaneous	14,000	12,376
Representation	NA	39,000
Total	332,000	345,800

NA—Not available.

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INTER-AMERICAN DEVELOPMENT BANK, 12TH ANNUAL MEETING OF THE BOARD OF GOVERNORS, IDB DELEGATION

(Total members: 68 persons)

EXECUTIVE DIRECTORS AND ALTERNATES

Raul Barbosa, Federico A. Intriago.
Lempira E. Bonilla, José Luís Montiel.
Henry J. Costanzo, Reuben Sternfeld.
Enrique E. Folcini, Armando Prugue.
Jesún Rodríguez y Rodríquez, Eduardo McCullough.
Ildegar Pérez-Segnini, Enrique Peñalosa Camargo.
Julio C. Gutiérrez, Guido Valle Antelo.
Secretary, Nelly Regis Da Silva.
Secretary, Ana Patricia Lara.
Secretary, Alma Malpica.
Secretary, Olga Pérez.
Secretary, Sally Strain.
Secretary, Ana María Abad.
Secretary, Berta Edgar.

GROUP OF CONTROLLERS OF THE REVIEW AND EVALUATION SYSTEM

Coordinator, Edmond J. Rouhana.

BANK MANAGEMENT: OFFICE OF THE PRESIDENT AND EXECUTIVE VICE PRESIDENT

President, Antonio Ortíz Mena.
Assistant, Alfredo Guitérrez.
Assistant, Alfonso Moscoso.
Secretary, Gladys De León.
Secretary, Martha E. Garrido.
Executive Vice President, T. Graydon Upton.
Assistant, Emil Weinberg.
Secretary, Panela Gibson.
Special Consultant, Office of the Program Advisor, Eduadro Figueroa.
Assistant, Integration Advisor, R. Alberto Calvo.

OPERATIONS DEPARTMENT

Operations Manager, João Oliveira Santos.
Secretary, María Cristina Arredondo.
Secretary, Elsa Ramos.
Deputy Manager for Loans, Guillermo Moore.
Secretary, Dulce M. Castilla.
Loan Divisions:
Director Zone I, Manuel Valderrama.
Director Zone II, Paul J. Colcaire.
Chief Area 6, Jorge D. Ferraris.
Deputy Manager for Project Analysis, James A. Lynn.
Deputy Manager for Loan Administration, Alfredo E. Hernández.
Secretary, Magdalena Wilson.
Loan Administration Divisions:
Director Zone II, Luís Buitrago.
Director Zone III, Freeborn G. Jewett, Jr.
Consultant, Christián Canta Cruz.

FINANCE DEPARTMENT

Financial Manager, Merlyn N. Trued.
Treasurer, José Epstein.
Secretary, Elia Garcia.

TECHNICAL DEPARTMENT

Technical Manager, Cecilio J. Morales.
Secretary, María Helene Theard.
Deputy Technical Manager, Pedro Irañeta.
Director, Technical Assistance Division, Beatríz R. Harretche.
Director, INTAL (Buenos Aires, Argentina), Felipe Tami.

LEGAL DEPARTMENT

General Counsel, Elting Arnold.
Secretary, Nilcea Muñiz.
Assistant General Counsel, Arnold H. Weiss.
Secretary, Eugenia Valero.

ADMINISTRATIVE DEPARTMENT

Administrative Manager, Alfonso Grados.
Secretary, Graciela Márquez.

ADVISORS

Program Advisors, Alfred C. Wolf.
Integration Advisor, José C. Cardenas.
Secretary, María Isabel la Torre.

REPRESENTATIONS

Special Representative in Europe, Enrique Pérez Cisneros.

ROUND TABLE

Narrator, Ann Kieswetter.
Assistant, Jacqueline Meyer.
Secretary, Rosa Seemann.
Narrator, Milic Kybal.

INTER-AMERICAN DEVELOPMENT BANK, 12TH ANNUAL MEETING OF THE BOARD OF GOVERNORS, STAFF OF THE BANK THAT FORM PART OF THE SECRETARIAT OF THE MEETING; TOTAL: 66 STAFF MEMBERS

I. SECRETARIAT DEPARTMENT

Secretary of the Bank, Jorge Hazera.
Secretary, Margarita Córdova.
Deputy Secretary of the Bank, Arturo Calventi.
Secretary, Yolanda Vigil.
Coordinator, Jaime Espinosa.
Secretary, Sylvia Larrad.
Protocol Officer, Julio Jara.
Secretary, Laura Macedo.

II. DOCUMENTS AND SESSIONS SECTION

Secretary, Esther Kronberger.
Assistant, Hector Yanez.

1. Sessions section

Sessions Officer, Luís Guardia.
Secretary, Ana María Mendizbal.

2. Documents section

Documents Officer, Kathryn Hiehle.
Documents Assistant, Maria del Socorro Sierra.
Documents Assistant, Tula Amas.
Typing Supervisor, Marcela Houser.
Typing Supervisor, Leonor Fuentes.
Typist, Morella Cabral.
Typist, Maria Isabel Rojas.
Typist, Vera Lawrence.
Typist, Maria Fenibar Ayala.
Typist, Angélica Rondón.
Portuguese Proofreader, Hilda Antunez.
Typist, Lycia Cunha.

3. Translation and Interpretation Section

Translation Officer, Fernando Hazera.
Deputy Translation Officer, Frank L. Massana.
Secretary, Doris Eleta.
English Translator, Julio Juncal.
English Editor Reviewer, Ruth Morales.
Portuguese Editor Reviewer, Elisa Kiehl.
Interpreter Supervisor, Ana Maria Pagés.
Portuguese Interpreter, Waldemar Lenson.
English Interpretor, Aurelio Narganes.
Portuguese Translator, Carmen Gomes.

III. SPECIAL SERVICES OFFICE

Chief, Angel Pola.
Secretary, Violeta Davila.
Housing Officer, Jorge Ochoa.
Reception Officer, Alvaro Chaves.

