ASSET DEPRECIATION RANGE

HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 22, 1971

Mr. VANIK. Mr. Speaker, the Treasury recently announced an unprecedented proposed ruling on depreciation called asset depreciation range—ADR. It will cost the public Treasury $3 to $5 billion per year and nearly $40 billion in this decade. The Treasury action is unconstitutional, an illegal usurpation of authority and an inefficient economic tool which wastes the Nation's tax resources.

The Constitution states that—

The Congress shall have power to lay and collect taxes.

And provides that—

All bills for raising revenue shall originate in the House of Representatives.

If the Executive has the authority to "wash-out" or remit $3 billion annually from the Public Treasury, what are the outer limits of this power? Can he excuse or give back 40, 80, or 100 percent of annual depreciation?

If the President can legally excuse $3 billion in corporate taxation by accelerating depreciation by 20 percent this year, he must also have the incredible power to excuse 100 percent depreciation, or $15 billion in annual taxation. This power, unrestrained, is the power to eliminate corporate taxation—which appears to be the goal of the President. What power remains to Congress?

As part of an effort to oppose this usurpation by the Executive, I am testifying at the hearings at Treasury beginning May 3.

In addition, I have introduced in the House today the following concurrent resolution:

That it is the sense of the Congress:

(1) That the Treasury Department does not have the authority under existing law to grant taxpayers the additional income tax deductions which would be allowed under the proposed asset depreciation range system as set forth in proposed regulations issued on March 12, 1971; and

(2) That the proposed regulations, if adopted by the Treasury Department, would be null and void in the absence of action by Congress in the form of enabling legislation.

This resolution was sponsored by the following Members:

Mr. VANIK (for himself, Mrs. ABZUG, and Mr. ADAMS).
Mr. ADDABBO.
Mr. ASPIN.
Mr. BADILLO.
Mr. BEGICH.
Mrs. CHISHOLM.
Mr. CORMAN.
Mr. DRINAN.
Mr. EILBERG.
Mr. GIBBONS.
Mr. HARRINGTON.
Mr. HECHLER of West Virginia.
Mr. MOSS.
Mr. NIX.
Mr. PODELL.
Mr. RODINO
Mr. ROSENTHAL.
Mr. SARBANES.
Mr. STOKES.

SENATE—*Friday, April 23, 1971*

The Senate met at 11 a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

The Right Reverend Monsignor Patrick J. Ryan, major general, U.S. Army, retired, former chief of U.S. Army chaplains, Washington, D.C., offered the following prayer:

Almighty and ever-loving God, who has been the help of our forefathers from the beginning of our Nation's history, look with favor upon this group of lawmakers. Direct them in their actions, grant them wisdom and strength to perform their important duties for the people of our Nation. Give them vigilant hearts and temper their zeal with prudence. In the long tradition of great lawmakers in our country, may they continue to protect and perpetuate the high principles and lofty ideals upon which our Nation was founded. Guide them in their deliberations, bless them with Your counsel that their endeavors may begin with Thee and through Thee be happily ended. Amen.

JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal and the proceedings of Thursday, April 22, 1971, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EXECUTIVE SESSION

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

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

U.S. AIR FORCE

The legislative clerk proceeded to read sundry nominations in the U.S. Air Force.

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

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

U.S. ARMY

The legislative clerk proceeded to read sundry nominations in the U.S. Army.

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

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

U.S. NAVY

The legislative clerk proceeded to read sundry nominations in the U.S. Navy.

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

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

U.S. MARINE CORPS

The legislative clerk proceeded to read sundry nominations in the U.S. Marine Corps.

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

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE ARMY AND IN THE NAVY

The legislative clerk proceeded to read sundry nominations in the Army and in the Navy, which had been placed on the Secretary's desk.

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

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

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

LEGISLATIVE SESSION

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

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

ARTHUR RIKE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 65, S. 157, and that the rule of germane-

ness not apply to the consideration of this one cleared bill on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the bill will be stated by title.

The LEGISLATIVE CLERK. S. 157, for the relief of Arthur Rike.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any statute of limitations, or lapse of time, or bars of laches or any proceeding heretofore had in the United States District Court for the District of North Dakota, jurisdiction is hereby conferred upon the United States District Court for the District of North Dakota to hear, determine, and render judgment upon any claim filed by Arthur Rike against the United States for compensation for personal injury, medical expenses, and property damage sustained by him arising out of an accident which occurred on December 24, 1964, allegedly as a result of the negligent operation of a motor vehicle by an employee of the United States while acting within the scope of his Federal employment.

SEC. 2. Suit upon any such claim may be instituted at any time within one year after the date of the enactment of this Act. Nothing in this Act shall be construed as an inference of liability on the part of the United States. Except as otherwise provided herein, proceedings for the determination of such claim, and review and payment of any judgment or judgments thereon, shall be had in the same manner as in the case of claims over which such court has jurisdiction under section 1346(b) of title 28, United States Code.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–63), explaining the purpose of the measure.

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

PURPOSE

The purpose of the bill is to confer jurisdiction upon the U.S. District Court for the District of North Dakota to hear, determine, and render judgment upon a claim by Arthur Rike. The bill would also waive the defenses of the United States to such claim based on the statute of limitations, lapse of time, laches, or any previous proceeding in the said district court.

STATEMENT

A similar bill for this claimant in the 91st Congress was approved by the committee and passed by the Senate, but no action was taken on it in the House of Representatives.

In its report to the committee, the Post Office Department stated the facts in the case and its recommendations as follows:

On February 5, 1968, the Department submitted a report on S. 2214 to this committee. The present report amends and supersedes the February 5 report in order to reflect correctly the final disposition of the civil tort action which is discussed below.

Our records disclosed that on February 23, 1967, Arthur Rike filed a civil tort action in the District Court, First Judicial District, Grand Forks, N. Dak., against David John Mersy, a postal employee. The suit demanded damages of $37,905 for alleged injuries sustained by Mr. Rike as a result of a collision on December 24, 1964, between Mr. Rike's automobile and that of Mr. Mersy, who was acting within the scope of his Federal employment. At the request of the assistant U.S. attorney the action was removed to the U.S. District Court for the District of North Dakota pursuant to 28 U.S.C. 2679(d), and the United States was substituted as party defendant in place of Mr. Mersy. The Government then moved to dismiss the suit on the ground that plaintiff's cause of action was barred by the 2-year Federal statute of limitations, 28 U.S.C. 2401(b). The court granted the Government's motion, dismissing the suit on November 29, 1967.

The Department opposes enactment of S. 2214. This bill would, in effect, nullify the above court proceedings and allow Mr. Rike an additional year within which to bring suit. In the 82d Congress this committee, in its report on Senate Joint Resolution 23, declared that it "would not relieve a claimant of a statute of limitations except for 'good cause' shown * * *." We see no evidence of "good cause" in this case to grant the relief which would be afforded by S. 2214.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee from the standpoint of the administration's program.

The sponsor of the bill, Hon. Quentin N. Burdick, has advised the committee as follows:

It has come to my attention that the Post Office Department's opposition to S. 2214, a bill for the relief of Arthur Rike, is that there is no showing of a "good cause" for extending the statute of limitations.

I feel that I must take exception to this. Mr. Rike was lulled into believing that the U.S. Government was not a party to claims arising out of an automobile accident in which he and David John Mersy were the drivers. The only reason an action was not filed within the statute of limitations is a belief on the part of Mr. Rike and his attorney, supported by statements made by representatives of the insurance company and the U.S. Post Office, that the Government was not a party to this suit. In a deposition taken by Mr. Rike's attorney, the postal inspector did not deny that he had made such a statement.

I firmly believe that this is a good and sufficient cause for the Judiciary Committee to favorably report S. 2214. The only thing this bill would do is give Arthur Rike the day in court which he has so far been denied.

The committee believes that the bill is meritorious and recommends it favorably.

ORDER OF BUSINESS

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

RETURN OF OKINAWA TO JAPAN

Mr. BYRD of Virginia. Mr. President, the Nixon administration has formally agreed to regard the return of Okinawa to Japan as a treaty issue requiring two-thirds Senate approval.

This was made clear in public statements by the Department of State, and also in an official letter from the Secretary of State to the chairman of the Senate Foreign Relations Committee.

For this action, the administration has been severely condemned by such newspapers as the New York Times, which contends that Okinawa should be returned to Japan by Executive agreement rather than by the advice and consent of the Senate.

Most certainly I do not agree with the Times' assessment—and I am indeed amazed that a newspaper which has been urging the Senate to reassert its prerogatives in foreign policy, now wants it to be bypassed because it fears the Senate will not do what the Times wants it to do.

As I see it, there are two issues involved:

First, shall Okinawa revert to Japanese administrative control; and

Second, if so, should it be by unilateral action by the President, or by recommendation of the President with the consent of the Senate?

As to whether it is in the best interest of the United States for Okinawa to be returned to Japan at this particular time in our history is one matter—and a debatable one.

But as to whether such action should be taken unilaterally by the President or by the President with the consent of the Senate, is, to my mind, clear cut. The United States obtained control of Okinawa by the Treaty of Peace with Japan, which treaty was ratified by the Senate of the United States.

I submit that it is logical and proper that any change in the Treaty of Peace with Japan can be made only with the approval of the Senate.

I am not concerned today with the question of whether Okinawa should or should not revert to the administrative control of Japan.

I am concerned today as to just how the matter should be handled if and when the executive department reaches an agreement with the Japanese Government.

It is appropriate at this point, I think, to give some background on this vitally important issue.

On May 29, 1969, just prior to the visit of the Japanese Foreign Minister to the United States, I addressed the Senate on the future status of Okinawa.

I pointed out that under the 1952 Treaty of Peace with Japan, the United States was granted the unrestricted use of the island of Okinawa in the far Pacific. On this island we have our greatest Pacific military base complex.

I expressed the view that any change in the status of Okinawa should be through action by the President and the Senate together, rather than by the President unilaterally.

That was May 29, 1969.

On November 4, 1969, 2 weeks before Prime Minister Sato of Japan was scheduled to arrive in Washington for further discussions regarding the reversion of Okinawa, I introduced in the Senate the following resolution:

It is the sense of the Congress that the President shall not enter into any agreement or understanding, the effect of which would be to change the status of any territory referred to in Article III of the Treaty of Peace with Japan, without the advice and consent of the Senate.

On November 5, 1969, I discussed this resolution at some length on the floor of the Senate. During the course of my remarks, I urged the Department of State and the President to make clear to the Prime Minister of Japan that any change in the treaty between the United States and Japan must be submitted to the Senate for approval.

When the vote was taken on the Byrd resolution, it was approved overwhelmingly by 63 yeas and 14 nays.

On November 21, President Nixon and Prime Minister Sato, after an exchange of views November 19, 20, and 21, issued a joint communique stating, among other things, that any agreements between the two governments would be subject to "the necessary legislative support."

The Senator from Virginia took this to mean that the executive branch would comply with the Senate resolution and that any change in the Treaty of Peace with Japan would be submitted to the Senate for approval or disapproval.

In the Senate, I commended President Nixon.

Simultaneously, the distinguished junior Senator from South Carolina (Mr. HOLLINGS), expressed the fear that I had not accurately interpreted the communique's meaning.

On November 25, 1969, Senator HOLLINGS addressed a letter to the President, in which he asserted:

> Senator Harry Byrd of Virginia has just commended the language of the communique of the Prime Minister and yourself; and Senator Byrd commended you for recognizing this role of the legislative branch.

And then the able Senator from South Carolina went on to say in his letter to the President that he had just returned from Japan and a conference with the Prime Minister, and that the Prime Minister discounted the necessity for ratification of any agreement affecting Okinawa.

President Nixon replied to Senator HOLLINGS in a letter dated January 9, 1970. That letter contained this sentence:

> With regard to Congressional action on any agreement with Japan on Okinawa, I want to say that I am fully cognizant—as is Secretary Rogers—of the implications of the Senate vote on Senator Byrd's Resolution of November 5.

From the beginning, I had confidence that President Nixon would honor the resolution adopted by the Senate on November 5, 1969. I have known Mr. Nixon for more than 20 years and had no reason to doubt that he would take the only appropriate course and submit to the Senate for ratification any change in the Treaty of Peace with Japan.

This is a part of the constitutional process—even though other presidents have breached the process, particularly President Johnson when he returned the Bonin Islands to Japan by Executive agreement. In fact, it was this action by President Johnson that prompted my resolution of November 5, 1969.

Many Senators have expressed concern at the erosion of Senate authority in regard to foreign policy. I myself feel very strongly in that regard, and I feel that the fault lies at least to some extent with the Senate for not asserting its constitutional prerogatives.

None feels more keenly about this than the distinguished chairman of the Foreign Relations Committee, Mr. FULBRIGHT, who was so helpful in the Senate enactment of my resolution of November 5, 1969.

On February 25, 1971, Chairman FULBRIGHT addressed a letter to the Secretary of State calling attention to the Senate-adopted resolution and requesting that the Foreign Relations Committee be advised "concerning the administration's plans for seeking congressional approval for any agreement on reversion of Okinawa."

On March 10, 1971, Secretary Rogers replied stating that—

> As soon as the negotiations (Okinawa) reach a situation which permits meaningful discussions, we will wish to begin consultations . . . on steps for obtaining the advice and consent of the Senate. Our hope will be to obtain Senate action this year.

I ask unanimous consent that at this point Chairman FULBRIGHT's letter and Secretary Rogers' reply be printed in the RECORD.

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

FEBRUARY 25, 1971.

Hon. WILLIAM P. ROGERS,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: I would appreciate your providing the Committee with a status report on the negotiations for the reversion of Okinawa, along with your estimate of when a formal agreement may be reached with Japan.

As you know, on November 5, 1969, the Senate adopted, by a vote of 63 to 14, an amendment offered by Senator Byrd of Virginia which expressed the sense of the Senate that any agreement changing the status of Okinawa "shall not take effect without the advice and consent of the Senate." In view of this expression of the Senate's views, I hope that any reversion agreement will be submitted in the form of a treaty. I would appreciate your advising the Committee concerning the Administration's plans for seeking Congressional approval for any agreement on reversion of Okinawa.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

THE SECRETARY OF STATE,
Washington, D.C., March 10, 1971.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: I am answering your letter of February 25 concerning Okinawa reversion.

Negotiations on specific reversion arrangements have been in progress now for nearly one year. Substantial progress has been made, but several issues remain unresolved. We expect to complete the negotiations sometime this spring, hopefully by May 1. As soon as the negotiations reach a stage which will permit meaningful discussions, we will wish to begin consultations with you and the Foreign Relations Committee on the substance of the reversion agreement and on steps for obtaining the advice and consent of the Senate. Our hope will be to obtain Senate action this year to permit both governments to go ahead with preparations for reversion sometime in 1972.

Sincerely,

WILLIAM P. ROGERS.

Mr. BYRD of Virginia. Mr. President, I think it worthwhile, too, to have printed in the RECORD the background chronology of the Okinawa question beginning with my Senate speech of May 29, 1969.

I ask unanimous consent to have printed at this point in the RECORD my speech of May 29, 1969; my speech of June 23, 1969, captioned "Future Status of Okinawa"; my statement to the Senate in presenting the resolution of November 4, 1969; my speech to the Senate of November 5, 1969, including the rollcall vote on the Byrd resolution; my Senate speech on November 25, 1969; and the Senate statement by Senator HOLLINGS of February 25, 1970, along with his letter to President Nixon and President Nixon's reply.

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

[From the CONGRESSIONAL RECORD, May 29, 1969]

OKINAWA

Mr. BYRD of Virginia. Mr. President, the Foreign Minister of Japan will arrive in Washington Saturday, May 31.

He will be in the United States to discuss the future status of the island of Okinawa.

Okinawa, and in fact the whole U.S. position in the Far East, is part of the heritage of World War II, which ended 24 years ago.

During the past quarter century, the United States has entered into mutual defense agreements with 44 nations—and has been involved in three major wars, counting World War II.

I doubt that any other nation in history, during such a short period of time, has engaged in three different major wars.

The U.S. Senate, under the Constitution, has a responsibility for foreign policy.

Too often during the past 25 years, the Senate has abdicated its responsibility in the field of foreign affairs, relying instead on the Department of State. Now I know that within that Department the overwhelming majority are dedicated, conscientious individuals; I know, too, that many of them are men of great ability.

But, I know also that whatever the reason, or wherever the responsibility may lie, the fact is that our Nation in this year of 1969 finds itself in a most unenviable position.

We are the dominant party in the North Atlantic Treaty Organization, the purpose of which is to guarantee the freedom of Europe; we are the dominant party of ANZUS—the treaty among Australia, New Zealand, and the United States; we are the military head of CENTO—Central Treaty Organization—Turkey, Iran, and Pakistan; we are the dominant partner in the Southeast Asia Treaty Organization, one of the prime reasons, according to former Secretary of State Dean Rusk, that the United States became involved in the war in Vietnam; we have guaranteed the security of Free China, and we have guaranteed the security of Japan.

As a practical matter, we have become the policeman of the world.

Can we logically continue in this role? Should we, even if we could?

Twenty-four years after the defeat of Germany, we have 225,000 troops in Europe, mostly in West Germany.

Twenty-four years after the defeat of Japan, we have nearly 1 million military personnel in the far Pacific, on land and sea.

The question of Okinawa, which the Japanese Foreign Minister is coming here to discuss, is of great significance to our position in the Pacific.

The status of the island has become the most inflammatory political issue in Japan; a clamor is rising among Japanese and Okinawans for the reversion of the Ryukyu Islands to Japanese administration.

There are many factors behind this move by Japan to regain administrative control of

Okinawa, one of which is the political fate of the administration of Prime Minister Sato.