IV. REGISTER OFFICE

Chief, Victoria Bauza.
Register Assistant, Maria Rosa Garayalde.
Register Assistant, Alicia Zito.
Register Assistant, Martha Maldonado.
Register Assistant, Isabel Lama.
Register Assistant, Maria Luisa Figueroa.

V. SERVICES ADMINISTRATION

Chief, Robert A. Conrads.
Secretary, Esther C. Ramos.
Deputy Chief, Walter White.
Secretary, Edna Migliazzo.
Special Assistant, Janet Mischler.
Assistant, Carmen Betz.

1. Installation section

Officer, Hernando Valdez.
Supervisor, Anthony Tobias.

2. Communications section

Officer, Carlos Merino.

3. Graphics section

Officer, Rafael Cervantes.
Assistant, Aldo Zito.
Assistant, Carlos Heraud.

VI. PERSONNEL SECTION

Chief, Lucrecia Navarrete.
Bilingual Secretary, Marilia Braga Machado.

VII. ACCOUNTING SECTION

Chief, Frank Scott.
Chief, Luis Solórzano.

VIII. INFORMATION SECTION

Chief, Joaquín E. Meyer.
Secretary, Cecilia Grimaldo.
Deputy Chief, Joseph U. Hinshaw.
Secretary, María Isabel Marchena.
Press Assistant, Antonio Velázquez.
Audio-visual Services Assistant, Mario Traverso.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

THE MILITARY SELECTIVE SERVICE ACT

The PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state by title.

The assistant legislative clerk read the bill by title, as follows:

A bill, H.R. 6531, to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes.

The Senate proceeded to consider the bill.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. STENNIS. Mr. President, regarding the pending business, the bill from the Armed Services Committee which proposes the extension of the Selective Service Act, there are two amendments pending as to which the time for a vote has been agreed upon. The first is the Hatfield amendment, as to which we were in the unusual situation, last week, of having agreed to vote on an amendment that had really not been officially presented. But the Senator from Oregon gave us the substance of his amendment, and it was largely the same in substance as one we had pased on in connection with another bill last year.

Controlled time on the Hatfield amendment does not begin until tomorrow morning at 10 o'clock. Representing the committee, I am here and ready to argue that amendment as well as the Schweiker amendment, which follows the Hatfield amendment, and if those gentlemen wish to argue the matter today, I shall be glad to wait and let them go first, and will be here to respond for the committee. But if, instead, they wish to start tomorrow when the controlled time begins, that will be all right with me also.

I appreciate the valiant efforts of the acting majority leader and the assistant minority leader in managing to be here. I shall be ready to respond at any time anything develops in debate, as I have stated.

Mr. MOSS. Mr. President, if the Senator will yield, I, too, wish to note the fact that the Senator from Mississippi is here and is prepared to discuss the amendments. It does not appear that either of the Senators proposing the amendments in question, Senator HATFIELD and Senator SCHWEIKER, are present to discuss them today. As the able Senator from Mississippi has pointed out, time begins to run specifically at a given time tomorrow. Therefore, if the Senator from Oregon and the Senator from Pennsylvania wish to limit themselves to that length of time, of course, that is their prerogative and their decision to make; but they have had an opportunity today to be here, with the Senate in session.

It does not appear that we will have a very long session today. There are other Senator present, and, of course, they may have something they would like to say, but I think it appropriate to indicate that it is likely we will not have a very long session today.

Mr. GRAVEL. Mr. President, if the Senator will yield briefly?

Mr. MOSS. I yield to the distinguished Senator form Alaska.

Mr. GRAVEL. Like the distinguished chairman of the committee, the Senator from Mississippi, I should like to state that I, too, am present and would be willing to debate at great length either the Schweiker amendment, for which I shall not vote, or the so-called zero amendment of the Senator from Oregon (Mr. HATFIELD), which I believe has not yet been submitted; so we do not even have a printed copy at this point. I am sure my colleague from Utah understands the difficulty in which that places both of us, in attempting to argue for or against the matter in that regard.

But, as I have stated, I would certainly be willing to engage in colloquy for the remainder of the day with my colleague from Mississippi, though it might be of doubtful value, since I think we would be talking in an empty Chamber.

The point at issue is that not many of our fellow Senators are here who wish to engage in discussing this matter today. But I would like the RECORD to show that, together with the distinguished Chairman of the Armed Services Committee, I am here and prepared to offer a lengthy speech, if need be, and to engage in the necessary colloquy to go with it.

Mr. STENNIS. I thank the Senator from Alaska for being on hand and well prepared.

Mr. President, I should like to state, with reference to agreeing to vote on an amendment that had not been filed, that I think the RECORD will show that the Senator from Mississippi outlined at the time his understanding of what that amendment would provide; so the RECORD did show the substance of the amendment for the information of all Senators and others, and also afforded a certain protection to the Senate, in that the amendment, when actually filed, could not go beyond the areas outlined at the time as to what we were agreeing about—at least I think we cannot afford to set the precedent of accepting an open ended threat by agreeing to limit debate on an amendment we do not know something about.

Mr. GRIFFIN. Mr. President, will the distinguished Senator from Mississippi yield for a brief comment?

Mr. STENNIS. I yield to the distinguished assistant Republican leader.

Mr. GRIFFIN. I have, of course, listened to these comments. The chairman of the committee, the distinguished Senator from Mississippi, did point out that the so-called Hatfield amendment does not become the pending business until 10 o'clock tomorrow morning. Of course, other Senators on either side of the issues before the Senate would have an opportunity today, if they wished, to address the Senate. I have made a number of telephone calls; I might say that I hope the distinguished acting majority leader will be willing to ask for a quorum call when we have finished this colloquy, so that I may have a little more time to find out whether some of the Senators who I know are interested in this question may wish to come over. Within a short period of time, I think I can give the acting majority leader some indication as to that.

Mr. MOSS. If the Senator will yield, I would respond by saying that we will, of course, provide some additional time so as to make sure that we have touched all the bases; but once we have touched them all, there would be no point in remaining in session.

Mr. GRIFFIN. I understand.

Mr. STENNIS. I thank the Senator. Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Chair is now informed that the amendment offered by the Senator from Oregon (Mr. HATFIELD) has been filed and printed.

Mr. MOSS. I am pleased to have that information. It is a printed amendment?

The PRESIDENT pro tempore. It is a printed amendment, yes.

QUORUM CALL

The PRESIDENT pro tempore. What is the pleasure of the Senate?

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

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

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT TO 9 A.M. AND FOR RECOGNITION OF SENATORS TUNNEY AND HART TOMORROW

Mr. MOSS. Mr. President, under the previous order, the Senate was to convene at 9:30 a.m. tomorrow morning.

I ask unanimous consent to amend that order, to provide, instead, for the Senate to convene at 9 a.m. tomorrow and that the Senator from California (Mr. TUNNEY) and the Senator from Michigan (Mr. HART) be recognized to conduct a colloquy, which may include

other Senators, for not to exceed 30 minutes.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for Wednesday, June 2, is as follows:

The Senate will convene at 9 a.m.

Immediately following the recognition of the two leaders under the standing order, the junior Senator from California (Mr. TUNNEY) will be recognized for not to exceed 15 minutes, to be followed by the senior Senator from Michigan (Mr. HART) for not to exceed 15 minutes, to be followed by the senior Senator from Virginia (Mr. BYRD) for not to exceed 15 minutes, following which there will be a period for the transaction of routine morning business, not to extend beyond 10 a.m., with a 3-minute limitation on speeches therein.

At 10 a.m., the unfinished business will be laid before the Senate, the Hatfield amendment will be called up, and time thereon will be controlled. At 3 p.m., the resolution pertaining to the reorganization plan will be laid before the Senate and debate will follow until 5 o'clock p.m., with the 2 hours controlled. At 5 p.m., the reorganization plan will be laid aside, and the Senate will resume consideration of the unfinished business.

The vote on the reorganization plan will occur at 11 a.m., Thursday, and it will be a rollcall vote.

ADJOURNMENT TO 9 A.M. TOMORROW

Mr. MOSS. Mr. President, under the previous order, as amended, the Senate will convene at 9 a.m. tomorrow morning and I therefore move, if there be no further business to come before the Senate, that it adjourn until tomorrow at 9 a.m.

The motion was agreed to; and (at 1 o'clock and 5 minutes p.m.) the Senate adjourned until tomorrow, June 2, 1971, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 1, 1971:

U.S. TARIFF COMMISSION

Catherine May Bedell, of Washington, to be a member of the U.S. Tariff Commission for the remainder of the term expiring June 16, 1974, vice Chester L. Mize.

ENVIRONMENTAL PROTECTION AGENCY

David D. Dominick, of Wyoming, to be an Assistant Administrator of the Environmental Protection Agency; (new position).

DIPLOMATIC AND FOREIGN SERVICE

Charles J. Nelson, of the District of Columbia, a Foreign Service Reserve officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Botswana, to the Kingdom of Lesotho, and to the Kingdom of Swaziland.

U.S. CIRCUIT COURTS

Roy L. Stephenson, of Iowa, to be a U.S. circuit Judge, eighth circuit, vice Martin D. Van Oosterhout, retiring.

U.S. PATENT OFFICE

John Stevens Lieb, of Wisconsin, to be an Examiner-in-Chief, U.S. Patent Office, vice Louis F. Kreek, resigned.

COMMUNICATIONS SATELLITE CORPORATION

Frederic G. Donner, of New York, to be a member of the Board of Directors of the Communications Satellite Corporation until the date of the annual meeting of the Corporation in 1974; (reappointment).

IN THE ARMY

The following-named officer for appointment as professor of mechanics, U.S. Military Academy, under the provisions of title 10, United States Code, sections 3075, 3205, and 4333:

Wilson, Robert M., [redacted].

The following-named persons for appointment in the Regular Army, by transfer in the grade specified, under the provisions of title 10, United States Code, sections 3283 through 3294:

To be lieutenant colonel

Pinto, Ralph D., [redacted].

To be captain

Brookshire, Robert F., III, [redacted].
Clearwater, Robert M., [redacted].
David, James R., [redacted].
Egersdorfer, Rudolf H., [redacted].
Harris Harold E., [redacted].
Howard, Freeman I., [redacted].
Jacunski, George G., [redacted].
Kramer, James S., [redacted].
Mayer, Haldane R., [redacted].
McRae, Wilton D., [redacted].
McWatters, Jack W., [redacted].
Morrison, Fred K., [redacted].
Murray, Charles A., [redacted].

To be first lieutenant

Bangasser, Hugh F., [redacted].
Baxley, John B., Jr., [redacted].
Brown, Frederick B., [redacted].
Casull, Brian H., [redacted].
Cheek, Jack W., [redacted].
Clark, Jeffrey R., [redacted].
Clemons, Donald E., [redacted].
Cohen, Michael A., [redacted].
Coupe, Dennis F., [redacted].
Cramer, William B., [redacted].
Crow, Patrick F., [redacted].
Deas, Bernard W., Jr., [redacted].
Eak, Gerald J., [redacted].
Finlaysen, Robert M., [redacted].
Franks, Robert G., [redacted].
Friend, Gary G., [redacted].
Fulbruge, Charles R., II, [redacted].
Harmon, James D., Jr., [redacted].
Hart, John M., Jr., [redacted].
Hudson, David E., [redacted].
Jeffress, Walton M., Jr., [redacted].
Jones, Bradley K., [redacted].
Lederer, Fredric I., [redacted].
Lewis, Paul W., [redacted].
Lincoln, Arthur F., Jr., [redacted].
Sheppard, Paul R., [redacted].
Smalkin, Frederic N., [redacted].
Smith, Jeffrey H., [redacted].
Stohner, George A., [redacted].
Valentine, James I., Jr., [redacted].
Varga, Stephen G., [redacted].
Varnado, Jimmie W., [redacted].
Varo, Gregory O., [redacted].
Walker, Robert A., [redacted].
Wallace, John K., III, [redacted].
Walters, Michael J., [redacted].
Walton, George R., [redacted].
Wilks, Riggs L., Jr., [redacted].
Zucker, David C., [redacted].
Willis, John T., [redacted].