In Japan, leftist elements, including the Socialist and Communist Parties and radical student groups, have vowed to wage a massive campaign of confrontation with the Government in 1970 to force the dissolution of the United States-Japanese Security Treaty. In addition, the same elements have coupled with this a demand that the United States withdraw completely from Okinawa.

This reminds one of the effort of elements in Panama to blackmail the United States into giving up the Panama Canal. The administration of President Johnson drew a treaty to meet the demands of the Panamanians, but strong opposition in the Senate kept the President from bringing the issue to a vote.

Okinawa is our most important single military base complex in the Far East—and is strategically located.

The United States has had unrestricted use of the island since World War II.

Beginning with President Eisenhower, each administration since 1951, has firmly maintained that the unrestricted use of U.S. bases on Okinawa is vital if the United States is to continue to have obligations in the Far East.

Sometimes the future status of Okinawa is linked to the United States-Japanese Mutual Security Treaty in which the United States guarantees the freedom and safety of Japan.

Such linkage is not correct. These are two separate issues.

The Mutual Security Treaty with Japan was consummated in 1960. Either party has the right to reopen it after 10 years, otherwise it remains in effect.

But, the status of Okinawa was determined by the 1952 Treaty of Peace with Japan. There is no legal obligation to discuss reversion of the island to Japan at this time or any other time.

The United States has complete administrative authority over the Ryukyu Islands, the largest of which is Okinawa, under the provisions of article 3 of the 1952 Treaty of Peace. This peace treaty is entirely separate—and I want to emphasize that—from the 1960 Mutual Defense Treaty with Japan.

The Japanese Government recognizes the important contribution of our Okinawa bases to Japanese and Asian security and is not likely to seek the removal of our bases. The Japanese Government does, however, want administrative control of the island which supports our major military base complex in the West Pacific.

To state it another way, the Japanese Government wants the United States to continue to guarantee the safety of Japan; to continue to guarantee the safety of Okinawa; to continue to spend hundreds of millions of dollars on Okinawa—$260 million last year. But it seeks to put restrictions on what the United States can do.

Japan wants a veto over any U.S. action affecting Okinawa. It specifically wants the right to deny to the United States the authority to store nuclear weapons on Okinawa and would require prior consultation before our military forces based there could be used.

In other words, the United States no longer would have unrestricted use of Okinawa.

Our role as the defender of the Far East has enabled Japan to avoid the burden of rearmament—less than 1 percent of her gross national product is spent on defense—and thus concentrate on expanding and modernizing its domestic economy.

In defense matters, the Japanese have gotten a free ride. As a direct result, Japan's present gross national product is over $120 billion and ranks third in the world, behind only the United States and the Soviet Union.

While the peace treaty with Japan gives the United States unrestricted rights on Okinawa, the 1960 Mutual Security Treaty provides that our military forces based in Japan cannot be used without prior consultation with the Japanese Government.

For example, when the North Koreans seized the U.S.S. *Pueblo* last year, Adm. Frank L. Johnson, commander of naval forces in Japan, testified that one reason aid could not be sent to the *Pueblo* was that approval first must be obtained from the Japanese Government to use U.S. aircraft based in Japan, those being the nearest aircraft available.

The Japanese Government now seeks to extend such authority to Okinawa.

Whether the United States should continue to guarantee the freedom of Japan, and Free China; whether we should continue the mutual defense arrangements covering the eight countries signing the Southeast Asia Treaty; plus the Phillipines; plus Australia and New Zealand; plus Thailand, Laos and Vietnam, is debatable.

But what is clear-cut commonsense, in my judgment, is that if we are to continue to guarantee the security of the Asian nations—and our Government has not advocated scrapping these commitments—then I say that it is only logical, sound, and responsible that the United States continue to have the unrestricted use of its greatest base in the West Pacific; namely, Okinawa.

The demand on the part of Japan that she obtain administrative authority on Okinawa stems from President Kennedy's statement in 1962 that he looked forward to the island's reversion to Japan "when the security interest of the free world will permit."

President Johnson reaffirmed this statement, and, in 1967, he and the Japanese Prime Minister agreed that the United States and Japan should keep the status of the Ryukyu Islands under review, "guided by the aim of returning administrative rights of these islands to Japan."

While I agree that eventually the Ryukyu Islands will be returned to Japan, I think it unfortunate that public statements by past Presidents, not binding on the U.S. Senate, have aroused the hopes of the Japanese that it could be accomplished at an early date.

It would be foolhardy, in my judgment, to commit the United States to defend most of the Far East and then to give away this country's unrestricted right to use its military bases on Okinawa.

For 4 long years, we have fought the Vietnam war with one hand tied behind our back. As a result, the war has been prolonged and the casualties increased.

Let us not be so foolish as to get into a similar position by giving someone else control over our principal military complex.

It is vitally important that public attention be focused on this issue of unrestricted use of our bases on Okinawa.

I speak as one who is not sympathetic to our deep involvement in Southeast Asia, one who from the beginning regarded it as an error of judgment to become involved in a ground war there.

I speak as one who questions the wisdom of our country's committing itself to mutual defense agreements with 44 different nations.

I speak as one who feels that we cannot logically be the world's policeman.

If by the act of granting Japan administrative control over Okinawa, the United States could insure a multinational defense structure in the Far East, with increased participation by Japan—if this action would relieve our country of a measure of its heavy international responsibilities—then, I would support a reversion of Okinawa to Japanese control.

But this is not the case.

Quite the contrary. Surrender of control over Okinawa would only make more difficult our role in the Pacific.

The issue must be decided by the Senate; it was the Senate which ratified the treaty of peace in 1952, which gave to the United States the unrestricted use of Okinawa.

In my opinion, so long as the United States maintains its significant role in the Far East, the continued unrestricted use of our bases on Okinawa is vital and fundamental.

[From the CONGRESSIONAL RECORD, June 23, 1969]

FUTURE STATUS OF OKINAWA

Mr. BYRD of Virginia. Mr. President, on May 29, just prior to the visit of the Japanese Foreign Minister to the United States, I addressed the Senate on the future status of Okinawa.

Under the 1952 Treaty of Peace with Japan, the United States was granted the unrestricted use of the island of Okinawa in the far Pacific. On this island, we have our greatest Pacific military base complex.

The Japanese Government is seeking administrative control of Okinawa, which is to say that it wants a veto over any U.S. action affecting Okinawa. It specifically wants the right to deny the United States the authority to store nuclear weapons on Okinawa, and would require prior consultation before our military forces based there could be used.

In speaking to the Senate, I expressed the view that it is debatable whether the United States should continue to guarantee the security of much of Asia.

But I expressed the view, too, that if we are to continue to guarantee the security of the Asian nations—and our Government has not advocated reducing these commitments—then it seems only logical, sound, and responsible that the United States continue to have the unrestricted use of its greatest base in the west Pacific; namely, Okinawa.

It would be foolhardy, in my judgment, to commit the United States to defend most of the Far East and then to give away this country's unrestricted right to use its military bases on Okinawa.

For 4 years we have fought the war in Vietnam with one hand tied behind our back. Let us not be so foolish now as to get into a similar position by giving someone else control over our principal military complex.

My Senate speech on Okinawa was published throughout Asia. Such newspapers as Asahi in Tokyo published the full text.

The Japanese newspapers, of course, do not agree with my view. It was given full coverage, however, by such papers as the Japanese Times and Yomiuri, which ran it in both its Japanese and English editions.

The future status of Okinawa is the most burning political issue in Japan.

The purpose of my speech was to focus public attention on what I consider to be a matter of great importance—assuming our Nation plans to continue to play a major role in the far Pacific.

Even the New York Times said in discussing the Japanese Foreign Minister's visit to Washington that—

"The Japanese must recognize that they cannot continue to enjoy the luxury of American protection without making some sacrifices on their own on behalf of mutual security."

While my speech received a cool reception in Japan, it appears to have helped focus attention on an important problem. It received support from the Shreveport, La., Journal; the Birmingham, Ala., News; the Lynchburg, Va., News; the Northern Virginia Daily, Strasburg, Va.; the Hartford, Conn., Courant; the Phoenix, Ariz., Republic; and the Nashville, Tenn., Banner, as well as from Chicago Tribune columnist, Walter Trohan.

I received the following telegram from the Chamber of Commerce of the United States in Okinawa:

"Applaud your speech in the Senate 29 May stop Please air mail copy complete text."

I also received the following telegram from the Patton Crosswhite Post 6975, Veterans of Foreign Wars, Bristol, Va.-Tenn.:

"Members oppose the return of Okinawa to the Japanese Government."

I ask unanimous consent that the text of various editorials mentioned above be published in the RECORD at this point.

(There being no objection, the editorials were ordered to be printed in the RECORD, as follows:)

[From the Shreveport (La.) Journal, May 30, 1969]

OKINAWA VITAL TO U.S. SECURITY

So long as the United States maintains its role as the defender of the Far East, the continued unrestricted use of this nation's military bases on Okinawa is vital and fundamental to the security of America and the rest of the free world.

This is the warning sounded by U.S. Sen. Harry F. Byrd Jr. of Virginia on the eve of a visit to Washington by the Foreign Minister of Japan, who will be in the United States to discuss the future status of the Island of Okinawa.

Senator Byrd, in a speech to his colleagues Thursday, and the U.S. Senate, under the Constitution, has a responsibility for foreign policy, but that too often during the past 25 years the Senate has abdicated this responsibility and relied instead on the Department of State.

Today the United States has become the policeman of the world, having entered into mutual defense agreements with 44 nations.

Senator Byrd asks, "Can we logically continue in this role? Should we, even if we could?

"Twenty-four years after the defeat of Germany we have 225,000 troops in Europe, mostly in West Germany.

"Twenty-four years after the defeat of Japan, we have nearly 1,000,000 military personnel in the Far Pacific, on land and sea."

Behind Japan's efforts to regain administrative control of Okinawa are many factors, one of which is the political fate of Prime Minister Sato. Leftist elements including the Socialist and Communist parties and radical student groups, have demanded that the United States withdraw completely from Okinawa.

The United States has had unrestricted use of Okinawa since World War II. The status of the island was determined by the 1952 Treaty of Peace with Japan. There is no legal obligation on the part of the United States to discuss reversion of the island to Japan at this time or any other time.

As analyzed by Senator Byrd, "The Japanese Government wants the United States to continue to guarantee the safety of Japan; to continue to guarantee the safety of Okinawa; to continue to spend hundreds of millions of dollars on Okinawa ($260,000,000 last year). But, it seeks to put restrictions on what the United States can do.

"Japan wants a veto over any U.S. action affecting Okinawa. It specifically wants the right to deny the United States the authority to store nuclear weapons on Okinawa and would require prior consultation before our military forces based there could be used."

In defense matters, the Virginia senator pointed out, the Japanese have been given a free ride. As a direct result, Japan's present gross national product is more than one hundred and twenty billion dollars a year and ranks third in the world, behind only those of the United States and the Soviet Union. Japan's expenses for its own national defense are less than one per cent of the value of its gross national product.

For four years the United States has fought the Vietnamese war with one hand tied behind its back. To relinquish control of Okinawa to the Japanese at this time—regardless of our friendship with the country—would be to further cripple ourselves for the benefit of others.

Senator Byrd deserves the gratitude of all Americans for his alertness and for his forthright stand against an action which could destroy the military security achieved for this nation by the men who gave their lives to take Okinawa in World War II.

[From the Birmingham, (Ala.) News, May 30, 1969]

OKINAWA: NOT NOW

Printed on the opposite page today are excerpts from a speech made in the U.S. Senate yesterday by Sen. Harry F. Byrd, Jr., of Virginia.

The subject of the speech is Okinawa, and it is timely because the Japanese minister arrives in Washington tomorrow for talks on the status of that island.

American forces captured Okinawa in the last major land battle against Japan in World War II. Since then the U.S. has administered the affairs of the island. Important military bases are maintained there under the terms of the peace treaty.

Under a separate agreement—the U.S.-Japan Mutual Security Treaty—the U.S. maintains troops in Japan itself. But, as Sen. Byrd pointed out yesterday, there are restrictions imposed on the use of U.S. forces based in Japan.

Increasingly in recent years there has been agitation in Japan against both the Mutual Security Treaty, which will be up for renegotiation next year, and U.S. control of Okinawa. But it is important to keep the two issues separate.

There may be modifications next year in the Mutual Security Treaty binding the two one-time enemies. This is a legitimate subject of negotiation and agreement—or, if the two nations so conclude, of disagreement.

The News believes that extension of the security treaty is in the national interest of both countries. Scrapping it would force the U.S. to re-think much of its Pacific strategy; it also would impose dramatic new responsibilities on the Japanese government which, under the protection of the U.S. defense umbrella, has achieved a near miraculous economic reconstruction without the nasty necessity of worrying much about its national defense.

But this newspaper does not believe that the U.S., in exchange for renewal of the security agreement—which as we say is of at least as much importance to Japan as to America—need succumb to pressure on the at-this-point extraneous issue of Okinawa.

To repeat: The two things are distinct and separate, despite the efforts of militant Japanese leftists to lump them into one big anti-American "cause."

With Sen. Byrd we assume that someday administrative control of Okinawa will revert to Japan. But it would be foolhardy under the present circumstances, when we are deeply involved in a war in Southeast Asia and committed to a border defense role in alliance with non-Communist nations in the region; to hand over or agree to hand-tying restrictions on the use of one of the key American military outposts in the Western Pacific.

We hope that the talks with the Japanese foreign minister will be cordial and constructive. But the Tokyo government should be given to understand that the question of Okinawa's reversion to Japanese control must wait more propitious times and meanwhile should not be allowed—by Tokyo or by us—to damage the good and mutually beneficial relations which have existed between the two countries since World War II or to poison the atmosphere in which the important forthcoming negotiations on the Mutual Security Treaty will be conducted.

As usual, Harry Byrd talked sense in the Senate yesterday. This is a refreshing change from what we too often hear from some other members of the august body, whose attacks on the U.S. defense establishment and quaint views on national security resemble nothing much as an apparent national death-wish.

[From the CONGRESSIONAL RECORD, Nov. 4, 1969]

OKINAWA

Mr. BYRD of Virginia. Mr. President, I send an amendment to the desk and asked that it be stated at this time, and then I wish to address a parliamentary inquiry to the Chair.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

"On page 13, after line 10, insert the following:

" 'SEC. 106. It is the sense of the Congress that the President shall not enter into any agreement or understanding, the effect of which would be to change the status of any territory referred to in Article 3 of the Treaty of Peace with Japan, without the advice and consent of the Senate.' "

Mr. BYRD of Virginia. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Virginia will state it.

Mr. BYRD of Virginia. I should like to ask the Chair whether the amendment which I have just submitted would be subject to a point of order.

The PRESIDING OFFICER. The Chair is informed by the parliamentarian that this is a sense resolution that does not involve legislation.

Mr. BYRD of Virginia. I thank the Chair. I interpret the Chair's ruling to mean that the amendment can be appropriately and properly presented to the pending legislation.

The PRESIDING OFFICER. The Senator from Virginia is correct.

Mr. BYRD of Virginia. Mr. President, I should like to address myself briefly to the amendment. I do not seek a vote this afternoon.

Mr. President, later this month, the Prime Minister of Japan, Mr. Sato, will come to the United States to discuss with the President the future status of the Ryukyu Islands, the principal one being Okinawa.

There will be a difference of views among Members of the Senate as to what the future role of Okinawa shall be. There will be some Members who will oppose any change in the present status, the present status being that the United States has sole and exclusive control over Okinawa.

There will be other Members of the Senate who will feel that there should be a change, and that Okinawa should revert to the administrative control of Japan.

Mr. President, my amendment does not suggest what the future status of Okinawa shall be. It does not in any way circumscribe the State Department or the President in negotiating with Prime Minister Sato, or other officials of the Japanese Government.

What the amendment provides is that it shall be the sense of Congress that whatever changes the administration concludes to make with the Japanese Government, affecting the treaty of peace with Japan, shall come to the Senate for ratification.

The treaty of peace with Japan was ratified by the Senate in 1952. It was under that treaty that the United States was given control over the Ryukyus which includes Okinawa.

Because the treaty governing control over the Ryukyus was ratified by the Senate, it is my view that any changes in the treaty

should come to the Senate for approval or disapproval.

Mr. President, I do not argue whether it would be wise or unwise to change the treaty of peace with Japan. What I am suggesting to the Senate is that whatever changes are deemed desirable by the executive branch not become effective by unilateral action, but that they come before the Senate for its approval or disapproval.

It was only a few weeks ago—a few months ago, perhaps—that the Senate adopted, I believe unanimously, the national commitments resolution which was presented to the Senate by the distinguished Senator from Arkansas (Mr. FULBRIGHT), chairman of the Foreign Relations Committee. The purpose of that national commitments resolution was to attempt to restore to the Senate some of the constitutional prerogatives which are Senate's but which, in my judgment, and apparently in the judgment of many Senators, have been taken over in recent years by the executive branch.

So this amendment, which will be presented tomorrow, is, in reality, the first opportunity that the Senate has had to pass on a specific issue coming before the Senate since the national commitments resolution was adopted by this body.

I want to emphasize again, Mr. President, that the amendment does not in any way circumscribe the State Department or the Chief Executive of our Nation in his negotiations with the government of Japan. But it does say, "Whatever decisions you make must then be submitted to the Senate of the United States for approval or disapproval." That, as I see it, is the constitutional process under which our Government is supposed to work.

I feel that in recent years the executive branch of the Government has assumed too much authority, and I think the Senate of the United States has helped the executive branch assume authority by refusing to demand that its own constitutional prerogatives be upheld. I feel that we have given away many of our responsibilities.