To be second lieutenant

Williams, Barry O., [redacted].

The following-named persons for appointment in the Regular Army of the United States, in the grades specified, under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be major

Anderson, Loren T., [redacted].
Aton, James K., [redacted].
Bauchspies, Robert W., [redacted].
Bentley, William R., [redacted].
Courtney, Clemon G., [redacted].
D'Ambrosio, Umberto, [redacted].
De Ponte, Joseph P., [redacted].
Doyle, Thomas M., [redacted].
Franklin, Wallace H., Jr., [redacted].
Gale, Paul B., [redacted].
Girone, Gerard M., [redacted].
Gowaski, Patrick J., [redacted].
Graham, Tasman L., [redacted].
Kistler, John S., [redacted].
Matthews, John G., [redacted].
McKeever, Francis L., [redacted].
Patterson, Joseph R., [redacted].
Powell, Buell R., [redacted].
Thompson, Jack C., [redacted].
Waldrop, Chumley W., [redacted].
Walker, George J., [redacted].
Williamson, Harold G., [redacted].

To be captain

Aceto, Vincent R., [redacted].
Anderson, Robert W., [redacted].
Baker, David C., [redacted].
Barfield, John R., [redacted].
Braddock, Anthony J., [redacted].
Breault, Edna T., [redacted].
Brown, Donald E., [redacted].
Brown, John R., [redacted].
Burden, Ollie D., [redacted].
Caruso, Louis H., [redacted].
Cavallo, Charles A., [redacted].
Cohen, Joel, [redacted].
Costa, Robert A., [redacted].
Creek, Raymond S., [redacted].
Daher, George D., [redacted].
Daniel, James M., [redacted].
Dennis, Harold B., [redacted].
Earley, Neal E., [redacted].
Ferner, Richard D., [redacted].
Fletcher, Ella L., [redacted].
Gay, William D., [redacted].
Gill, Thomas M., [redacted].
Griswold, Franklin D., [redacted].
Hacker, Larry M., [redacted].
Herring, Charles L., [redacted].
Hibbs, Carroll M., [redacted].
High, Roy S., [redacted].
Hudson, Andrew J., Jr., [redacted].
Hula, Roger P., II, [redacted].
Jackson, William L., [redacted].
Jones, Richard G., [redacted].
Kern, Robert W., [redacted].
King, Daniel J., [redacted].
La Fond, Clovis O., [redacted].
Landrum, Sidney E., [redacted].
La Rue, John R., Jr., [redacted].
Leahy, Robert E., [redacted].
Maclellan, Norman, [redacted].
Mader, Carson L., [redacted].
Martinez, Fernando, [redacted].
McGillen, John L., Jr., [redacted].
McLeod, Charles G., [redacted].
McQuestion, John R., [redacted].
Mercer, Richard R., [redacted].
Milliner, James E., [redacted].
Minkinow, Stanley, [redacted].
Moore, John P., [redacted].
Nielson, Kenneth G., [redacted].
O'Neil, John F., [redacted].
Porter, Robert W., [redacted].
Ray, Webster D., [redacted].
Roberts, William F., [redacted].
Shade, William L., [redacted].
Sherwood, Robert W., [redacted].
Simpson, Daniel H., [redacted].
Sisson, David J., [redacted].
Slone, Charles W., [redacted].
Stamm, Richard L., [redacted].
Stanford, Harold D., [redacted].
Taylor, Robert E., [redacted].
Uribe, Jorge I., [redacted].
Valdez, Robert, [redacted].
Vorhies, Maurice E., [redacted].
Warren, Robert J., [redacted].
Watson, Gary R., [redacted].
Willis, Mitchell H., [redacted].
Woytek, Arthur H., [redacted].
Yates, Carl W., [redacted].

To be first lieutenant

Allen, Michael D., [redacted].
Ankerson, Diane N., [redacted].
Bentley, Aubrey L., [redacted].
Beringer, George R., [redacted].
Caron, Paul L., [redacted].

Demoor, Maurice A., XXXX
Fortin, Robert A., xxx-xx-xxxx
Evans, Joseph B., xxx-xx-xxxx
Adams, Gearl V., xxx-xx-xxxx
Alexander, Lynn P., xxx-xx-xxxx
Anderson, Charles V., xxx-xx-xxxx
Anderson, Kenneth W., xxx-xx-xxxx
Archer, David M., xxx-xx-xxxx
Bacon, John E., Jr., xxx-xx-xxxx
Baird, Robert D., xxx-xx-xxxx
Barber, Preston W., xxx-xx-xxxx
Baysinger, Douglas M., xxx-xx-xxxx
Beckman, Herbert D., xxx-xx-xxxx
Beegle, Charles L., xxx-xx-xxxx
Berglund, Barry A., xxx-xx-xxxx
Blanchard, Sherman J., xxx-xx-xxxx
Boyer, Harry R., xxx-xx-xxxx
Brown, Connie A., xxx-xx-xxxx
Bryan, Larry E., xxx-xx-xxxx
Bunton, William E., xxx-xx-xxxx
Burnam, Ronald E., xxx-xx-xxxx
Callis, Robert T., xxx-xx-xxxx
Campbell, Lannis E., Jr., xxx-xx-xxxx
Cavis, Charles A., xxx-xx-xxxx
Cilibert, Edward T., xxx-xx-xxxx
Cisternino, John G., xxx-xx-xxxx
Clawson, Donald E., xxx-xx-xxxx
Cochran, Charles D., xxx-xx-xxxx
Connally, Sharon C. III, xxx-xx-xxxx
Cornick, Thomas H., xxx-xx-xxxx
Cox, Dorcas M., xxx-xx-xxxx
Cox, Raymond F., Jr., xxx-xx-xxxx
Craig, Terry L., xxx-xx-xxxx
Daly, Lawrence T., xxx-xx-xxxx
Davis, Larry L., xxx-xx-xxxx
Davis, William S., xxx-xx-xxxx
DeBerry, Thomas P., xxx-xx-xxxx
Debok, Phillip C., xxx-xx-xxxx
Delgado, Richard, xxx-xx-xxxx
Devore, Daniel L., xxx-xx-xxxx
Dohany, Alexander L., xxx-xx-xxxx
Dowling, Ted K., xxx-xx-xxxx
Dunbar, Merwin C., Jr., xxx-xx-xxxx
Eickemeyer, Karl F., Jr., xxx-xx-xxxx
Erickson, Philmon A., Jr., xxx-xx-xxxx
Fabian, David R., xxx-xx-xxxx
Fiddner, Dighton M., xxx-xx-xxxx
Fleming, Stephen B., xxx-xx-xxxx
Foley, Robert M., xxx-xx-xxxx
Forville, David R., xxx-xx-xxxx
Foster, Jean A., xxx-xx-xxxx
Frawley, Lester F., Jr., xxx-xx-xxxx
Friel, Gorge E., xxx-xx-xxxx
Froelich, Gerald L., xxx-xx-xxxx
Fry, Jerry R., xxx-xx-xxxx
Frye, Ivan D., xxx-xx-xxxx
Fuller, Marvin E., xxx-xx-xxxx
Fulton, John S., xxx-xx-xxxx
Gaglia, Joseph, xxx-xx-xxxx
Galenes, Alexander A., xxx-xx-xxxx
Garner, Douglas V., xxx-xx-xxxx
Goldman, Gilbert L., xxx-xx-xxxx
Gollattscheck, Mark L., xxx-xx-xxxx
Golphenee, Orval J., xxx-xx-xxxx
Goodwin, William L., Jr., xxx-xx-xxxx
Gould, Leroy D., xxx-xx-xxxx
Graham, James R., xxx-xx-xxxx
Gravatt, Arthur T., xxx-xx-xxxx
Griffin, John W., xxx-xx-xxxx
Griggs, Dennis L., xxx-xx-xxxx
Groce, Gary R., xxx-xx-xxxx
Hall, James W., xxx-xx-xxxx
Hanson, Charles M., xxx-xx-xxxx
Hassell, Leonard G., xxx-xx-xxxx
Henline, William B., xxx-xx-xxxx
Hentz, James D., Jr., xxx-xx-xxxx
Herbert, Clarke E., xxx-xx-xxxx
Heyman, Eugene F., Jr., xxx-xx-xxxx
Hiu, Patrick, S. H., xxx-xx-xxxx
Hudock, John M., xxx-xx-xxxx
Huey, James T., xxx-xx-xxxx
Hunter, Jack M., xxx-xx-xxxx
Hyatt, Richard S., xxx-xx-xxxx
Jarvis, Michael J., xxx-xx-xxxx
Johnson, Lawrence D., xxx-xx-xxxx
Jorgeson, Lynn P., xxx-xx-xxxx
Kaleta, Albert E., xxx-xx-xxxx
Karney, Robert E., xxx-xx-xxxx
Kenney, Michael R., xxx-xx-xxxx
Killebrew, Robert B., xxx-xx-xxxx
Knack, Frederick H., xxx-xx-xxxx
Knight, James M., xxx-xx-xxxx
Knisely, Benjamin M., xxx-xx-xxxx
Koenig, William T., xxx-xx-xxxx
Kotyrba, Charles H., xxx-xx-xxxx
Laabs, Gary L., xxx-xx-xxxx
Laible, Benjamin E., xxx-xx-xxxx
Langley, Edmund K., xxx-xx-xxxx
Lanier, Glen A. Jr., xxx-xx-xxxx
Lester, Michael B., xxx-xx-xxxx
Lipke, William R., xxx-xx-xxxx
Lofgren, David J., xxx-xx-xxxx
Lyon, Douglas R., xxx-xx-xxxx
Manoil, Robert, xxx-xx-xxxx
Marshall, John N., xxx-xx-xxxx
Maue, David C., xxx-xx-xxxx
Mays, Audie L., xxx-xx-xxxx
McCarthy, Charles P., xxx-xx-xxxx
McGee, George P., xxx-xx-xxxx
McKinley, Loran, R., Jr., xxx-xx-xxxx
Meek, Thomas, xxx-xx-xxxx
Morgenstern, Michael E., xxx-xx-xxxx
Morton, Ward D., III, xxx-xx-xxxx
Mullaly, Charles F., xxx-xx-xxxx
Noble, Richard J., Jr., xxx-xx-xxxx
Norton, Augustus R., xxx-xx-xxxx
Nucci, Kernan M., xxx-xx-xxxx
Oeschger, Oren E., xxx-xx-xxxx
Patterson, Robert G., xxx-xx-xxxx
Peck, Carl C., xxx-xx-xxxx
Peck, Daniel J., xxx-xx-xxxx
Petersen, Michael A., xxx-xx-xxxx
Pevey, Tommy R., xxx-xx-xxxx
Phillips, Ronald D., xxx-xx-xxxx
Pickering, Thomas J., xxx-xx-xxxx
Pienkos, Richard B., xxx-xx-xxxx
Pike, A. Nolan III, xxx-xx-xxxx
Piper, Paul A., xxx-xx-xxxx
Pitzer, James R., xxx-xx-xxxx
Plimpton, Robert P., xxx-xx-xxxx
Powers, James S., xxx-xx-xxxx
Quinlan, James E., xxx-xx-xxxx
Rank, James L., xxx-xx-xxxx
Redden, Jimmy D., xxx-xx-xxxx
Reese, Justin M. III, xxx-xx-xxxx
Reid, Barbara C., xxx-xx-xxxx
Reynolds, James P., xxx-xx-xxxx
Rice, Ray E., xxx-xx-xxxx
Ridder, William E., xxx-xx-xxxx
Roach, Christopher J., xxx-xx-xxxx
Rubino, Vincent E., xxx-xx-xxxx
Rue, William K., xxx-xx-xxxx
Ryan, Kevin M., xxx-xx-xxxx
Saunders, Richard, xxx-xx-xxxx
Scully, Edward J., xxx-xx-xxxx
Seale, Leopold K., xxx-xx-xxxx
Seefeld, Herman W. III, xxx-xx-xxxx
Segal, Jack D., xxx-xx-xxxx
Seidenberg, Anthony B., xxx-xx-xxxx
Seymour, John A., xxx-xx-xxxx
Shaw, Ellis P., xxx-xx-xxxx
Shelton, George R., xxx-xx-xxxx
Shiffert, Alvin M., Jr., xxx-xx-xxxx
Shirk, Lloyd D., xxx-xx-xxxx
Short, Thomas E., xxx-xx-xxxx
Simiele, Frank A., xxx-xx-xxxx
Skinner, Robert G., xxx-xx-xxxx
Smith, Dick R., xxx-xx-xxxx
Smith, Douglas G., xxx-xx-xxxx
Smith, Leslie T., xxx-xx-xxxx
Smith, Mary J., xxx-xx-xxxx
Smith, Michael K., xxx-xx-xxxx
Smith, Paul W., xxx-xx-xxxx
Smith, Thomas A., xxx-xx-xxxx
Solomon, Mendel S., xxx-xx-xxxx
Spieth, James K., xxx-xx-xxxx
Staley, Leo G., xxx-xx-xxxx
Steahly, Lance P., xxx-xx-xxxx
Stevens, Samuel M., xxx-xx-xxxx
Strain, John H., xxx-xx-xxxx
Stroup, Dennis R., xxx-xx-xxxx
Sullivan, John P., xxx-xx-xxxx
Sullivan, William C., Jr., xxx-xx-xxxx
Taylor, James A., xxx-xx-xxxx
Terry, Richard A., xxx-xx-xxxx
Tessier, Robert J., xxx-xx-xxxx
Tisdale, Tyron E., Jr., xxx-xx-xxxx
Topacio, David J., xxx-xx-xxxx
Turner, George H., xxx-xx-xxxx
Turner, Leonard J., xxx-xx-xxxx
Uselding, John R., xxx-xx-xxxx
Vescovi, Ronald E., xxx-xx-xxxx
Voelker, Edward M., Jr., xxx-xx-xxxx
Vranekovic, James D., xxx-xx-xxxx
Wagenaar, Robert S., xxx-xx-xxxx
Wallace, Jerry L., xxx-xx-xxxx
Walton, Willard, Jr., xxx-xx-xxxx
Wambaugh, George W., Jr., xxx-xx-xxxx
Weaver, Robert V., xxx-xx-xxxx
Weddle, Paul C., xxx-xx-xxxx
Welch, James J., xxx-xx-xxxx
Wells, Geoffrey F., xxx-xx-xxxx
Welsh, Francis P., xxx-xx-xxxx
Welsh, Leo F., Jr., xxx-xx-xxxx
Whitenton, Richard L., xxx-xx-xxxx
Wilson, Eugene E., xxx-xx-xxxx
Woltersdorf, John W., Jr., xxx-xx-xxxx
York, Joanne G., xxx-xx-xxxx
Zadzora, Timothy P., xxx-xx-xxxx