Here is an opportunity, on a vitally important issue, to decide whether there shall be a change in the control of the greatest military base complex that the United States has in the far Pacific—namely, Okinawa—by unilateral executive action, or whether such action taken by the President, to be effective, must be submitted to the Senate for its consideration, advice, and consent.

I shall not detain the Senate longer today. Tomorrow I would like to present a few additional facts in regard to the amendment and mention some other aspects of the problem of Okinawa which faces the United States.

I think it will be a very important mission which the premier of Japan will undertake on behalf of his government when he comes to the United States on the 18th of this month. I think it is very desirable at this time to focus on the question of Okinawa. I think the Japanese Government should understand that, while the negotiations properly will be carried out by the executive branch of the Government, the Senate of the United States will participate in the final decision by having the opportunity to accept or to reject whatever commitments are made to that government on behalf of the United States.

[From the CONGRESSIONAL RECORD, Nov. 5, 1969]

OKINAWA

Mr. BYRD of Virginia. Mr. President, the pending amendment was laid down yesterday.

It deals with the treaty of peace signed by the United States with Japan in 1952. The amendment provides that the treaty of peace having been ratified by the Senate of the United States, any changes which are proposed in the treaty shall come back to the U.S. Senate for approval or disapproval.

The Prime Minister of Japan will arrive in Washington on Monday, November 17.

He will be in the United States to discuss the future status of the island of Okinawa.

Okinawa, and, in fact, the whole U.S. position in the Far East, is part of the heritage of World War II, which ended 24 years ago.

During the past quarter century, the United States has entered into mutual defense agreements with 44 nations—and has been involved in three major wars, counting World War II.

I doubt that any other nation in history, during such a short period of time, has engaged in three different major wars.

The U.S. Senate, under the Constitution, has a responsibility for foreign policy.

Too often during the past 25 years, the Senate has abdicated its responsibility in the field of foreign affairs, relying instead on the Department of State. Now, I know that within that Department that overwhelming majority are dedicated, conscientious individuals; I know, too, that many of them are men of great ability.

But I know also that whatever the reason, or wherever the responsibility may lie, the fact is that our Nation in this year of 1969 finds itself in a most unenviable position.

We are the dominant party in the North Atlantic Treaty Organization, the purpose of which is to guarantee the freedom of Europe; we are the dominant party of ANZUS—the treaty among Australia, New Zealand, and the United States; we are the military head of CENTO—Central Treaty Organization—Turkey, Iran, and Pakistan; we are the dominant partner in the Southeast Asia Treaty Organization, one of the prime reasons, according to former Secretary of State, Dean Rusk, that the United States become involved in the war in Vietnam; we have guaranteed the security of free China, and we have guaranteed the security of Japan.

As a practical matter, we have become the policeman of the world.

Can we logically continue in this role? Should we, even if we could?

Twenty-four years after the defeat of Germany, we have 225,000 troops in Europe, mostly in West Germany.

Twenty-four years after the defeat of Japan, we have nearly 1 million military personnel in the far Pacific, on land and sea.

The question of Okinawa, which the Japanese Prime Minister is coming here to discuss is of great significance to our position in the Pacific.

Okinawa is our most important single military base complex in the Far East—and is strategically located.

The United States has had unrestricted use of the island since World War II.

Beginning with President Eisenhower, each administration since 1951, has firmly maintained that the unrestricted use of U.S. bases on Okinawa is vital if the United States is to continue to have obligations in the Far East.

Sometimes the future status of Okinawa is linked to the United States-Japan Mutual Security Treaty in which the United States guarantees the freedom and safety of Japan. Such linkage is not correct. These are two separate issues.

The Mutual Security Treaty with Japan was consummated in 1960. Either party has the right to reopen it after 10 years, otherwise it remains in effect.

But, the status of Okinawa was determined by the 1952 Treaty of Peace with Japan. There is no legal obligation to discuss reversion of the island to Japan at this or any other time.

The United States has complete administrative authority over the Ryukyu Islands, the largest of which is Okinawa, under the provisions of article 3 of the 1952 Treaty of Peace. This peace treaty is entirely separate—and I want to emphasize that—from the 1960 Mutual Defense Treaty with Japan.

The Japanese Government recognizes the important contribution of our Okinawa bases to Japanese and Asian security and is not likely to seek the removal of our bases. The Japanese Government does, however, want administrative control of the island which supports our major military base complex in the West Pacific.

To state it another way, the Japanese Government wants the United States to continue the safety of Japan; to guarantee the safety of Okinawa; to continue to spend hundreds of millions of dollars on Okinawa—$260 million last year. But it seeks to put restrictions on what the United States can do.

Japan wants a veto over any U.S. action affecting Okinawa. It specifically wants the right to deny to the United States the authority to store nuclear weapons on Okinawa and would require prior consultation before our military forces based there could be used.

In other words, the United States no longer would have restricted use of Okinawa.

Our role as the defender of the Far East has enabled Japan to avoid the burden of rearmament—less than 1 percent of her gross national product is spent on defense—and thus concentrate on expanding and modernizing its domestic economy.

In defense matters, the Japanese have gotten a free ride. As a direct result, Japan's present gross national product is over $120 billion and Japan ranks third in the world, behind only the United States and the Soviet Union.

While the peace treaty with Japan gives the United States unrestricted rights on Okinawa, the 1960 Mutual Security treaty provides that our military forces based in Japan cannot be used without prior consultation with the Japanese Government.

For example, when the North Koreans seized the U.S.S. *Pueblo* last year, Adm. Frank L. Johnson, commander of naval forces in Japan, testified that one reason aid could not be sent to the *Pueblo* was that approval first must be obtained from the Japanese Government to use U.S. aircraft based in Japan, those being the nearest aircraft available.

The Japanese Government now seeks to extend such authority to Okinawa.

Whether the United States should continue to guarantee the freedom of Japan, and free China; whether we should continue the mutual defense arrangements covering the eight countries signing the Southeast Asia Treaty; plus the Philippines; plus Australia and New Zealand; plus Thailand, Laos, and Vietnam, is debatable.

But what is clear-cut commonsense, in my judgment, is that if we are to continue to guarantee the security of the Asian nations—and our Government has not advocated scrapping these commitments—then I say that it is only logical, sound, and responsible that the United States continue to have the unrestricted use of its greatest base in the West Pacific; namely, Okinawa.

While I agree that eventually the Ryukyu Islands will be returned to Japan, it would be foolhardy, in my judgment, to commit the United States to defend most of the Far East and then to give away this country's unrestricted right to use its military bases on Okinawa.

If by the act of granting Japan administrative control over Okinawa, the United States could insure a multinational defense structure in the Far East, with increased participation by Japan—if this action would relieve our country of a measure of its heavy international responsibilities—then, I would support a reversion of Okinawa to Japanese control.

But this is not the case.

Quite the contrary. Surrender of control over Okinawa would only make more difficult our role in the Pacific.

The future role of the United States in Far Pacific is of tremendous importance.

It is of great importance to the American people—and it is of great importance to the people of Asia.

Many feel, as do I, that our worldwide commitments must be reduced. This, too, appears to be the view of President Nixon.

But so long as the United States maintains its significant role in the Far East, the continued unrestricted use of our bases on Okinawa is vital and fundamental.

This month's visit to the United States by the Japanese Prime Minister presents a good opportunity for our Government to focus attention on the Far Pacific and the future role there, both of the United States and Japan.

The issue of Okinawa and its future status is not alone an executive decision.

It was the U.S. Senate which, in 1952, ratified the Treaty of Peace, which treaty gave to the United States the unrestricted use of Okinawa.

That treaty, Mr. President, was approved by the Senate on March 20, 1952. The yeas were 66, the nays 10. Two-thirds of the Senators present and voting having voted in the affirmative, the treaty of peace with Japan was agreed to on March 20, 1952.

Any change in that treaty must come to the Senate for approval. It would be unwise and undesirable for the executive branch to make commitments to Japan without the consent of the Senate.

If the Senate is to fulfill its constitutional responsibility in the field of foreign policy, it must make clear that any change in the Treaty of Peace with Japan must be ratified by the Senate.

The issue of Okinawa is important on its own; and the Senate may be divided on the proper course to pursue.

But the Senate, I should think, would be united in its determination to require Senate ratification of any changes which may be made in regard to treaties which have been ratified by the Senate.

For the Senate to concede to the executive branch of Government the right to change treaty commitments without Senate approval would be to make a mockery of the national commitments resolution it adopted unanimously only a few months ago.

On the eve of Prime Minister Sato's visit to the United States, I call on the Department of State and the President to make clear to the Prime Minister that any change in the treaties between the United States and Japan must be submitted to the Senate for approval.

Mr. BYRD of Virginia. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

The result was announced—yeas 63, nays 14, as follows:

[No. 137 Leg.]

YEAS—63

Allen, Allott, Anderson, Baker, Bellmon, Bennett, Bible, Burdick, Byrd, Va., Byrd, W. Va., Cannon, Case, Church, Cook, Cotton, Curtis, Dodd, Dole, Eagleton, Eastland, Ellender.

Ervin, Fulbright, Goodell, Gravel, Gurney, Hansen, Hart, Holland, Hruska, Hughes, Jordan, Idaho, Magnuson, McClellan, McGovern, McIntyre, Miller, Mondale, Montoya, Moss, Mundt, Murphy.

Nelson, Packwood, Pastore, Pearson, Pell, Prouty, Proxmire, Randolph, Russell, Schweiker, Smith, Maine, Spong, Stennis, Stevens, Symington, Talmadge, Tydings, Williams, N.J., Williams, Del., Young, N. Dak., Young, Ohio.

NAYS—14

Boggs, Brooke, Harris, Hatfield, Inouye.
Javits, Kennedy, Mansfield, Mathias, McCarthy.
McGee, Muskie, Percy, Scott.

PRESENT AND ANNOUNCING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Griffin, against.

NOT VOTING—22

Aiken, Bayh, Cooper, Cranston, Dominick, Fannin, Fong, Goldwater.

Gore, Hartke, Hollings, Jackson, Jordan, N.C., Long, Metcalf, Ribicoff.

Saxbe, Smith, Ill., Sparkman, Thurmond, Tower, Yarborough.

SPEECH BY SENATOR HARRY F. BYRD, JR., DEMOCRAT OF VIRGINIA ON THE FLOOR OF THE SENATE, NOV. 25, 1969

During the weekend, I had an apportunity to study the Communique issued Friday by the President of the United States and the Prime Minister of Japan.

It was cordial in tone, as it should have been. It is important, I feel, that there be a close and friendly relationship between Japan and the United States.

Prime Minister Sato's visit to the United States, as President Nixon made clear, should help achieve a better understanding between the two countries.

The text of the communique is three columns of newspaper type. It is divided into 15 brief sections.

The key section is number 6.

This is the section which deals specifically with Okinawa. In this section, the Prime Minister emphasized his view that the time had come to respond to the strong desire of the people of Japan to return Okinawa to Japanese control. President Nixon expressed appreciation of the Prime Minister's view.

Now we come to the key sentences.

"They (President Nixon and Prime Minister Sato) therefore agreed that the two governments would immediately enter into consultations regarding specific arrangements for accomplishing the early reversion of Okinawa without detriment to the security of the Far East, including Japan.

"They further agreed to expedite the consultations with a view to accomplishing the reversion during 1972, subject to the conclusion of these specific arrangements with the necessary legislative support."

Now, let's analyze the above language.

Just what agreement was reached by Mr. Nixon and Mr. Sato?

1. They "agreed that the two governments would immediately enter into consultations regarding specific arrangements for accomplishing the early reversion of Okinawa" . . . and,

2. Such consultations would be "subject to the conclusion of these specific arrangements with the necessary legislative support."

So, it seems clear that the only agreement made by President Nixon is one of principle, namely, an early reversion of Okinawa.

But no details have been agreed to.

No specific arrangements have been agreed to.

The agreement, to cite the text of the communique, is to "enter into consultations regarding specific arrangements."

As one who feels that the United States must have the unrestricted use of Okinawa, our greatest military complex in the Far Pacific, if we are to continue our widespread commitments in Asia, I frankly am relieved since reading the text of the communique.

The text does not bear out the newspaper headlines concerning the communique.

The only agreement President Nixon made was to "immediately enter into consultations regarding specific arrangements . . ."

And then that was followed by the two leaders of government specifying that any specific arrangement would be subject to legislative support action which, in so far as the United States is concerned, means approval by the Senate.

I am glad to state to the Senate that I support this communique. It should help Prime Minister Sato in Japan without forfeiture by the United States of any control over Okinawa other than agreeing to enter "into consultations regarding specific arrangements . . ."

I am especially pleased that the Senate's role in any final arrangements affecting Okinawa is specifically recognized in the text of the communique.

The fact that this is so clearly spelled out in the communique results, I feel, from the action taken by the Senate of the United States on November 5, 1969.

On that date, the Senate, by a recorded vote of 63 to 14, specified that any change in the Treaty of Peace with Japan must come to the Senate for approval or disapproval.

In the Nixon/Sato Communique 16 days later, both leaders recognized that any "specific arrangements" affecting Okinawa would be subject to Senate approval.

In my judgment, this establishes a historic precedent and one which is of vital importance both to the Senate and to the nation.

President Johnson, last year, unilaterally returned to Japan the Bonin Islands, which included Iwo Jima, without submitting his action to the Senate for ratification.

The Senate was not aware of President Johnson's action until the deed had been accomplished.

But the Senate on November 5 of this year served notice that any changes in treaties previously ratified by the Senate must be submitted to the Senate for approval.

This action of the Senate on November 5, followed by the Nixon/Sato Communique of November 21, makes clear that both the Senate and President Nixon are aware that no change may be made in the present status of Okinawa without Senate approval.

It is difficult to predict what the Senate will do in regard to Okinawa—and I do not intend to try.

The leadership of the Senate favors an early return of Okinawa to Japan, but I have talked with a great many Senators who do not agree with that viewpoint.

I have the feeling that the United States will be retaining the free and unrestricted use of Okinawa until such time as we reduce our commitments to defend so many Asian nations. It is my hope that we will soon begin to reduce our Asian commitments.

[From the CONGRESSIONAL RECORD, Feb. 25, 1970]

THE DISPOSITION OF OKINAWA

Mr. HOLLINGS. Mr. President, during the last session of Congress, I expressed my concern over the question of the commitment of the United States to Japan regarding the disposition of Okinawa. Since we obtained Okinawa under article 3 of the Peace Treaty of 1954, it was my judgment that any disposition of Okinawa required the advice and consent of the U.S. Senate. Although such Senate action would seem to be required, the issue was somewhat clouded in June of 1968 when President Johnson returned the Bonin Islands which were secured under the same article to Japan without benefit of congressional approval. ue to the importance of Okinawa under our present treaty commitments and considering the problems of seeking and maintaining peace in the Far East, it is my feeling that kinawa, bound by a treaty with the advice and consent of the Senate, can only be disposed of with the advice and consent of the Senate.

Senators may recall, on November 5, 1969, the Senator from Virginia (Mr. BYRD) offered an amendment to the State Department appropriation bill which stated:

"It is the sense of the Senate that any agreement or understanding entered into by the President to change the status of any territory referred to in Article 3 of the Treaty of Peace with Japan, shall not take effect without the advice and consent of the Senate."

This amendment was agreed to by a vote of 63–14.

Subsequently, President Nixon met with Premier Eisaku Sato of Japan on November 19, 20, and 21, 1969, "to exchange views on the present international situation and on other matters of mutual interest to the United States and Japan." On November 21, 1969, they issued a joint communique which stated in relation to Okinawa that they agreed "to expedite the consultations with the view to accomplishing the reversion during 1972 subject to the conclusion of these specific agreements with the necessary legislative support."

In view of the Senate resolution agreed to earlier that month, I was extremely concerned that the word "support" did not necessarily mean "advice and consent" and so stated on the floor of the Senate on November 25, 1969. On that same day I addressed a letter to the President of the United States requesting a clarification. At this point in the RECORD, I ask unanimous consent that this letter be printed in its entirety.

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

NOVEMBER 25, 1969.

Hon. RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I would appreciate your understanding as to the responsibility of the Legislative Branch of government in the disposition of Okinawa.

It appears that Okinawa, bound by a treaty, with the advice and consent of the Senate, could only be disposed of with the advice and consent of the Senate. Accordingly, to reaffirm this requirement, the United States Senate recently enacted the Byrd Resolution expressing the sense of the Senate, to this effect. Feeling still that you have adhered to this requirement in your talks with Prime Minister Sato, Senator Harry Byrd of Virginia has just commended the language of the Communique between the Prime Minister and yourself. And Senator Byrd commended you for recognizing this role of the Legislative Branch. However, I have just returned from Japan and a conference with Prime Minister Sato. It is my impression that Prime Minister Sato's view is best expressed in the *Japan Times* of November 11 in the article entitled "Sato Tells Opposition U.S. Will Okay Reversion Under 1972 Formula" in which the Prime Minister discounts the necessity for ratification of any agreement affecting Okinawa. Senator Byrd interprets the language under Section 6 of the Communique ". . . with necessary legislative support" as recognizing the necessity under the Constitution for ratification by the United States Senate. On the contrary, the use of the word "support" rather than "advice and consent" leads me to conclusion that as long as substantial support is obtained you do not believe that a ratification by a two-thirds vote of the United States Senate is necessary. Specifically, I am sure you would receive substantial support for the return of Okinawa without the uninhibited right of launching combat operations from members of the Democratic leadership and the Foreign Relations Committee. But this does not constitute "advice and consent."

As a result of my discussion with our commanders in the Far East, I do not believe that we can fulfill our commitments with the restrictions of the 1972 formula. I believe our commitments in the Far East and to world peace transcend the domestic and political problems of Japan, the textile problems here at home and other considerations that have been confused into the "Okinawa question." I believe in the ultimate return of Okinawa, but not now.

Accordingly, I would like an opportunity to vote on any agreement or treaty made affecting Okinawa. Please tell me whether or not Senator Byrd is correct in his understanding. Please tell me whether or not you believe that I, as a Senator, have this right on the Okinawa question.

Most respectfully, I am

ERNEST F. HOLLINGS.

Mr. HOLLINGS. Mr. President, on January 9, 1970, the President answered my letter and stated in part:

"Let me assure you that the Executive Branch will continue to maintain close contact with the Legislative Branch in order to work out mutually satisfactory arrangements for handling the problems of Okinawa reversion, including the appropriate form of Congressional participation in this matter."

I am reassured by this statement. Obviously, we do not seek to control the land or the people of Okinawa and we are certainly interested in maintaining friendly relations with Japan. However, I do believe in view of our commitments in the Far East the role of Okinawa is vital and I believe the Senate's role in this foreign policy issue is important. Consequently, I am pleased that the President has erased any doubt as to the Senate's participation which should eliminate any confusion on this point on the part of the people of the United States or Japan.

Mr. President, I ask unanimous consent that the letter from the President be printed in the RECORD in its entirety.

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

THE WHITE HOUSE,
Washington, January 9, 1970.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HOLLINGS: Your thoughtful letter of November 25 has been given careful consideration.

With regard to Congressional action on any agreement negotiated with Japan on Okinawa, I want to say that I am fully cognizant—as is Secretary Rogers—of the implication of the Senate vote on Senator Byrd's resolution of November 5. We intend to stay in close touch with the Congressional leadership and appropriate committees as our negotiations with Japan go along. As you know, we have already discussed Okinawa reversion with many members of the Congress and have benefited from your views.

It was because of the importance of Congressional judgment that we inserted into the Joint Communique of November 21 the statement that consultations with Japan would be expedited with a view to accomplishing the reversion during 1972 subject to the conclusion of specific arrangements with the necessary legislative support.

Let me assure you that the Executive Branch will continue to maintain close contact with the Legislative Branch in order to work out mutually satisfactory arrangements for handling the problem of Okinawa reversion, including the appropriate form of Congressional participation in this matter.

You also expressed concern, as a result of your discussion with our commanders in the Far East, that we could not fulfill our commitments in the Far East with the restrictions of the 1972 formula. I want to assure you that I gave the fullest consideration to this most important aspect of my talks with the Prime Minister. He and I agreed, as the communique stated, that it was important for the peace and security of the Far East that the United States should be in a position to carry out fully its defense treaty obligations in the area and that reversion should not hinder the effective discharge of these obligations.

As a result of my talks with the Prime Minister, I am convinced that the arrangements we will make for reversion will not impair our ability to meet our security commitments in Asia. This belief is shared by my senior military advisers. I also feel strongly that resolution of the Okinawa question is essential to healthy relations over the long term with a most important Asian ally, the Government and people of Japan.

I appreciate your writing to me about this important matter.

Sincerely,

RICHARD NIXON.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

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

(The remarks of Mr. COOK when he introduced Senate Joint Resolution 89 and the ensuing debate are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 575) entitled "An act to authorize funds to carry out the purposes of the Appalachian Region Development Act of 1965, as amended," with amendments in the nature of a substitute.

The message also announced that the House insists upon its amendments, requests a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. BLATNIK, Mr. JONES of Alabama, Mr. GRAY, Mr. EDMONDSON, Mr. HARSHA, Mr. SCHWENGEL, and Mr. CLEVELAND was appointed managers of the conference on the part of the House.

The message further announced that, pursuant to the provisions of section 1, Public Law 86–42, the Speaker had appointed Mr. MORSE of Massachusetts as a member of the U.S. Delegation of the Canada-U.S. Interparliamentary Group to fill the existing vacancy thereon.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. In accordance with the previous order, there will be a period for the transaction of routine morning business of not to exceed 30 minutes, with a limitation of 3 minutes on statements therein.

ORDER OF BUSINESS

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

(Mr. ERVIN's remarks when he introduced S. 1642 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. METCALF):

A joint resolution of the Legislature of the State of California; to the Committee on Aeronautics and Space Sciences:

"ASSEMBLY JOINT RESOLUTION No. 13—RELATIVE TO SPACE SHUTTLE PROGRAM

"Whereas, The hub of NASA's future space plans is the earth-orbited manned space station, from which interorbital ferries and planetary expeditions will depart, and hopefully, it will prove to be the precursor for the module that will eventually carry men to Mars and back; and

"Whereas, In order to support the station and its subsequent additions, an earth-to-orbit shuttle is required; and

"Whereas, Together, the space station and shuttle are the keystones to the next major accomplishments of the nation's space program; and

"Whereas, California's year-round climatic conditions are ideal for the earthside operations of the so-called "shuttle ship" to the future United States space station; and

"Whereas, California has a tremendous reserve of highly trained engineers and technicians experienced in aerospace; and

"Whereas, California's aerospace industry presently has unused capacity and the capability to supply all project components at the lowest cost; and

"Whereas, California offers a variety of launch and recovery sites in clear weather areas; and

"Whereas, California offers the necessary open space to allow for a launch area 7,000 miles long free of any population and not crossing over any foreign country, or miles of dry lakebed areas for recovery; and

"Whereas, California has available, in place, most of the operating facilities required; and

"Whereas, California's vast unemployment problem would be greatly alleviated with the employment that would be generated by locating the space shuttle project here; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States, and requests the National Aeronautics and Space Administration, to permanently locate the launch and reentry facilities for the space station shuttle ship project in the State of California; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the National Aeronautics and Space Administration."

Two joint resolutions of the Legislature of the State of California; to the Committee on Public Works:

"SENATE JOINT RESOLUTION No. 16

"Relative to earthquake-damaged dwellings

"Whereas, The northeast San Fernando Valley, situated in Los Angeles County, suffered a disastrous earthquake on the morning of February 9, 1971; and

"Whereas, It has been estimated that approximately 1,000 dwellings will be condemned as unsafe for human occupancy; and

"Whereas, The affected homeowners face staggering monetary expenditures as they attempt to repair and replace their domiciles; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Secretary of the Treasury to establish interest rates not to exceed 1 percent on Federal Small Business Administration loans to homeowners for repair or replacement or earthquake damaged dwellings; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States and to the Secretary of the Treasury.

"SENATE JOINT RESOLUTION No. 25

"Relative to economic dislocation caused by curtailment of the SST program

"Whereas, The recent decision of the Congress of the United States to suspend continued federal support of development of a supersonic transport will result in severe economic dislocation in parts of California; and

"Whereas, The elimination of subcontracted work related to SST development will result in yet more unemployment in an already severely depressed aerospace and technical job market in California; and

"Whereas, This economic crisis should be met by immediate federal action to provide California workers and California industry with new jobs and new contracts; and

"Whereas, It is hoped that Senator Alan Cranston and Senator John V. Tunney will especially do whatever they can to obtain federal assistance for the California economy; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memoralizes the President and the Congress of the United States to provide economic assistance to California to meet the economic dislocation caused by the curtailment of the SST program; and be it further

"Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. ELLENDER, from the Committee on Appropriations, with amendments:

H.J. Res. 567. A joint resolution making certain urgent supplemental appropriations for the fiscal year 1971, and for other purposes (Rept. No. 92–77).

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session, the following favorable executive reports of nominations were submitted:

By Mr. PASTORE, from the Committee on Commerce:

James W. Moreau, Joseph R. Steele, and Owen W. Siler, officers of the Coast Guard for promotion to the grade of rear admiral;

John H. Reed, of Maine, to be a member of the National Transportation Safety Board for the term expiring December 31, 1975;

Jame T. Lynn, of Ohio, to be Under Secretary of Commerce; and

William N. Letson, of Ohio, to be General Counsel of the Department of Commerce.

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. JAVITS:

S. 1641. A bill to provide federally guaranteed loans to necessitous firms which are affected with the public interest. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. ERVIN:

S. 1642. A bill to insure the separation of Federal powers by amending title I of the United States Code, to provide for the implementation of article I, section 7, of the Constitution. Referred to the Committee on the Judiciary.

By Mr. INOUYE:

S. 1643. A bill to authorize reduced postage rates for certain mail matter sent to Members of Congress. Referred to the Committee on Post Office and Civil Service.

By Mr. DOLE:

S. 1644. A bill to amend section 103 of the Internal Revenue Code of 1954 to increase the small issue exemption from the industrial development bond provision from $5,000,000 to $10,000,000. Referred to the Committee on Finance.

By Mr. COOK (for himself and Mr. STEVENS):

S.J. Res. 89. A joint resolution expressing a proposal by the Congress of the United States for the safe return of American prisoners of war and the accelerated withdrawal of all American military forces and equipment from South Vietnam. Referred to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JAVITS:

S. 1641. A bill to provide federally guaranteed loans to necessitous firms which are affected with the public interest. Referred to the Committee on Banking, Housing and Urban Affairs.

EMERGENCY LOAN GUARANTEE BILL

Mr. JAVITS. Mr. President, I send to the desk for appropriate reference a bill to establish a $5 billion Federal emergency loan guarantee authority, for providing U.S. guaranteed loans to enable necessitous businesses threatened with having to cut off essential public services to continue such services.

When the history books of the past 2 years are written there will quite possibly be some reference to the fact that we were for some weeks on the very edge of economic disaster because of the inability of U.S. businesses to maintain a sufficiently liquid position. The Penn Central incident attracted the major share of publicity, to be sure; but behind Penn Central were scores of other corporations, being gradually strangled in a liquidity squeeze. I have come away from conversations with financial leaders, and those in the business of lending money, convinced that many sound corporations would have failed for lack of ready cash but for the fact that there was only one major bankruptcy and that the Federal Reserve was able to act so decisively in that situation.

It would be tragic if the history books also had to relate that the U.S. Congress had failed to perceive the danger, even in retrospect, and had taken no action to prevent such incidents from taking place.

Mr. President, the bill I introduce today is the fourth in a series of high-priority economic legislation which I have introduced or cosponsored in this Congress. The first, the Emergency Employment Act of 1971—to provide public service employment—seeks to make a dent in our unacceptably high level of unemployment which has to date shown no signs of abating, and to provide State and local governments with sorely needed manpower in fields ranging from transportation and law enforcement to environmental protection.

The second, the administration's general revenue sharing bill, is important for the fact that it would turn back to State and local governments a share of the Federal fiscal growth dividend each year. It would introduce a new, more equitable principle into our tax system and help relieve the truly grave crisis conditions of State and local government finance. Although I believe the money to be shared under the program is not enough—I have introduced an amendment to that bill doubling the amount—the principle of general revenue sharing is one I thoroughly support.

The third priority economic legislation is the bill I introduced last month, to establish an emergency Price Stabilization Board, for restraining major inflationary wage and price increases. This temporary Board would in my opinion provide the administration with the margin it needs to speed up our economy and lower unemployment without setting loose new inflationary forces.

These bills if passed could together make substantial inroads into our unsatisfactory unemployment situation, the crisis conditions of many State and local governments and the still high rate of inflation. Thus they would speed our economy recovery. What they could not do, however, is insure that financial markets and public services would operate smoothly in the event of a future liquidity squeeze of a major corporation providing essential services which is what this bill would do.

It is similar in concept to the recommendations of the Republican members of the Joint Economic Committee in the Joint Economic Committee Annual Report of 1971, and is basically the same bill I introduced last July.

It would amount to an economic "war power" which the Federal Government could use when extraordinary weapons are called for.

At a time when an RFC-type operation is being openly discussed in Congress, my bill offers a modern alternative to the more bureaucratized RFC.

The bill would authorize the Secretary of the Treasury to guarantee loans made to businesses which are in necessitous circumstances, the discontinuance of whose operations would result in an unacceptable curtailment of service vital to the national interest. This guarantee authority would have a life of 1 year, by which time the Secretary must submit to Congress a report together with recommendations on the need for establishing a permanent Emergency Loan Guarantee Corporation. That Corporation, if recommended, and not vetoed by either House of Congress, would succeed to the Secretary's loan guarantee authority.

The Secretary cannot act indiscriminately under the provisions of the bill; he would be bound by a number of safeguards.

First. No guarantee could be made under my bill unless the Secretary certifies in writing that the loan to be guaranteed is necessary, considering the purposes of the bill; that the loan cannot otherwise be obtained on reasonable terms and conditions; that there is reasonable assurance of repayment, and that failure to provide a guarantee would in effect shut down the services for maintenance of which the loan is sought.

The Secretary would also have to certify that the end use of the loan will be in productive purposes which are necessary to the well-being of the national economy or a region thereof; also that the business to be assisted is one which offers services which are essential to the national or regional interest. The business in question could conceivably be undergoing reorganization under the Bankruptcy Act, so long as all the necessary conditions are met.

Second. Before making a guarantee the Secretary would consult with the chairman and the ranking minority members of the Banking Committees of the Senate and the House of Representatives. An appropriate analogy here is the consultations which the Federal Reserve Board carries on with the FDIC and the Federal Home Loan Bank Board before making changes in interest ceilings under regulation Q.

Third. The Secretary would be subject to ceilings on the amount he can guarantee. The maximum aggregate amount outstanding of guaranteed loans outstanding cannot exceed $5 billion. He must justify to Congress any guarantees—or series of guarantees to one borrower—which exceed $20 million in any one year, and such guarantees are subject to congressional veto.

Fourth. The Secretary could impose any conditions on the borrower he deems to be appropriate. This safeguard is intended to prevent the loan from merely enabling the borrower to siphon funds out of its productive enterprises for use in such activities as mergers and acquisitions, increased dividend payments, and so forth; or to bail out badly managed or failing businesses.

Fifth. The Secretary would be bound by the policy directive of a Loan Guarantee Policy Board, which also would be established by my bill. The membership of the Board would consist of a Chairman to be appointed by the President, the Chairman of the Federal Reserve Board, and the Secretary of the Treasury. The purpose of setting up this Board is to have some fully independent authority exercise overall supervision of the guarantee program. The Board would be directed in the bill to establish the general policies which shall govern who is eligible and who is ineligible for guarantees. These policies would be published and, of course, subject to public scrutiny. In particular, the Board would have to define the national or regional economic interest involved in granting or denying a guarantee.

Sixth. The Secretary of the Treasury is given visitation powers sufficient for him to insure that any guaranteed loan was being used for the purposes for which it was made.

To summarize, the bill contains two guarantee authorities: The first in the Secretary of the Treasury, would start immediately upon passage of the bill and last for one year. The second, if sent to the Congress by the Secretary, would permanently reside in the loan guarantee corporation. The fact that the President presently lacks economic "war powers" to cope with a liquidity emergency is reason enough for establishing the guarantee authority relatively soon, on a temporary basis, and with appropriate safeguards. I believe that the question of whether we need a permanent guarantee authority is one that can be deferred for the present time. It needs more study, and even if a permanent authority is called for, the details of the permanent guarantee corporation would require some time for planning. This is the reason for the 1-year period given the Secretary to come up with his report and recommendations.

Mr. President, recent newspaper reports have raised the possibility that the administration might ask Congress to approve an emergency loan guarantee for the Lockheed Corp. Lockheed's difficulties, as we all know, have stemmed primarily from the costs of developing the complex C–5A aircraft and, more recently, from the Rolls Royce bankruptcy. Whether or not Lockheed could qualify for a guarantee under my bill is something the Secretary of the Treasury would have to determine. But the important thing here is that Lockheed's difficulties are ones which could occur in the life of any corporation independent of a national economic slowdown or recession. They illustrate the need to arm the Federal Government with authority to act as a guarantor of last resort in the event it determines that national interest is at stake. We must all agree that the present situa-

tion is too unsatisfactory where the question of emergency loan guarantee relief has to be decided in the Congress only when it is in session. I urge my colleagues to give serious consideration to providing our Government with the economic "war power," with appropriate safeguards, which our economy clearly needs.

Mr. President, I ask unanimous consent to have printed in the RECORD a fine analysis and recommendations regarding the corporate liquidity problem and the need for an emergency loan guarantee authority which appeared in the minority views of the Joint Economic Committee's annual report, as well as the text of the bill.

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

S. 1641

A bill to provide federally guaranteed loans to necessitous firms which are affected with the public interest

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

FINDINGS AND PURPOSE

SECTION 1. (a) The Congress finds—

(1) that the liquidity necessary to keep the Nation's economic system operating and productive continues to grow rapidly and that the effective functioning of the capital markets is a prerequisite to meeting these liquidity needs;

(2) that the capital markets have from time to time been unable to satisfy such needs on reasonable terms and this inability leads in given cases to severe regional or national economic disruption and liquidity crises; and

(3) that the existence of a loan guarantee authority in the Government is necessary to the national interest to stabilize capital markets during those times when urgent and temporary financing cannot generally be acquired on reasonable terms.

(b) It is the purpose of this Act to provide authority for emergency financial assistance in the form of loan guarantees to aid business enterprises to meet temporary and urgent financial requirements which, if not met, might seriously impair the ability of such enterprises to produce goods and services, and might seriously affect the economy of the Nation or a region thereof.

EMERGENCY LOAN GUARANTEE AUTHORITY

SEC. 2 (a) In furtherance of the purpose of this Act, the Secretary of the Treasury (hereinafter in this Act referred to as the "Secretary") is authorized upon terms and conditions perscribed by him, and after consulting with the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking and Currency of the House of Representatives to make commitments to guarantee and to guarantee any financing institution against loss of principal or interest on any loan to a business enterprise for the purpose of assisting that enterprise to meet temporary and urgent financial needs which if not met (1) could seriously impair the ability of the enterprise to produce goods or services for the public, and (2) could adversely and seriously affect the economy of the nation or a region thereof.