To be second lieutenant

Albright, Hugh J., xxx-xx-xxxx
Anders, Robert L., xxx-xx-xxxx
Ballou, Justin G., xxx-xx-xxxx
Brooks, Dan W., xxx-xx-xxxx
Burden, Charles G. III, xxx-xx-xxxx
Cannava, Thomas J., xxx-xx-xxxx
Castner, William B., xxx-xx-xxxx
Causey, Danny P., xxx-xx-xxxx
Cornwell, Lewis W., xxx-xx-xxxx
Coulter, Martin A., xxx-xx-xxxx
Curtice, Janet M., xxx-xx-xxxx
Dickson, Michael A., xxx-xx-xxxx
Farlow, Joseph E., xxx-xx-xxxx
Fitzpatrick, James T., xxx-xx-xxxx
Fox, Jack R., xxx-xx-xxxx
Galos, Steven W., xxx-xx-xxxx
Garfield, Jefferson James, xxx-xx-xxxx
Geraghty, Richard W., xxx-xx-xxxx
Hauschild, Harry P., xxx-xx-xxxx
Hendley, Albert J., xxx-xx-xxxx
Hilliard, John C., xxx-xx-xxxx
Hoffmeyer, James H., xxx-xx-xxxx
Ingram, Charles A., xxx-xx-xxxx
Jones, Brian S., xxx-xx-xxxx
Langkamp, Joseph P., xxx-xx-xxxx
Leary, William J., Jr., xxx-xx-xxxx
Long, Bruce B., xxx-xx-xxxx
Lutz, Michael J., xxx-xx-xxxx
McCoy, Warren D., xxx-xx-xxxx
Milman, George E., xxx-xx-xxxx
Murphy, James M., Jr., xxx-xx-xxxx
Neslage, Robert L., xxx-xx-xxxx
Norder, Nickolas W., xxx-xx-xxxx
Oaks, Stanley C., Jr., xxx-xx-xxxx
Phillips, Eugene B., xxx-xx-xxxx
Piedmont, Thomas M., xxx-xx-xxxx
Remig, Wayne D., xxx-xx-xxxx
Ricketts, David J., xxx-xx-xxxx
Schneider, Lawrence, xxx-xx-xxxx
Shaffer, Joseph K., xxx-xx-xxxx
Sieving, Immanuel C., xxx-xx-xxxx
Stuhrke, Frederick M., Jr., xxx-xx-xxxx
Taylor, Jeffrey W., xxx-xx-xxxx
Tilley, Gary L., xxx-xx-xxxx
White, Robert C., Jr., xxx-xx-xxxx
Wozniak, Arthur, xxx-xx-xxxx
Wright, David O., xxx-xx-xxxx
Young, Anna M., xxx-xx-xxxx