(b) No guarantee of a loan shall be made under this section unless the Secretary finds and appropriately certifies that—

(1) the loan is necessary to carry out the purposes of this Act;

(2) the loan is not otherwise available on reasonable terms and conditions;

(3) there is reasonable assurance of repayment of the loan;

(4) a failure to provide a guarantee of the loan under the authority of this section would seriously impair the ability to produce the goods and services of the enterprise in behalf of which the guarantee is to be made;

(5) the business of the enterprise to be assisted is of a nature which makes assistance under this section appropriate in furtherance of the purposes of this Act; and

(6) the loan to be guaranteed will be applied to productive purposes which are necessary to the economic health and welfare of the nation or a region thereof.

(c) The Secretary shall require such security for guarantees and such agreements regarding management of the components of the enterprise to be assisted as he may deem appropriate. An enterprise in reorganization pursuant to the Bankruptcy Act is not ineligible to receive a loan guaranteed under this section if the Secretary makes the findings and certifications required by subsection (b).

(d) The Secretary shall consult, as necessary, with any business enterprise which has received a loan guaranteed under this section concerning any matter which may bear upon the ability of such enterprise to repay the loan within the time fixed therefore and reasonable protection to the United States; and otherwise to assure that the purpose of this Act is being carried out.

(e)(1) The maximum obligation of the Secretary under any loan or loans made to any one borrower within any one year which is guaranteed under this section shall not exceed $20,000,000 unless—

(A) prior to making such guarantee the Secretary submits to the Congress a full detailed report of the circumstances requiring the guarantee in the case of the particular enterprise and the justification therefor in furtherance of the purposes of this Act; and

(B) a period of thirty calendar days of continuous session of the Congress following the date on which such report is submitted to the Congress elapses, and during such period there is not passed by either the Senate or the House of Representatives a resolution stating in substance that the Senate or the House of Representatives, as the case may be, does not approve the proposed guarantee. For the purposes of this paragraph in the computation of the thirty-day period there shall be excluded the days on which either the Senate or the House of Representatives is not in session because of adjournment of more than three days to a day certain or an adjournment of the Congress sine die.

(2) The maximum obligation of the Secretary under all outstanding loans guaranteed under this section shall not exceed at any time $5,000,000,000.

(f)(1) Payments required to be made as a consequence of any guarantee under this section shall be made by the Secretary from the loan guarantee fund established pursuant to subsection (f).

(2) In the event of any default on any loan guaranteed under this section and payment in accordance with the guarantee is made by the Secretary, the Attorney General shall take such action as may be appropriate to recover the amount paid by the Secretary, with interest, from the defaulting borrower or other persons liable therefor.

(3) The Secretary shall prescribe and collect a guarantee fee in connection with each loan guaranteed under this Act. Sums realized from such fees shall be deposited in the loan guarantee fund established pursuant to subsection (f).

(g)(1) There is established in the Treasury a loan guarantee fund to be administered by the Secretary. The fund shall be used only for the purpose of the guarantee program authorized by this section, including the payment of administrative expenses. All fees paid in connection with such program shall be credited to the fund. Moneys in the fund not needed for current operations may be invested in bonds or other obligations of, or guaranteed by, the United States.

(2) There are authorized to be appropriated to the loan guarantee fund such amounts as may be necessary to provide requisite capital. In the event there are insufficient moneys in the fund to meet obligations of the fund, the Secretary shall transfer to the fund such sums as may be necessary to fulfill such obligations. The Secretary may use, for the purpose of making any such transfer, the proceeds from the sale of any securities issued under the Second Liberty Bond Act which are extended to include such transfers to the fund. There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to repay such transfers. Interest on sums so transferred shall be paid from time to time, at a rate determined by the Secretary, from fees credited to the fund.

(h) There is created a Loan Guarantee Policy Board which shall consist of a chairman appointed by the President, with the advice and consent of the Senate, and the Chairman of the Federal Reserve Board and the Secretary of the Treasury as members. The Board shall establish general policies (particularly with respect to the national or regional economic interest involved in the granting or denial of applications for guarantees under this section and with respect to the coordination of the functions of the Secretary under this section with other activities and policies of the Government) which shall govern the granting or denial of applications for guarantees under this section.

(i) Any Federal Reserve Bank is authorized to act as fiscal agent of the Secretary in the making of contracts of guarantee under this section and in otherwise carrying out the purposes of this section. All funds necessary to enable any such fiscal agent to carry out any guarantee made by it on behalf of the Secretary shall be supplied and disbursed by or under authority from the Secretary. No such fiscal agent shall have any responsibility or accountability except as agent in taking any action pursuant to or under authority of the provisions of this section. Each such fiscal agent shall be reimbursed by the Secretary for all expenses and losses incurred by it in acting as agent on behalf of the Secretary, including (without being limited to) the expenses of litigation.

(j)(1) Except as provided in paragraph (2) and (3) of this subsection, this section and all authority conferred thereunder shall terminate upon the expiration of one year after the date of enactment of this Act, or upon the establishment of an Emergency Loan Guarantee Corporation pursuant to section 3, whichever is the earlier.

(2) If, at the expiration of one year after the date of enactment of this Act action on the Emergency Loan Guarantee Corporation is still pending before the Congress, the authority conferred under this section shall continue until such action is completed or upon the establishment of the Corporation, whichever is the earlier.

(3) The termination of this section and the authority conferred thereunder shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment, or other obligation entered into pursuant to this section prior to such termination, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out pursuant to this section.

REPORT; ESTABLISHMENT OF EMERGENCY LOAN GUARANTEE CORPORATION

SEC. 3. Not later than one year after the date of enactment of this Act, the Secretary shall submit to the Congress a full and complete report of his operations under section 2, together with his recommendations with respect to the need for the establishment of an Emergency Loan Guarantee to provide for the continuation of a loan guarantee assistance program comparable to that authorized under section 2. If the Secretary recommends the establishment of such corporation, he shall, at the time of submitting such report or at any time thereafter but prior to the expiration of one year after the date of enactment of this Act, submit to the Congress a charter for the organization of such corporation. Such charter shall take effect, and the Emergency Loan Guarantee Corporation shall become a body corporate with the powers stated in such charter, upon the expiration of the first period of sixty calendar days of continuous session of the Congress following the date on which the charter is transmitted to the Congress, if between the date of transmittal and the expiration of such sixty-day period there has not been passed by either the Senate or the House of Representatives a resolution stating in substance that it does not approve the proposed corporation. For the purpose of the foregoing, there shall be excluded, in the computation of such sixty-day period, the days on which either the Senate or the House of Representatives is not in session because of adjournment of more than three days to a day certain or an adjournment of the Congress sine die.

PROCEDURE WITH RESPECT TO DISAPPROVAL RESOLUTIONS

SEC. 4. The provisions of sections 910–913 of title 5, United States Code, shall be applicable with respect to the procedure to be followed in the Senate and House of Representatives in the exercise of their respective responsibilities under section 2 (d) and (3) of this Act; except that references in such provisions to a "resolution with respect to a reorganization plan" shall be deemed for the purposes of this section to refer to a resolution of disapproval under section 2 (d) and 3.

EXCERPT FROM MINORITY VIEWS TO THE JOINT ECONOMIC COMMITTEE ANNUAL REPORT

CORPORATE LIQUIDITY

With application of the Penn Central Railroad for bankruptcy in June 1970, the difficulties of certain brokerage houses in conducting business, and the rumors of other large corporations verging on bankruptcy during 1970 and into this year, the subject of corporate liquidity has become an item of some concern to economic policymakers. Basically, corporate liquidity is a concept used to describe the ability of a corporation to meet obligations as they become due. There are a number of different statistical ways to show what the liquidity position of any corporation is. Most of these measures of liquidity compare a corporation's cash and other liquid assets with various kinds of short-term liabilities; but as this description implies, liquidity bears a close relation to cash flow, the rate of corporate investment and other dynamic concepts which cannot easily be conveyed by statistical ratios.

Within the limitations of our commonly accepted measures of liquidity it is clear that corporations have been in a progressively tighter liquidity squeeze since the late 1950's. In part, declining liquidity ratios have been the result of more efficient management; in the Appendix to the President's Economic Report, there is conjecture that confidence in the economy also caused many corporations to reduce the amount of cash and other liquid assets to a lower proportion of total assets. By the late 1960's, however, it was clear that corporate balance sheets continued to reflect a view of rising sales and prices which was not warranted by a national policy of slowing the economy and stemming inflation. New capital appropriations in the first half of 1969 rose by 17 percent over the late 1968 level, notwithstanding that the Administration's and the Federal Reserve's policies were well known. Business spending for new plant and equipment accelerated from a temporary low in mid-1968 through the third quarter of 1969; in late 1969, when interest rates were at record high's, manufacturers were still projecting a quick upturn within the next six months.

In fact, the quick upturn did not come. Although moderately expansionary policies were begun in early 1970, the Administration's announced goal in this regard was to avoid stimulating a rise in demand such as occurred in 1967. It should have been clear to most business leaders that the Administration was taking its mandate of halting inflation seriously. Nevertheless, businesses kept a pattern of financing and inventory accumulation that was more suited to boom times than to the slow conditions of 1970. The ratio of total business inventories to sales during the first half of 1970 stayed at the relatively high rate of 1.56–1.59, and the rate of inventory accumulation far exceeded the rate of increase in other current assets. The accelerating use of commercial paper to maintain cash flows reflected the apparently general expectation that any slowdown in sales was quite temporary; during the first five months of 1970, the use of commercial paper increased 25 percent.

The failure of the Penn Central Corporation to refinance its maturing commercial paper in June 1970, and the resulting petition for bankruptcy, precipitated what many observers have called a liquidity crisis. Effects of the Penn Central situation were felt in the money and securities markets, which in turn affected the ability of other corporations—some with low liquidity ratios themselves—to obtain fully adequate financing.

During the first few weeks after Penn Central's difficulties came to light, the Federal Reserve Board took action to encourage bank financing where cash flow problems of businesses were being caused by weakness in the commercial paper market. On June 23, it suspended the Regulation Q ceilings on larger denomination, short-term certificates of deposit, and announced at the same time that the discount window would be available to assist banks in financing the emergency cash needs of business. The promptness of the Fed's action, and its unequivocal objectives, helped materially to cool what could have been a crisis of major proportions. Since mid-1970 corporations have attempted to restructure their balance sheets to secure a larger proportion of liquid assets, but this has not prevented the ratio of total current assets to current liabilities from reaching new lows by the end of 1970. On the other hand, indications are that changes in the pattern of corporate financing will make some headway in improving liquidity ratios during 1971.

Several lessons can be drawn from last year's experience.

The first is the widespread effect which the insolvency of a few major corporations could have in this country. In its Annual Report, the Council of Economic Advisors concludes that there was no liquidity crisis in 1970 "if this term is taken to connote skyrocketing interest rates, a complete absence of bids for established securities, and numerous bankruptcies of sound corporations." We do not accept the implication of the Council that these conditions need exist before a liquidity crisis is recognized. Quite apart from the fact that the insolvency of a major source of employment in an area can result in regional economic depression and inestimable human suffering, the bankruptcy of a few large corporations, we have learned, has implications for the ability of others to raise money and thus to maintain their own liquidity positions and profit levels; the response of the Federal government to such conditions as this should be the same as in any other crisis.

A second lesson from the 1970 liquidity experience is that the Federal government has shown it has substantial powers to prevent widespread bankruptcies in the event of a potential liquidity crisis. The power of the Federal Reserve as an emergency source of liquidity was amply demonstrated last June, and we thoroughly approve of the Fed's decisive reaction to the Penn Central situation.

Thirdly, however, we believe that the Government needs additional tools in order to ensure the smooth functioning of financial markets during times of unusual demands for liquidity. As Chairman Burns said during testimony before this Committee last July, the liquidity-creation powers of the Federal Reserve should be used only under extraordinary circumstances. Therefore, we recommend establishing a Federal emergency loan guarantee program to be used in situations where the inability of a necessitous borrower to obtain a loan would result in serious curtailment of essential services to the public. Such a program should not be used as a means to bail out poorly run corporations or to correct for misjudgments of management, and businesses receiving the benefits of the guarantee program would thus have to be subjected to far-reaching Federal supervision. As our discussion of the events of 1970 indicates, misjudgments by businessmen of the Administration's rather clear intentions played a role in the liquidity squeeze, and they should not be rewarded by having available federally guaranteed loans on a no-strings basis.

Fourthly, it is clear that better analytical tools need to be devised to assess business liquidity and potential liquidity problems. In its Appendix to the President's Economic Report the CEA does a competent job of analyzing liquidity but concedes that its conclusions might have to be qualified to the extent its sampling of firms was not completely representative. It states furthermore that "the severe difficulties experienced by some of the large manufacturing corporations in the analysis are concealed within the general averages." More work should be done in assessing the effect of major corporate bankruptcies and the ability of government to ease any resulting hardship. Government also owes a particular responsibility to warn the business community of any incompatibility between government objectives and business expectations, and while this was done during 1969 and 1970, it is evident that the methods employed were not effective enough. We look forward to the report of the Presidential Commission on Financial Structure and Regulation, which will address itself to factors influencing the liquidity situation.

By Mr. ERVIN:

S. 1642. A bill to insure the separation of Federal powers by amending title I of the United States Code, to provide for the implementation of article I, section 7, of the Constitution. Referred to the Committee on the Judiciary.

THE POCKET VETO BILL

Mr. ERVIN. Mr. President, I introduce, for appropriate reference, a bill to implement article I, section 7, of the Constitution, thereby spelling out the so-called pocket veto power of the President.

This bill is submitted in an effort to solve the longstanding pocket veto controversy which was brought into focus so clearly last December when President Nixon allegedly pocket vetoed the Family Practice of Medicine Act and a private relief bill.

The Judiciary Committee on Separation of Powers, of which I am honored to serve as chairman, became involved in the pocket veto controversy early this year when we conducted a day of hearings on the subject on January 26. As a result, I am acutely aware of the potential for the abuse of our constitutional principles when the pocket veto power is illegally invoked.

Mr. President, over the years the executive branch has exhibited a rather startling lack of sensitivity for the separation of powers principle, and often has disregarded the constitutional powers, prerogatives, and responsibilities of Congress. The President's alleged pocket veto last December of two acts passed by Congress is but one example. Another glaring instance is the present impoundment of more than $12 billion in funds that have been lawfully appropriated by Congress for projects and programs it deemed important. There are other examples, but my focus here is on the President's pocket veto action, which constituted a raw assertion of executive power.

The veto provision in the Constitution, embodied in article I, section 7, assures the President of adequate time—10 days—to consider legislation passed by Congress and this period of time cannot be narrowed or reduced, directly or indirectly, by Congress. The Constitution also provides that the Congress shall have adequate opportunity to consider the President's objections to a bill which he has vetoed, and to override it by a two-thirds majority. However, the Constitution provides that in those rare instances when the Congress shall "by their adjournment prevent" the return of a bill, such bill shall not become law. This last provision is popularly known as the pocket veto.

In the situation that occurred last December, the President was presented the Family Practice of Medicine Act and the private bill for relief of Miloye Sokitch on December 14. On December 25—which marked the expiration of the 10-day period, the intervening Sunday not counted—he claimed that the bills had been "pocket vetoed." President Nixon maintained that he had been prevented from returning the bills because the Congress had "adjourned" for Christmas. The Senate, in which the Family Practice of Medicine Act had originated, had recessed from the close of business on Tuesday, December 22, 1970, until 12 o'clock noon on Monday, December 28, 1970, a period of 4 days, excluding the intervening Sunday. Obviously, the President had ample time to consider these measures and to return them to Congress, which under no reasonable interpretation could be considered "adjourned" in the constitutional sense, but was merely in temporary recess for the Christmas holiday.

As I mentioned, the President had adequate time to consider these bills and to return them with his objections; by refusing to use the normal veto process appropriate to this situation, the President deprived the Congress of its opportunity to reconsider the measures in light of his objections. By relying on this alleged "pocket veto," the President was able to exercise an absolute veto—which is completely contrary to any constitutional provision. It is perfectly clear that the President grasped this opportunity to use the "pocket veto" in order to avoid returning the bills to the Congress where they almost certainly would have been overridden. The President thus avoided another political defeat by abusing his Executive power.

In order to carry out this ploy, the President and his lawyers in the Justice Department looked at the Christmas recess of Congress just as they would a sine die adjournment at the end of a session. I find no support in the Constitution for such an interpretation.

Moreover, the Supreme Court has dealt with the "pocket veto" concept in two cases, neither of which is precisely on point.

In the *Pocket Veto* case, 279 U.S. 655 (1928), the Court ruled that a congressional recess of several months constituted an "adjournment" and was sufficient to support a "pocket veto." In that case, the House had adjourned sine die at the end of a session, while the Senate had recessed for several months until reconvening to sit as a court of impeachment. Prof. Arthur S. Miller, of the George Washington University National Law Center and a consultant to the Subcommittee on Separation of Powers, said at our hearings that the Pocket Veto case "really is so different that it does not even bear much resemblance to what happened last month at the short recess for Christmas."

The other Supreme Court decision was in *Wright* v. *United States*, 302 U.S. 583 (1938). In that case, the Senate had adjourned for 3 days while the House was still in session. The Court held that article I, section 5, clause 4, which permits one House to adjourn for up to 3 days without the consent of the other, does not constitute adjournment in the constitutional sense. The Court went on to hold that the officers of the House and Senate can receive bills and messages from the President when their respective House is in recess for 3 days or less.

Factually, the situation last year differs from both the Pocket Veto and Wright cases. Neither the Senate nor House had adjourned sine die at the end of a session, which distinguishes it from the Pocket Veto case. Neither House was in session and the recess was for more than 3 days, which distinguishes it from the Wright case.

It is my hope that definitive answer to the problem posed by President Nixon's alleged "pocket veto" can be obtained from the courts, perhaps by way of the Sokitch private bill. However, the Congress in the meantime can and should act to prevent another abuse of the "pocket veto" power by defining what "adjournment" means.

A memorandum prepared earlier this year by the Congressional Research Service of the Library of Congress, at the request of the Subcommittee on Separation of Powers, properly describes the power of the Congress to define the meaning of "adjournment." I quote from that memorandum:

By legislating to provide that the pocket veto will only be available in situations wherein Congress has adjourned *sine die* Congress will be furthering the spirit of the Constitution as well as laying to rest an anomaly that has found its way into constitutional interpretation, an absolute veto by the President while the session of Congress continues. Such action would not only be perfectly proper but would conform to the requirements of constitutional interpretation as set forth in *Fairbanks v. United States*, 181 U.S. 283: The true spirit of constitutional interpretation both as to grants of powers and in respect to prohibitions and limitations is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose.

Constitutional justification for such a definition can be found in Article I, Section 8, Clause 18, the "necessary and proper" clause of the Constitution, which provides that Congress shall have the power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The Courts have given to Congress great latitude in acting under the power conferred by this clause: By the settled construction and the only reasonable interpretation of this clause, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it. *Legal Tender* Case, 110 U.S. 440 (1884).

Surely the defining of the word adjournment to ensure that legislation enacted during a session will be available for reconsideration by that session if the President disapproves is an "appropriate means which (is) conducive (and) adapted to the end to be accomplished". The power of the President to approve or disapprove would not be disturbed or lessened in any degree whatsoever and neither would the ten day period which the Constitution grants him be affected.

The fact that the Supreme Court in the *Pocket Veto* Case, supra, 680, found in the absence of legislation, a definition of the word "adjournment" as used in Article I, Section 7, Clause 2 embodied within the Constitution that was broader than the one proposed should not act as a deterrent to such legislation construing this constitutional provision. The decision of the Supreme Court in *Veazie Bank v. Fenno*, 8 Wall 533, where it is held that an interpretation by Congress of a provision of the Constitution is entitled to great weight, especially in the absence of anything adverse to it in the discussions of the Conventions which framed and ratified the Constitution," is particularly applicable here because the Court noted in the *Pocket Veto* Case, supra, 675, that, "No light is thrown on the meaning of the constitutional provision (veto power) in the proceedings and debates of the Constitutional Convention;" . . . Therefore, since there is nothing "adverse to it" in the record of the Convention it would appear that it is within the power of Congress to provide the President and the Court with its construction of what an adjournment, within the meaning of Article I, Section 7, is.

Mr. President, almost daily the Members who are honored to sit in the Congress express outrage over the usurpation of congressional authority by the executive branch of the Government. In the instant controversy there is no doubt in my mind that the President violated the separation of powers doctrine. The Founding Fathers, in order to make government by law secure, ordained that the

Constitution and the laws enacted by Congress pursuant to it should be the supreme law of the land, and imposed upon all public officials the duty to obey them. This includes, of course, the President of the United States.

I think the controversy boils down to a very simple question: Will Congress demand that the executive branch of Government respect its rights, duties, and obligations as set out by the Constitution?

The bill I introduce today will help answer one aspect of that question by defining "adjournment" as "an adjournment sine die by either the Senate or the House of Representatives."

This provision, Mr. President, would make it impossible for the President to exercise a pocket veto except when either the Senate or House has adjourned sine die, which occurs only at the end of a session of Congress or at the end of a Congress.

Such a definition would be on all fours with the facts of the pocket veto case. In that case the House had adjourned sine die at the end of a session and the Senate had adjourned to meet at a date certain in order to sit as a court of impeachment.

Essentially, the bill is designed to implement article I, section 7, of the Constitution. It will do that by providing:

First. That every bill passed by the Congress be presented to the President or to a person in the Executive Office of the President previously designated and authorized in writing by the President to receive it. This provision is in keeping with the present practice whereby enrolled bills are hand carried by agents of the House or Senate to the White House, where they are received by a representative of the White House Records Office with a notation of the date and time of receipt. Delivery to the White House Records Office is considered presentation to the President, unless he has advised the Congress that he has withdrawn the authority of the officials of the White House Records Office to receive enrolled bills, as has been done at times when the President is outside the country.

Second. That the President, if he approves a bill, shall place on it his signature and the date and, if he so desires, the word "approved."

Third. That if the President does not approve a bill presented to him, he shall return it with his objections to the House in which it originated. If he returns a bill prior to adjournment but when the respective House is not actually in session, then presentation to an officer designated and authorized by that House to receive bills under those circumstances shall constitute a return of the bill. Such officer shall call the matter to the attention of that House, through its presiding officer, on the next succeeding day on which it is in session. Mr. President, this part of the overall scheme, utilizing the agents of the House and Senate, is in keeping with the Wright case.

Fourth. That the House to which the bill is returned shall enter the President's objections at large on their Journal and proceed to reconsider it. The Congress would then be able to override the President's veto in keeping with the constitutional provision.

Fifth. That if any bill is not returned by the President or his successor in office within 10 days, Sundays excepted, after it is presented as provided for in the bill, it shall be law in like manner as if he had signed it unless either the House or Senate prevent its return by their having adjourned sine die.

Mr. President, I believe that time is of the essence in this matter, since the Congress contemplates several short recesses during this session, one of them being for a month during August and September. If we delay, we may find more legislation passed by the Congress subjected to this illegal, absolute veto by the President. I think that it is of the utmost importance that the Congress reassert its prerogative in this area by favorably considering this legislation.

I urge the Members of this body to support this measure.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1642

A bill to insure the separation of Federal powers by amending title I of the United States Code, to provide for the implementation of article I, section 7, of the Constitution

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title I of the United States Code be amended by adding the following chapter:

"Chapter 4.—APPROVAL OF ACTS

"Sec.
"301. Presentation to President.
"302. Approval by President.
"303. Disapproval by President.
"304. Reconsideration.
"305. Enactment without signature; pocket veto.
"306. Definition.

"§ 301. PRESENTATION TO PRESIDENT

"Every bill that passes the Senate and the House of Representatives shall, before it becomes a law, be presented to the President of the United States or to a person in the Executive Office of the President previously designated and authorized in writing by the President to receive it.

"§ 302. APPROVAL BY PRESIDENT

"(a) If the President approves a bill presented as provided in section 301 of this title, he shall sign it at the end thereof.

"(b) The President shall not make any notation on a bill, so presented, other than his signature and, if he desires, the word 'approved' and the date.

"(c) The President's authority to sign a bill, so presented shall not be affected by the adjournment of the Congress.

"(d) The authority to sign a bill, so presented, shall devolve to the President's successor in office.

"§ 303. DISAPPROVAL BY PRESIDENT

"If the President does not approve a bill presented as provided in section 301 of this title he shall return it with his objections to the House in which it originated. His objections may be on any basis without limitation.

"Return to an officer designated and authorized by the House of Representatives or the Senate respectively, to receive bills so returned prior to adjournment while the body is not actually in session shall constitute a return to that House. Such officer shall call the matter to the attention of that House, through its presiding officer, on the next succeeding day on which it is in session.

"§ 304. RECONSIDERATION

"The House to which a bill is returned shall enter the President's objections at large on their Journal and proceed to reconsider it. If after such reconsideration two-thirds of the Members present shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall be likewise reconsidered, and if approved by two-thirds of the Members present, it shall become a law. The votes of both Houses shall be determined by the yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively.

"§ 305. ENACTMENT WITHOUT SIGNATURE; POCKET VETO

"If any bill is not returned by the President or his successor in office within ten days, Sundays excepted, after it is presented as provided in section 301 of this title, it shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

"§ 306. DEFINITION

"As used in this chapter, 'adjournment' means an adjournment sine die by either the Senate or the House of Representatives."

By Mr. INOUYE:

S. 1643. A bill to authorize reduced postage rates for certain mail matter sent to Members of Congress. Referred to the Committee on Post Office and Civil Service.

Mr. INOUYE. Mr. President, I rise today to introduce a bill to provide for the issuance of a special 1-cent postage stamp to be used for correspondence with Members of Congress.

The introduction of this legislation emanates from my firm belief that the essence of our democratic system is the continuing operation of a two-way communication system between the people of this country and their elected representatives.

Each Member of the Congress is directly responsible to those people in his State or district which he represents. He must not only keep communication channels open, but more importantly, he must be responsive to the opinions he receives through these channels. The most practical means of transmitting these signals is through the mail. It is most difficult for many of us to imagine ourselves in a situation where the desire to express an opinion is frustrated because we must think twice about spending money on a postage stamp. Unfortunately, we must face the fact that many of our Nation's citizens are forced to consider the purchase of postage stamps for the purpose of expressing a grievance to their representatives as something beyond their means.

The issuance of a 1-cent stamp for this purpose would effectively remove this prohibition and allow any citizen to advise their representatives of their individual opinions on the issues facing our Nation. I cannot overestimate the importance of this concept of individual expression. Every citizen has the right and the responsibility to participate in

the democratic system through both the ballot box and the use of correspondence. This measure would amend the Postal Reform Act of 1970 to provide for the issuance of these 1-cent stamps to be sold only at U.S. Post Offices. The bill also authorizes appropriations necessary to account for the difference in postal revenue resulting from the sale of 1-cent stamps as opposed to prevailing postage rates for mail matter addressed to Congressmen, which does not exceed 4 ounces in weight. In view of the franking privileges available to Members of Congress, this measure would effectively equalize the treatment of mail from both the Congress and its constituency.

By Mr. DOLE:

S. 1644. A bill to amend section 103 of the Internal Revenue Code of 1954 to increase the small issue exemption from the industrial development bond provision from $5,000,000 to $10,000,000. Referred to the Committee on Finance.

INDUSTRIAL REVENUE BONDS

Mr. DOLE. Mr. President, I am pleased to introduce a bill to amend section 103 of the Internal Revenue Code of 1954, as amended to increase the small issue exemption from the industrial development bond provision from $5,000,000 to $10,000,000. This bill is identical to H.R. 4752 introduced by Congressman GARNER SHRIVER on February 22, 1971. Similar legislation was also introduced by Congressman WILBUR MILLS, chairman of the Ways and Means Committee on April 6, 1971.

For over 30 years, municipalities have had the authority to issue tax-exempt, industrial-revenue bonds to encourage industrial growth and help create new jobs. And until approximately 2 years ago, there was no limit on the amount of these bonds which a municipality could issue. In the fall of 1968, the previous administration proposed a reduction of this authority to $1 million. However, because of the outstanding efforts of several of my colleagues led by the distinguished Senators CURTIS and HRUSKA, an amendment was approved which raised the level of small issue exemption to $5 million.

But the current level of exemption is only sufficient to cover the needs of the smallest communities or the smallest projects. With the present economic problems existing in many communities in our country both rural and urban, we need to do everything possible to help them help themselves. An enlightened tax policy plays an invaluable part in stimulating economic development. This bill would be especially beneficial to areas such as Wichita, Kans., where expended industrial development would do much to offset existing unemployment.

Mr. President, the main argument for placing a limitation on the amount of tax-exempt, industrial-revenue bonds which a town or city could issue was that certain cities were abusing this privilege through the issuance of as much as $100 million or more of these bonds. I support the need for a limitation. An open-ended authorization would cause a serious loss in Federal revenues and unnecessary use of the tax exempt market at the expense of other public issues. However, I feel that the $5 million authorization is now too restrictive, and increasing it to $10 million would mean only a minimal loss to the Treasury.

If we mean business about reversing the trend of outmigration from rural areas and really intend to encourage rural development, we must make it conducive for industry to locate in rural areas.

President Nixon in his recent message to the Congress of the United States on rural community development stated:

For the sake of balanced growth, therefore, but even more for the sake of the farmer and all his neighbors in rural America—first class citizens who deserve to live in first class communities—I am proposing that the federal government re-think America's rural development needs and rededicate itself to providing the resources and the creative leadership those needs demand. The President also stated that it takes many different kinds of activities to create rural development—to create rural opportunity.

Tax-exempt industrial revenue bonds are such an activity. With a reasonable ceiling of $10 million they can be an outstanding means of generating employment and increasing income for low-income rural areas, thus retarding the flow of people from rural areas. These industrial revenue bonds would also help small businesses locate in large cities. This small business exemption of $10 million is not a device to provide tax benefits for large business ventures but only to provide the impetus to permit them to become efficient. It would be a means to rejuvenate depressed areas not only in the country but also within our cities. I personally know how important it is to a community and its general well-being to encourage and promote the growth of industries. This proposal would not only provide jobs but also increase productivity and promote an improved standard of living for rural and urban residents alike. These are proper solutions to poverty and welfare.

I urge the Senate Finance Committee to seriously consider this legislation.

By Mr. COOK (for himself and Mr. STEVENS):

S.J. Res. 89. A joint resolution expressing a proposal by the Congress of the United States for the safe return of American prisoners of war and the accelerated withdrawal of all American military forces and equipment from South Vietnam. Referred to the Committee on Foreign Relations.

Mr. COOK. Mr. President, I introduce a joint resolution for the safe return of all American prisoners of war and for the accelerated withdrawal of all American military forces and equipment from South Vietnam.

For 6 long years a large contingent of American combat troops supported by American air and artillery forces have been actively engaged in the defense of the people of South Vietnam. Prior to that the United States assisted the South Vietnamese by means of military and economic aid and the presence of American military advisers.

In 1954, in a letter to President Diem, President Eisenhower offered a "program of American aid" to "assist Vietnam" and help it resist aggression from the North. What began as "assistance" to the free people of Indochina after 1954, became a "firm commitment" to the military defense of the present government in Saigon. When President Eisenhower left office there were 685 U.S. military advisers in South Vietnam. There were no combat troops. By the time of President Kennedy's assassination in 1963, the American presence had grown to 16,200 military advisers, but still no combat troops. However, at the conclusion of 1968 the Government of the United States had stationed on Vietnamese soil 545,000 combat troops supported by American airpower and artillery.

The escalation of American airpower and combat troops was a gross and costly overcommitment. As I have said before:

We all realize in 1970 what only a few of the wisest understood in 1964 and before—that is—*our national security is not threatened in the least by events in Southeast Asia.* The most powerful nation in the world has finally learned that intervention with our manpower, the youth of our nation, is not the answer. The presence of American men on Indochinese soil we now know is not only not productive, it is counter-productive.

Through the determined efforts of the present administration, that number will be reduced by almost one-half by May of this year. As of December 1, the President has promised that only 185,000 American soldiers will remain. His avowed goal, as well as that of the Congress, is total and complete withdrawal.

Last year the Congress in representing the demands of an overwhelming majority of Americans stated its intention that all American military personnel be withdrawn from South Vietnam both consistent with the amount of time reasonably necessary for the completion of the program of Vietnamization and in conformity with the Nixon doctrine first espoused on July 15, 1969. The essence of that doctrine is that a nation allied or important to the United States must assume primary responsibility for its defense.

It is now time for the Congress to assess its contribution of aid and military expertise to the Republic of South Vietnam. From all reports, 1970 has shown a marked improvement in the performance of the South Vietnamese military forces. They have increased their tactical and logistical skills as both the Cambodian and Laos operations have shown. As President Nixon stated in the U.S. foreign policy for the 1970's, a report made in February of this year to the Congress:

The South Vietnamese accounted for a growing bulk of combat engagements. They took over more of our bases. They completely assumed naval operational responsibilities inside the country, and they substantially stepped up the role of their air forces, flying almost half the sorties in South Vietnam.

In comparing the Army of South Vietnam of today as opposed to a mere 2 years ago, he further elaborated:

Two years ago there was no assurance that the South Vietnamese could undertake large-scale military operations on their own. Now, they have proven their ability to do so.

Two years ago the South Vietnamese con-

stitutional system was just beginning to take hold. Since then the national assembly and the supreme court have played increasingly meaningful roles, and there has been a series of elections at the province, village, and hamlet levels. Today, the political focus in South Vietnam for almost all forces except the Communists is within the established system.

Two years ago large areas of South Vietnam were unsafe and many routes impassable. Now, while there are still many dangerous pockets, the vast bulk of the country is secure.

And only recently on April 7 in his address to the Nation on this subject, President Nixon said that "Vietnamization has succeeded."

As expected, the President's military advisers fully support him on this matter. According to a Pentagon fact sheet on the Laotian operation:

> The weight of evidence is that the South Vietnamese forces acquitted themselves very well in the six weeks of fighting which followed the initial incursion into Laos.

The Pentagon further stated:

> Lom Son has underlined the progress which has been made in Vietnamization. Three years ago, ARVN units were engaged against the enemy units in and close to South Vietnam's own population centers. Now ARVN units have shown themselves able to deal with the enemy threat in sanctuary areas without the support of U.S. ground combat forces or advisors while keeping their own territory pacified as well. They have demonstrated the ability to mount a complex multidivision operation in conditions of difficult and unfamiliar terrain, adverse weather, and against a well-prepared enemy. Moreover, this is being achieved with a U.S. presence which has diminished by some 260,000 men since 1969.
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> To illustrate this point further, it should be recognized that February and March are the months of the year in which the Communists traditionally mount the most extensive military operations in all regions of South Vietnam. This year they were given an additional incentive to do this because of that (sic) fact that such actions would harass the rear areas of ARVN operations in Laos and Cambodia and would distract attention from those two actions. Despite exhortations to their cadre to undertake such action within South Vietnam they have been unable to date to mount anything which can even be considered a major successful high point. In fact, the situation within South Vietnam has been extraordinarily calm during the entire month of February and March with the exception of an action being taken by ARVN forces against Communist strongholds in the U Minh forest of military Region IV.
>
> The ability of the South Vietnamese forces to sustain security after the departure of United States forces, will in the long run, be measured by the balance of strength which exists between North and South Vietnamese forces. Our assessment is that the balance in the Indochina peninsula has swung in favor of the South Vietnamese. As Ambassador Bunker has reported, the operation has created confidence among the South Vietnamese in the ability of ARVN and pride in its accomplishments. There has been satisfaction in the fact that the fighting has been taken outside the borders of South Vietnam and that ARVN has been able to inflict far heavier casualties on the enemy.
>
> We conclude, therefore, that the foundation for Vietnamization in South Vietnam is sound and that the process has been enhanced by the disruptions Lam Son has caused the enemy and by the increased confidence it has given the South Vietnamese in meeting their own defense needs.