The following-named distinguished military students for appointment in the Regular Army of the United States, in the grade of second lieutenant, under provisions of title 10, United States Code, sections 2106, 3283, 3284, 3286, 3287, 3288, and 3290:

Beckette, Edmund T., xxx-xx-xxxx
Bedard, Alan E., xxx-xx-xxxx
Bender, James H., xxx-xx-xxxx
Bienick, Paul J., xxx-xx-xxxx
Bisaillon, Robert D., xxx-xx-xxxx
Blankenship, Richard E., xxx-xx-xxxx
Blaue, Ronald W., xxx-xx-xxxx
Bosserman, Bruce N., xxx-xx-xxxx
Bowen, William A., xxx-xx-xxxx
Brown, Jerry R., xxx-xx-xxxx
Brown, John A., xxx-xx-xxxx
Buck, Randolph O., xxx-xx-xxxx
Burmeister, Horace W., Jr., xxx-xx-xxxx
Butler, Thomas M., xxx-xx-xxxx
Cassella, Edmund A., xxx-xx-xxxx
Chee, David, xxx-xx-xxxx
Chin, Dennis T., xxx-xx-xxxx

Choquette, Stefan P., XXXX.
Clark, Gary G., xxx-xx-xxxx.
Cork, Timothy R., xxx-xx-xxxx.
Costello, Benjamin L., xxx-xx-xxxx.
Cox, Joseph M., xxx-xx-xxxx.
Crepeau, Robert P., xxx-xx-xxxx.
Cruz, Michael G., xxx-xx-xxxx.
Currie, Van A., xxx-xx-xxxx.
Dancses, Joseph S., xxx-xx-xxxx.
Darcy, Edward J., xxx-xx-xxxx.
Davila, Nestor A., xxx-xx-xxxx.
Deshazer, Macarthur, xxx-xx-xxxx.
Doss, James H., xxx-xx-xxxx.
Eckhart, Michael A., xxx-xx-xxxx.
Egiziano, Robert U., xxx-xx-xxxx.
Egmon, Gary W., xxx-xx-xxxx.
Evans, David L., xxx-xx-xxxx.
Evans, John L., II, xxx-xx-xxxx.
Faggioli, Vincent J., xxx-xx-xxxx.
Fojt, Alan S., xxx-xx-xxxx.
Fuoco, Samuel, xxx-xx-xxxx.
Calloway, David A., xxx-xx-xxxx.
Ganninger, Richard W., xxx-xx-xxxx.
Garrison, Dennis V., Jr., xxx-xx-xxxx.
Gorres, Roger L., xxx-xx-xxxx.
Graski, George M., xxx-xx-xxxx.
Griffin, Howard S., xxx-xx-xxxx.
Guffey, David M., xxx-xx-xxxx.
Guthmiller, Donald L., xxx-xx-xxxx.
Hale, Ronald L., xxx-xx-xxxx.
Hammonds, Gary L., xxx-xx-xxxx.
Hampel, Gary G., xxx-xx-xxxx.
Hernandez, Arthur B., xxx-xx-xxxx.
Hertig, Mark E., xxx-xx-xxxx.
Hervey, Paul M., xxx-xx-xxxx.
Hickman, Michael M., xxx-xx-xxxx.
Hicks, Paul W., xxx-xx-xxxx.
Householder, Gary E., xxx-xx-xxxx.
Howrey, Edward L., xxx-xx-xxxx.
Hughes, Michael, xxx-xx-xxxx.
Hurd, Charles W., Jr., xxx-xx-xxxx.
Hylton, Milford D., Jr., xxx-xx-xxxx.
Iossi, Charles M., xxx-xx-xxxx.
Jemiola, Richard W., xxx-xx-xxxx.
Jones, Leonard D., xxx-xx-xxxx.
Jones, Randall D., xxx-xx-xxxx.
Kassigkeit, Henry C., xxx-xx-xxxx.
Keleher, Michael P., xxx-xx-xxxx.
Kennedy, John D., xxx-xx-xxxx.
Kennedy, Robert J., xxx-xx-xxxx.
King, Sidney D., xxx-xx-xxxx.
Klenowski, Charles S., xxx-xx-xxxx.
Knapp, Stanley K., xxx-xx-xxxx.
Kopec, Julius L., xxx-xx-xxxx.
Labin, Daniel L., xxx-xx-xxxx.
Lindsey, Charles B., xxx-xx-xxxx.
Lipton, Patrick P., xxx-xx-xxxx.
Liu, Louw Shiang, xxx-xx-xxxx.
Lyle, Woodrow R., xxx-xx-xxxx.
Marcello, Carlo J., Jr., xxx-xx-xxxx.
Markunas, Peter J., xxx-xx-xxxx.
Mathes, Todd D., xxx-xx-xxxx.
McKean, Michael J., xxx-xx-xxxx.
McPhail, James D., xxx-xx-xxxx.
Messerknecht, Craig L., xxx-xx-xxxx.
Milton, Theodore R., Jr., xxx-xx-xxxx.
Minnich, Scott G., xxx-xx-xxxx.
Moody, Donald J., xxx-xx-xxxx.
Nelson, William E., Jr., xxx-xx-xxxx.
Nishimoto, Castle K., xxx-xx-xxxx.
Norden, Stephen B., xxx-xx-xxxx.
Oncken, William, III, xxx-xx-xxxx.
O'Sullivan, Jay D., xxx-xx-xxxx.
Palmer, James T., xxx-xx-xxxx.
Parkins, Bruce M., xxx-xx-xxxx.
Peach, Gregory W., xxx-xx-xxxx.
Pearl, Barton Lee, xxx-xx-xxxx.
Perkins, Kenneth R., xxx-xx-xxxx.
Perry, Brewster, Jr., xxx-xx-xxxx.
Perry, Michael L., xxx-xx-xxxx.
Phinney, David G., xxx-xx-xxxx.
Poole, Trachanzie P., xxx-xx-xxxx.
Price, Daniel G., xxx-xx-xxxx.
Pumphrey, Robert S., xxx-xx-xxxx.
Quinones, Edgardo E., xxx-xx-xxxx.
Ritter, George P., xxx-xx-xxxx.
Rose, Douglas M., xxx-xx-xxxx.
Rose, Richard P., xxx-xx-xxxx.
Rothlein, Julius, xxx-xx-xxxx.
Rowan, Robert T., Jr., xxx-xx-xxxx.
Schaaf, Randy C., xxx-xx-xxxx.
Scott, David D., xxx-xx-xxxx.
Scott, Peter B., xxx-xx-xxxx.
Shaw, Rayford L., xxx-xx-xxxx.
Shenberger, Paul S., xxx-xx-xxxx.
Siebold, James R., xxx-xx-xxxx.
Skudlarek, William J., xxx-xx-xxxx.
Sloan, John W., III, xxx-xx-xxxx.
Staples, Winthrop R., III, xxx-xx-xxxx.
Stricklin, William G., xxx-xx-xxxx.
Swenson, Gary G., xxx-xx-xxxx.
Tant, Hugh B., III, xxx-xx-xxxx.
Thompson, Kenneth P., xxx-xx-xxxx.
Thues, Stanley R., xxx-xx-xxxx.
Walkenshaw, Barry G., xxx-xx-xxxx.
Walkenshaw, Philip S., xxx-xx-xxxx.
Ward, Russell D., Jr., xxx-xx-xxxx.
Waronicki, Theodore W., Jr., xxx-xx-xxxx.
Welles, Peter B., xxx-xx-xxxx.
Wenger, Lowell E., xxx-xx-xxxx.
Werb, Thomas J., xxx-xx-xxxx.
Williman, Glenn S., xxx-xx-xxxx.
Wilson, Jon S., xxx-xx-xxxx.
Wright, Steven W., xxx-xx-xxxx.
Wysocki, Henry V., xxx-xx-xxxx.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 1, 1971:

IN THE COAST GUARD

The nominations beginning Edward A. Howard, to be chief warrant officer (W–2), and ending Ronald A. Simons, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 30, 1971.

HOUSE OF REPRESENTATIVES—*Tuesday, June 1, 1971*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

The fruit of the spirit is found in all that is good and right and true.—Ephesians 5: 9.

Eternal God, our Father, as we enter a new month and begin a new week we acknowledge our dependence upon Thee and offer unto Thee once again the devotion of our hearts. Throughout this month may we feel sustained by Thy spirit, led by Thy love and guided by Thy wisdom as we endeavor to walk in the ways of truth and justice and good will.

We pray that our life as a nation may be rooted more deeply in moral and spiritual truth and that the fundamental principles of our land may be founded more securely on religious foundations. Only thus can our belief in the Fatherhood of God and the brotherhood of man arise to new reality in our day and only thus can our profession and our practice come to closer agreement.

So may it be now and forever more. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

AN EXASPERATING EXPERIENCE WITH THE CONGRESSIONAL POUCH MAIL SERVICE

(Mr. HOWARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOWARD. Mr. Speaker, along with practically every other American, I have been constantly frustrated with the operation of the U.S. Postal Service. My most recent exasperating experience with delivery of the mail came last week when I, for the first time, tried to utilize the Postal Service's highly publicized congressional pouch mail service.

This pouch mail absolutely, positively guarantees that air mail delivered to the House Post Office before 2 p.m. will positively, absolutely be delivered in New Jersey the very next day.

Mr. Speaker, that does not seem unreasonable since New Jersey is not so very far away from our Nation's Capital.

When I informed my secretary that we were going to try this great new pouch mail service, she was skeptical and called the congressional relations office to be reassured that a communication being sent by me to the Governor of New Jersey and all of the newspapers in my district would arrive the very next day. She was assured that this would be the case.

Mr. Speaker, you can guess the ending. The mail did not arrive in New Jersey until 2 days later.

Perhaps we should heed the advice of our colleague, the gentleman from Arizona (Mr. UDALL), who recently stated that we should take the operation and responsibility for the war in Vietnam from the Department of Defense and give it to the U.S. Postal Service. They may not stop the war, but they will sure as hell slow it down.

BOBBY SEALE SHOULD STAND TRIAL

(Mr. SIKES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SIKES. Mr. Speaker, Bobby Seale—Black Panther, revolutionary, and public nuisance—is a free man today because a judge decided he is too well known to stand trial for murder. The court has held that no jury could fairly judge him for the crime of which he stands accused.

It sickens me to consider the victory this man has won over decency. Today, this radical among radicals is free to walk the streets, shouting his denunciation of the United States, spreading hate and fear, spewing his irrational venom to the eager ears of his fellow revolutionaries, and thumbing his nose at rational society.

Bobby Seale undoubtedly now considers himself immune from the law. There will be others like him who claim equal exemption from the laws which govern those who respect processes of justice.