Mr. President, the time has come to acknowledge that we have done all that we can reasonably expect to do in building a viable force in South Vietnam capable of its own self-defense. Whether or not the original commitment was justified or regardless of how essential some may consider South Vietnam or the whole of Indochina, the cost we have paid clearly outweighs any further involvement.

America in fighting in its longest war since independence has generously given to the defense of the people of Indochina.

We have contributed both in aid and the cost of our involvement well over $120 billion.

We have lost over 44,000 of our finest young men.

We have suffered the disabling and wounding of an additional 197,000 young men.

And finally, we have contributed the ultimate in society, the unity and spirit of our body politic.

No other nation has given more to the aid and defense of another.

We have honorably fulfilled our commitment to the people of South Vietnam. We can give no more. In the words of the most distinguished senior Senator from Vermont, the dean of Senate Republicans and ranking Republican on the Senate Foreign Relations Committee:

> Common sense should tell us that we have now accomplished our purpose as far as South Vietnam is concerned.

With our pledge thus fulfilled, we have but one other promise to keep. We must bring home all of those that we sent over including those being held as prisoners of war.

Since the first American soldier was captured in March of 1964, the lists of men missing in action and those being held as prisoners of war has swollen to over 1,600. The best available evidence suggests that some of these men have been prisoners since that time, a period of 6 years. Although many efforts have been made by their families, by concerned individuals, and by the U.S. Government, they still remain in the custody of the North. Hanoi has admitted that it is holding 339 U.S. servicemen. We are all deeply concerned about the fate of these courageous men. President Nixon in his October Indochina peace initiative called for a cease-fire-in-place and the immediate and unconditional release of all prisoners of war held by all sides.

Although some administration spokesmen believe that the POW problem is a humanitarian issue and one that should not be linked to any eventual political and military settlements in Indochina, the fact remains that it is related to these other objectives.

The administration's position has consistently been that if our prisoners are released, we shall withdraw. In a CBS interview on March 16, Secretary Laird was quoted as saying:

> We will maintain a U.S. presence in South Vietnam just as long as the North Vietnamese hold a single American prisoner, either in Laos, Cambodia, South Vietnam or in North Vietnam, so, we will maintain a presence in South Vietnam until this POW question is resolved.

Also, on that same day, Secretary Rogers was asked the following questions:

> Are the prisoners the only reason we would be leaving troops there?
>
> Yes.
>
> So if the prisoners are released or the North Vietnamese agree to release them, we will get out?
>
> Yes.

From these statements we can, and we must, conclude that the United States is negotiating for the purpose of obtaining the release of its prisoners of war in order to facilitate total withdrawal.

The North Vietnamese have made it perfectly clear that they will not take the initial step of releasing our POW's. Representatives of the North on May 8, 1968, issued the so-called 10 points or principles by which they hoped to see implemented on overall solution to the present conflict. The "ninth point" referred to the negotiation of prisoners of war. However, such talks were to occur as an "aftermath" of the war which included the total withdrawal of all American troops. Their position was altered somewhat in the "eighth point" of September 17, 1970. Here, they agreed to "discussions" on prisoner release on the condition that the United States would commit itself to a withdrawal date for all American forces.

Hanoi certainly wants the United States out of the Southeast Asia. There is no logical reason to assume that Hanoi is holding our POW's in order to prolong the American military presence. Rather, they are obviously holding these prisoners as a means of assuring a total, American withdrawal. We should realize that the United States is in a weak bargaining position. We have already announced our intention to withdraw and we have announced a schedule for that withdrawal, even though we have set no deadline.

If, therefore, our primary military objective of Vietnamization is succeeding, and if the only remaining obstacle for our complete withdrawal is the release of American prisoners of war, there can only be one logical conclusion. The United States must again take the initiative in negotiating a release of American prisoners. We must display, by our willingness to take immediate and significant steps toward total withdrawal, the sincerity of our position, and our strong desire to disengage, keeping foremost in mind our resolve to obtain the release of American prisoners. We must be prepared to make a commitment of total withdrawal in exchange for a commitment by the North Vietnamese to release all American prisoners of war.

The resolution I am introducing today can accomplish the setting of a date certain for complete withdrawal. That date is fixed as a time 9 months after the Governments of the United States and North Vietnam reach an agreement on the release of our prisoners. It neither specifies the terms of the agreement, nor demands a prior complete release as a condition precedent for withdrawal. I believe it will

give our negotiators at the Paris peace talks increased flexibility. I am also of the opinion that it will provide a new incentive for quick action by North Vietnam.

Mr. President, the case for our total and complete withdrawal has been set forth. When an agreement is reached, our exit should be as expeditious as is logistically possible. I have been assured that this objective may be accomplished within 9 months.

The time to begin is now.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Under the previous order, the Senator from Alaska (Mr. STEVENS) is recognized for not to exceed 15 minutes.

Mr. STEVENS. Mr. President, I shall be pleased to yield to the Senator from Kentucky any further time he would like to have.

Mr. COOK. I have completed my statement.

Mr. STEVENS. Mr. President, I rise as a cosponsor of the joint resolution which has been proposed by the Senator from Kentucky. I think that he initiated a new approach to terminating the involvement of U.S. forces in South Vietnam.

I have just returned from South Vietnam and Cambodia, and I found that there has been a rapid growth of the volunteer nonregular defense forces—the so-called People's Self-Defense Forces, the regional forces, and the popular forces—in South Vietnam, and that their participation has, in fact, enabled the regular army and air force in South Vietnam to become more mobile and to replace our American combat forces.

It is true, as the Senator from Kentucky stated, that the South Vietnamese leaders believe that the Cambodian and Laos engagements have rebuilt the confidence of the South Vietnamese forces. There are now almost 4 million men and women in their Home Guard, the People's Self-Defense Forces, with an additional 550,000 men in the regional forces and popular forces, which are similar to our National Guard. These forces are trained and armed by us, and are now defending the hamlets, villages, and district capitals. Significantly, it is the volunteer forces that are taking most of the casualties in combat between the North Vietnamese and the South Vietnamese, but it is the growth of these forces that gives stability to the Vietnamization program and gives us the ability to withdraw our troops.

I have cosponsored the resolution of the Senator from Kentucky because I think he does emphasize the matter that must be settled between the North Vietnamese and American negotiators in Paris before we can complete the withdrawal of our forces. There is a necessity for the North Vietnamese to agree that they will release our prisoners in exchange for a definite commitment on the part of American forces to withdraw within a time certain. I think this agreement can then be the triggering device to a complete American withdrawal from South Vietnam and the total Southeast Asia conflict.

I believe that the Vietnamization program is working, and I believe that this Nation is committed, under President Nixon's leadership, to a total withdrawal of our forces. The South Vietnamese I have talked to acknowledge this decision. All the military people I have talked with in South Vietnam acknowledge the decision. Our withdrawal is working, and it has primarily one goal, that is, the withdrawal of our forces in complete safety—forces that have been involved in behalf of this Government in assisting the South Vietnamese Government.

We are taking great pains to bring back those who are in the service of this country in South Vietnam. I was told that not one American soldier has been injured as a result of the withdrawal operations. We have as great an obligation, or an even greater obligation, to those men who have been captured.

I feel that there is a considerable difference between our deployment based upon Vietnamization and a retreat based upon withdrawal, without regard to the considerations involved in the prisoners-of-war issue or involved in the safety of our troops in South Vietnam.

I hope that we can see a new light on the horizon, and this is the lessening of tensions with China. And I hope that we are now on the road to eventual total peace in Indochina.

I served in China during World War II, Mr. President. There has not been peace in this area since I went there as a boy of 19. I think it is high time that we found a way to initiate not only the complete withdrawal of our people from South Vietnam, but to initiate, through the Peking government in China, the efforts of that Government in trying to restore peace throughout Southeast Asia. I think Peking has the key to this. If they would deny assistance to North Vietnam, I think we could also terminate further assistance to South Vietnam and probably bring the conflict there to an end.

In any event, the chief issue as far as I am concerned, after my second trip to South Vietnam, is the future safety and treatment of our prisoners of war. The Senator from Kentucky has proposed in his resolution that Congress assist in bearing the burden of trying to bring about the resolution of our involvement in Southeast Asia. It is a reasonable approach. It will give the two governments the opportunity to trigger the total withdrawal of U.S. forces, and also permit us to leave honorably with all our people, particularly our prisoners of war.

I congratulate the Senator from Kentucky for his comments today, and I hope that we will achieve consideration of this resolution. I still oppose the idea of a date, picking an arbitrary date and saying we will completely withdraw our forces without regard to the prisoners of war situation. The prisoners of war must come first, not last. I think that is what the resolution of the Senator from Kentucky would achieve—putting the fate of the prisoners of war first. Once there is agreement on this, we can bring about the total process of withdrawal and disengagement, and resume the actions of this country under what I consider to be a great doctrine, the Guam doctrine presented by President Nixon.

I am happy to yield to the Senator from Kentucky.

Mr. COOK. Mr. President, would the Senator agree that both of us have been absolutely assured that logistically, the removal of the manpower and the literally millions and millions of tons of equipment can be accomplished within a period of 9 months?

Mr. STEVENS. I would certainly agree with the Senator that we have been given every assurance and told categorically this can be done. I spent a considerable amount of time during the Easter recess examining the retrograde program myself, and I have been told personally by those in charge of this program that it is possible to withdraw, not only our men, but also the equipment which must be removed from Southeast Asia within this period.

I think it highly important that we keep in mind that our equipment must be removed from South Vietnam. This equipment is necessary to insure the military preparedness of our country. Also, there are thousands of tons of civilian equipment—road graders, trucks, caterpillars, dozers, and equipment—that this country can use in its own roadbuilding and improvement efforts. I hope we will consider this and provide the time that is necessary for the whole defense establishment, not only to withdraw our troops, but to withdraw this equipment. I am pleased to say that we have been given the assurance that it can be done in no more than 9 months.

Mr. COOK. Does the Senator also agree that this is basically not an issue that can be determined after a settlement, or after withdrawal, but this can ultimately be the very key by which we ourselves have committed ourselves to maintain a facility in South Vietnam as long as the north maintains any prisoners of war?

Mr. STEVENS. I agree absolutely with that statement. Furthermore, I have the deep, certain feeling that were we to leave our prisoners of war there, they would be used after we leave by the North Vietnamese in a trading process with the South Vietnamese. We must resolve the POW issue first, and let everything flow as a consequence of an agreement, on the part of the North Vietnamese and Vietcong to release our prisoners, and an agreement on our part to leave completely.

Mr. COOK. Did not the President of the United States make it clear that he had the concurrence of the South Vietnamese Government, the Cambodian Government, and the Laotian Government when he made the speech some time ago in which he said that the first thing that should occur should be that all prisoners of war should be released and sent to their respective homes, and that he had a commitment from the other countries that this could be said and this commitment could be made to the North Vietnamese?

Mr. STEVENS. That is my understanding. I believe the Senator from Kentucky correctly recalls the statement of the President.

Furthermore, I believe that should we succeed in getting an agreement for the

release of American prisoners of war, the total release of all prisoners would follow from this agreement. We have the triggering device; we have the ability, not simply to demand the release of our prisoners, as the Senator realizes, but to say that if the North Vietnamese will agree to release our prisoners, we will withdraw in a time certain.

I think that this is the crux of the whole issue, getting the first agreement. Thus, I believe that the joint resolution takes the proper course.

Mr. COOK. I thank the Senator from Alaska for joining me in this effort. I hope we might have a great deal of support among Senators.

ADDITIONAL COSPONSORS OF BILLS

S. 646

At the request of Mr. McCLELLAN, the Senator from California (Mr. TUNNEY) was added as a cosponsor of S. 646, a bill to amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recordings, and for other purposes.

S. 855

At the request of Mr. COTTON, the Senator from Michigan (Mr. HART) was added as a cosponsor of S. 855, a bill to correct certain inequities in the crediting of National Guard technician service in connection with civil service retirement.

S. 1113

At the request of Mr. BAKER, and by unanimous consent, the Senator from New York (Mr. BUCKLEY), the Senator from Florida (Mr. GURNEY), and the Senator from Washington (Mr. JACKSON) were added as cosponsors of S. 1113, a bill to establish a structure that will provide integrated knowledge and understanding of ecological and other problems associated with pollution and other related problems.

S. 1156

At the request of Mr. HART, the Senator from Michigan (Mr. GRIFFIN), the Senator from Minnesota (Mr. MONDALE), the Senator from Wisconsin (Mr. NELSON), and the Senator from Pennsylvania (Mr. SCOTT) were added as cosponsors of S. 1156, a bill to provide for a Great Lakes basic conservation program.

S. 1384

At the request of Mr. PROUTY, the Senator from New Hampshire (Mr. COTTON), the Senators from Kansas (Mr. PEARSON and Mr. DOLE), the Senator from Alaska (Mr. STEVENS), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of S. 1384, a bill to enact the Older Americans Income Assurance Act of 1971.

S. 1505

At the request of Mr. PROUTY, the Senator from New Hampshire (Mr. COTTON) and the Senator from Kansas (Mr. PEARSON) were added as cosponsors of S. 1505, a bill to enact the Blind and Disabled Income Assurance Act of 1971.

S. 1611

At the request of Mr. PEARSON, the Senator from Wisconsin (Mr. NELSON) and the Senator from Oklahoma (Mr. BELLMON) were added as cosponsors of S. 1611, to amend the Interstate Commerce Act for the purpose of insuring that regulations governing the operation of farm vehicles will be based on commonsense and on an understanding of the normal operation of our Nation's farms.

ADDITIONAL COSPONSORS OF RESOLUTIONS

SENATE RESOLUTION 38

At the request of Mr. STEVENS, the Senator from South Dakota (Mr. McGOVERN) was added as a cosponsor of Senate Resolution 38, a resolution to provide legislative authority to the Senate Select Committee on Small Business.

SENATE RESOLUTION 73

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the next printing, the name of the distinguished Senator from Alaska (Mr. STEVENS) be added as a cosponsor of Senate Resolution 73, a resolution to amend the Standing Rules of the Senate.

The ACTING PRESIDENT pro tempore (Mr. METCALF). Without objection, it is so ordered.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 57, 58, 59, 60

Mr. ERVIN submitted four amendments intended to be proposed by him to the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes, which were received, ordered to be printed, and to lie on the table.

NOTICE OF HEARINGS—VA HOSPITAL CRISIS

Mr. CRANSTON. Mr. President, for the information of Senators, I wish to announce that my Subcommittee on Health and Hospitals of the Veterans' Affairs Committee will hold hearings next week on the Veterans' Administration hospital crisis.

The hearings will be held next Tuesday, Wednesday, and Thursday, at these times and places: Tuesday, April 27, at 9:30 a.m. in room 4221, New Senate Office Building; Wednesday, April 28, at 1 p.m. in room 4221, New Senate Office Building; Thursday, April 29, at 9:30 a.m. in room 412, Old Senate Office Building.

The purpose of these hearings is to investigate what has happened to the extra $105 million Congress appropriated for this fiscal year to the Veterans' Administration to expand its medical staff and improve the medical services rendered by the VA. We will also inquire into the proposed reduction in the patient census in veterans' hospitals across the country by 47,000 patients during fiscal year 1972.

I am very much concerned that the Office of Management and Budget has ordered the VA to make a drastic reduction in its anticipated patient load. It is important that we determine what medical impact this cutback will have on our sick and disabled veterans. The American people have a right to know whether this is a part of a plan by the OMB to phase out and eventually do away with veterans' hospitals.

As chairman of the Veterans' Affairs Subcommittee of the Committee on Labor and Public Welfare in the 91st Congress, in oversight hearings on medical care of veterans wounded in Vietnam we found a serious deterioration in VA hospital care. As a result of this investigation, Congress appropriated an additional $105 million above the budget request for VA medical care in order to improve immediately the quality of care for our veterans. I understand that this money has been diverted to uses other than those intended by Congress. The money was for more doctors, nurses, and medical attendants. However, none of the additional funds were spent for these purposes.

Mr. President, these will be the first hearings held before the Subcommittee on Health and Hospitals of our new Veterans' Affairs Committee. Several outstanding medical school deans will testify, as well as representatives of veterans organizations, and individual disabled veterans. The VA's top medical people will also appear to testify on the continuing tragedy of our VA hospital crisis.

It is urgent that we get a firm grasp on the current need for medical services by our sick and wounded veterans, and that we make it clear to the administration and the Nation that the Senate will do everything possible to provide first-class medical care to our veterans.

ADDITIONAL STATEMENTS

PUBLICATION OF RULES OF PROCEDURE OF SELECT COMMITTEE ON STANDARDS AND CONDUCT

Mr. STENNIS. Mr. President, as required by the Legislative Reorganization Act of 1970, I submit herewith for publication in the RECORD the Rules of Procedure adopted by the Select Committee on Standards and Conduct:

Resolved, That the Select Committee on Standards and Conduct, United States Senate, adopt the following rules governing the procedure for the Committee:

1. *Meeting time.*—The meetings of the Committee shall be on the first Monday of each month at 10:30 a.m. or upon call of the Chairman.

2. *Organization.*—Upon the convening of each Congress, the Committee shall organize itself by electing a chairman and a vice chairman, adopting rules of procedure, and confirming staff members.

3. *Quorum.*—A majority of the Members of the Committee shall constitute a quorum for the transaction of business, except that two Members shall constitute a quorum for the purpose of taking sworn testimony.

4. *Proxies.*—A Member may vote by special proxy on any issue which comes before

the Committee for decision except as otherwise designated in these rules.

5. *Record of Committee action.*—The Chief Counsel of the Committee shall keep or cause to be kept a complete record of all Committee action. Such record shall include a report of the votes on any question on which a record vote is demanded.

6. *Public hearings.*—All hearings conducted by this Committee shall be open to the public, except executive sessions for voting or where the Chairman orders an executive session. The Committee, by a majority vote, may order a public session at any time. In making such determination, the Committee will take into account evidence which may tend to defame or otherwise adversely affect the reputation of any person.

7. *Secrecy of executive testimony.*—All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the Committee.

8. *Stenographic record of testimony.*—An accurate stenographic record shall be kept of the testimony of all witnesses in executive or public hearings. The record of his own testimony, whether in public or executive session, shall be made available for inspection by a witness or his counsel under Committee supervision; a copy of any testimony given in public session, or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session, shall be made available to any witness at his expense if he so requests.

9. *Release of reports to public.*—No Committee report or document shall be released to the public in whole or in part without the approval of a majority of the Committee. In case the Committee is unable to reach a unanimous decision, separate views or reports may be presented and printed by any Member or Members of the Committee.

10. *Subpenas.*—Subpenas may be issued by the Committee Chairman or any other Member designated by him, and may be served by any person designated by the Chairman or Member. The Chairman or any Member may administer oaths to witnesses.

11. *Swearing of witnesses.*—All witnesses at public or executive hearings who testify to matters of fact shall be sworn unless the Chairman, for good cause, decides that a witness does not have to be sworn.

12. *Counsel for witnesses.*—Any witness summoned to a public or executive hearing may be accompanied by counsel of his own choosing who shall be permitted while the witness is testifying to advise him of his legal rights.

13. *Right to submit interrogatories.*—Any person who is the subject of an investigation in public hearings may submit to the Chairman of the Committee questions in writing for the cross-examination of other witnesses called by the Committee. With the consent of a majority of the members of the Committee present and voting, these questions shall be put to the witnesses by the Chairman, by a member of the Committee, or by counsel of the Committee.

14. *Written witness statements.*—Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the counsel or Chairman of the Committee 24 hours in advance of the hearings at which the statement is to be presented. The Committee shall determine whether such statement may be read or placed in the record of the hearing.

15. *Prohibition of cameras.*—Television, motion picture and other cameras and lights will not be permitted to operate during a hearing.

16. *Interrogation of witnesses.*—Interrogation of witnesses at Committee hearings shall be conducted on behalf of the Committee by Members and authorized Committee staff members only.

17. *Right to testify.*—Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a Committee Member or counsel, tends to defame him or otherwise adversely affect his reputation, may (a) request to appear personally before the Committee to testify in his own behalf, or, in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the Committee for its consideration and action.

18. *Confirmation of staff.*—All staff members shall be confirmed by a majority of the Committee.

19. *Changing rules.*—These rules may be modified, amended, or repealed by a decision of the Committee, provided that a notice in writing of the proposed change has been given to each Member.

ANOTHER PIPELINE IN ALASKA

Mr. STEVENS. Mr. President, the importance of the Trans-Alaska pipeline cannot be overstressed. It is the key to the solution of the impending energy shortage. Although many have speculated about its adverse effects, few have taken time to research the subject. An exception is Kent Sturgis, an Alaskan newsman. Sturgis, who is the Anchorage reporter for the Associated Press, was born in Alaska and educated at the University of Alaska and the University of Washington. He worked for the Fairbanks Daily News-Miner before joining the Associated Press. His knowledge of Alaska is extensive. Recently, he researched an existing pipeline—a 626-mile fuel artery that crosses Alaska and northern Canada. Built in the mid-1950's, the pipe is 8 inches in diameter and supplies the needs of military installations in Fairbanks, crossing mountain passes as high as 7,000 feet. His article is enlightening and provides an insight into the kind of problems that will be faced by the Trans-Alaska pipeline's builders. Here is the article:

The military has operated a 626-mile fuel pipeline through Alaska and northern Canada for more than 15 years without apparent lasting environmental damage, an Army report says.

The eight-inch line was designed and built in the mid-1950's before ecology became a household word.

Beginning at the deep-water port of Haines in Alaska's Southeastern Panhandle, the pipeline snakes over mountain passes as high as 7,000 feet, and crosses 26 major rivers through Canada's Yukon Territory and British Columbia to Fairbanks.

To date, the report says, the Army line has withstood earthquakes, floods, erosion and corrosion, subzero temperatures and vandalism. But it also says the line has been the source of more than a dozen documented spills ranging from a few barrels to 4,000 barrels, and is in a "deteriorating" condition.

The existing pipeline has faced many of the same problems as those encountered by seven oil firms hoping to build and operate an 800-mile Trans-Alaska crude oil pipeline from the Arctic Coast to the Gulf of Alaska.

The Trans-Alaska pipeline, subject of a raging national debate, cannot be built until approval for construction is granted by the Interior Department under terms of the National Environmental Policy Act. More than 75 percent of the route crosses the federal land.

Conservationists and others fear construction of the commercial pipeline will harm Alaska's ecology and wildlife populations permanently, and will open America's last sizeable wilderness to face-changing development. They also fear the possibility of spills in shipping the oil by tanker from Valdez, the southern terminus of the proposed line, to Washington State and elsewhere along the West Coast.

The oil companies, which have formed Alyeska Pipeline Service Co. in their joint venture, contend the Alaskan line is the only practical and economic means of marketing oil from the North Slope oilfields, which are hundreds of miles from the nearest highway.

Fate of the Trans-Alaska pipeline hinges on the final draft of construction stipulations now being prepared by the Interior Department following environmental impact hearings in Washington, D.C., and Anchorage.

The Army pipeline was built in 1954 and 1955 under supervision of the Corps of Engineers to supply an assortment of fuels to Interior Alaska military reservations.

The existing pipeline is only one-sixth the diameter of the proposed 48-inch Trans-Alaska line. The fuel it carries is much lighter than crude oil. Its route is several hundred miles south of that over which the commercial pipe would be laid.

The Army line has a daily pumping capacity of some 30,000 barrels, while the larger line could deliver more than 2 million barrels of oil to Valdez daily. The military facility cost almost $44 million when completed; the Trans-Alaska line would cost more than $1 billion.

But those involved in construction and operation of the military line have dealt with many of the problems facing the Alyeska Pipeline Service Co., and have learned a number of environmental lessons.

The history of the Haines-Fairbanks pipeline is contained in a report compiled recently at the request of Fairbanks Mayor Julian Rice, who presented it as evidence with his testimony last month at hearings in Anchorage. It was prepared by the Petroleum Directorate of the U.S. Army Alaska, headquartered at Fort Richardson near Anchorage.

The report contains limited information on a dozen spills reported since the spring of 1956, with eight of them occurring since 1968. Six were caused by corrosion, four by bullet holes, one a motor vehicle struck a valve and another when buried pipe was ruptured by a power pole auger, the report said.

"There was never a requirement to report environmental damage caused by petroleum spills," it said. "As a result, very few official records or observations were made that reflect this area of concern so prevalent today."

The board of directors of the Southeast Alaska Community Action Program passed a resolution last month asking that Governor William A. Egan appoint a board to investigate a spill last September into a tributary of the Chilkat River, about 20 miles north of Haines. It also asked that the pipeline be closed "until it is satisfactorily shown to be in good condition."

The resolution had been requested by Tlingit Indians in Haines and nearby Klukwan, who use the Chilkat River for subsistence fishing.

The Army report said the break, through which about 1,800 barrels of jet fuel were lost, was caused by corrosion.

The Army said fishing reports indicated "the bottom of the small stream was bared of marine life by the density of the initial spill." The report said "monitoring of this

stream by fisheries experts continues" and added that other environmental damage appeared negligible.

According to the report, the most serious oil spill on record occurred near Dezadeash (Daisy-dash) Lake in Yukon Territory during May, 1968, when some 4,000 barrels of diesel fuel was lost. The Army said it was caused "from a corrosion break where the pipeline was buried in an area of predominantly corrosion-conducive soils."

Straw was spread over the lake, a boom was used to pick up the fuel-soaked straw and after most of the cleanup job was done, "a detail was left behind for a period of months to clean up any traces of fuel that could be found," the report said.

The Army said "the fish kill was considered significant," but adds that as of last summer, lake fishing was "fair to good."

"Along the route, temperatures have ranged from a low of minus 83 degrees at Snag, Yukon Territory, to a high of 92 degrees at Fairbanks, a range of 175 degrees.

"As liquid fuels are capable of contracting and expanding with temperature changes," the report said, "line pressures and flow rates are directly affected. During a temperature rise, it has been possible to receive 1,000 barrels an hour while only pumping from Haines 500 barrels an hour."

Although the Army reports no serious problems caused by permafrost—which is considered one of the engineering question marks in the Trans-Alaska proposal—it has learned several lessons from operations in severe winter temperatures.

Some critics of the Trans-Alaska pipeline say that because the line will be moving hot oil over areas of heavy permafrost, the pipe may buckle and break if the hot oil melts ice-laden soil supporting the line.

The Army report said its pipeline—built south of the Arctic Circle—is laid over ground which contains only "patchy" permafrost which does not have as high a water content as permafrost north of Fairbanks.

Deicing work had to be undertaken on the Army pipeline in Yukon Territory during the winter of 1956 because water was left in sections of the line after completion of hydrostatic testing the previous fall.

Because it was plugged by ice, the report said, the line had to be cut in 28 locations in order to remove ice.

The Army said "significant quantities" of fuel were spilled, but it could not say exactly how much or what damage, if any, was caused.

The report said the pipeline suffered no damage during the Great Alaska Earthquake of 1964.

"The above-ground sections merely writhed across the 50-foot right-of-way, but the line was designed for movement," the report said. "The buried sections presented no problems since, during the ditch phase, the line was snaked in such a way that the movement of the earthquake caused no appreciable undue stress."

Another problem encountered by the Army is erosion. During spring thaw, the report said, rushing water can undermine the pipeline "and in some cases, up to 200 feet of pipe would be suspended."

The report attributes no spills to erosion working on the line.

"This caused no serious problems . . . since our aerial surveillance aircraft brought this to our attention immediately," the report said. "Maintenance teams would go out and brace the pipeline in the area. The bracing invariably was designed to take care of future problems."

Because the pipe was not wrapped or coated to ward off external corrosion, several miles of pipe have had to be replaced.

However, the report said the "major problem facing the petroleum directorate is the deteriorated—and deteriorating—condition of the southern section" of the line. And it says the cost of all necessary repairs is prohibitively high.

The report said only "emergency repairs" will be made until decisions about the pipeline's future are made on the basis of a utilization study. If the Trans-Alaska pipeline is built, the military expects to use fuel refined in Fairbanks from North Slope oil.

EXECUTIVE IMPOUNDMENT OF APPROPRIATED FUNDS

Mr. ERVIN. Mr. President, as Senators know, the Subcommittee on Separation of Powers recently conducted 3 days of hearings on the practice of impoundment of appropriated funds by the executive branch of the Government.

At those hearings we heard from legal scholars, political scientists, Government officials, and Members of Congress. While the witnesses did not all agree on the legality of the impoundment practice, there was a consensus, except from the administration witnesses, that the impoundment practice has been used by various administrations as a policy tool. The Constitution gives to the Congress all legislative power, and the executive branch of the Government is charged with the faithful execution of the laws passed by Congress. When impoundment is used illegally to thwart the will of the duly elected representatives of the people, the separation of powers doctrine becomes nothing more than a figment of the imagination of the Founding Fathers. Those wise men knew that freedom is best preserved when governmental powers are separated in a manner so that the different branches of the Government may maintain checks and balances over the others.

In the next few days I intend to introduce proposed legislation which would require the President to report to Congress instances of impoundment of funds appropriated for specific projects. The President will be required to give his reasons for the impoundment, and Congress, within a given number of days, will be able to disapprove his impounding action by a majority vote of both Houses.

As Senators know, I strongly advocate a balanced budget and fervently believe that the Federal Government has been hypocritical in promulgating its fiscal policies. Moreover, the executive branch of the Government has not employed the impoundment practice to effectuate savings and economies in government; rather it has become a raw assertion of executive power employed to usurp Congress' power of the purse.

Consequently, I think the time has come for Congress to reassert its power in this area.

I ask unanimous consent that an editorial from the New York Times of April 22, 1971, and an article from the Wall Street Journal of April 22, 1971, regarding the whole question of impoundment and the role of the Subcommittee on Separation of Powers in this controversy, be printed in the RECORD.

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

SEPARATE THOSE POWERS

The average American still tends to assume that when Congress appropriates a sum of money for a particular program or project and the President fails to veto it, precisely that sum of money will be spent in the allotted time. Few assumptions are less warranted; as a result, a political confrontation between the executive and legislative branches of government is not far in the offing.

Over most of the Republic's history the authority of Congress to appropriate money was unchallenged, but now Congress proposes and the President disposes—if he so wishes. If not, he impounds the appropriated money or whatever part of it he thinks wise.

The shift started in complete innocence soon after the turn of the century, when the President was empowered to save the Treasury money if he could achieve a Congressional purpose for less than the amount appropriated. In World War II the executive power in this regard was swollen by President Roosevelt's refusal to spend money appropriated for projects that might require scarce materials or otherwise hinder the war effort. And legislation enabled postwar Presidents to exercise the same discretion for other reasons—the state of the nation's economy, the debt ceiling and the like.

By now the process has gone so far that the Nixon Administration has impounded nearly $13 billion in funds appropriated by Congress for domestic programs. Instead of the roughly $600 million that Congress clearly wanted spent on urban mass transit this year, the Administration has budgeted only $269.7 million. Of funds made available by Congress for fiscal year 1971, some $192 million for public housing has been frozen, $200 million for urban renewal, $200 million for water and sewer grants, and so on. The trend has gone so far that some Congressmen themselves accept the contention that a Congressional appropriation is merely an authorization to spend, not a mandate.

But the tide is turning. In hearings before his own subcommittee on the separation of powers, Senator Ervin of North Carolina complained rightly that through this discretionary use of funds "the President is able to modify, reshape or nullify completely the laws passed by Congress."

Legislation is in preparation to restore the balance by requiring a President to seek Congressional approval for cuts in appropriations that go beyond the dictates of efficiency. But Senator Mathias of Maryland, a liberal Republican, seems to us to be on an even better track. Why not give the President, through constitutional amendment, a line-item veto in appropriations bills—with Congressional power, of course, to override? Given a compelling case, the President would generally have his way—but he would have it only by grace of a truly equal branch of government.

CAN THE PRESIDENT REFUSE TO SPEND SOME FUNDS? FIGHT RAGES IN CAPITAL

(By Arlen J. Large)

WASHINGTON.—The city has monuments and vistas, but it doesn't have a proper aquarium. Congress voted nine years ago to build one, and legislators appropriated money for it, but Presidents Johnson and Nixon refused to spend it. Now the aquarium's chief congressional sponsor has died, and the plans are abandoned.

But Mike Kirwan's aquarium keeps cropping up in a raging Congress-vs.-White House debate over a President's power not to spend

funds appropriated by law. Members of Congress in both parties assail what they consider constitutional corner-cutting by President Nixon, and the unbuilt aquarium is cited as a classic example.

Sen. Charles Mathias, the Maryland Republican, says, "The President has just quietly effected a veto without getting all the fish lovers in the United States upset by having to issue a veto message."

It's a serious quarrel. Legislation is being considered that would crimp a President's power to impound funds unilaterally, and lawmakers are threatening to put some administration-backed bills in cold storage until President Nixon unfreezes some of the $12.8 billion of unspent appropriations. And in a related dispute, a move is afoot to force Mr. Nixon to spend money on a health program he thinks he formally and officially vetoed.

SOURING RELATIONS

The din from Capitol Hill may be having some effect. Appropriations Committee members in both houses are beginning to get private assurances from the White House that the freeze on at least some public works projects will be lifted after July 1.

No matter how it all comes out, the argument over spending authority is further souring relations between the legislative and executive branches, which already are at odds over war powers and foreign policy. Democratic Sen. Allen Ellender of Louisiana, chairman of the Senate Appropriations Committee, has called openly for Congress to say "no" to Nixon proposals in retaliation for the spending freeze.

"I suspect we are going to see more and more of this thinking in the Congress in the days ahead if changes are not made," warned Sen. Ellender in a Shreveport speech last week.

To hear the aggrieved lawmakers tell it, they're just patriots trying to preserve the Constitution. The freezing of appropriated funds, says Democratic Sen. Sam Ervin of North Carolina, lets the President "modify, reshape or nullify completely laws passed by Congress," and this "flies directly in the face of constitutional principles." Sen. Ervin, an expert on the Constitution, has been holding scholarly hearings on the subject. He hasn't been complaining about the specific project freezes in North Carolina though there are some.

ICE IN THE PORK BARREL

Not so with many of the other avowed Constitution-preservers, who are alarmed at ice in the pork barrel. Sen. Ellender is sore because the administration won't spend an extra $3 million that Congress voted for the Red River Waterway in Louisiana. Democratic Rep. Joe Evins, chairman of the House Appropriations Subcommittee on public works, is miffed at the withholding of funds for expansion of the Oak Ridge Atomic Energy operation in his Tennessee district, and he also resents a national hold-down on aid to cities. That kind of thing, he wrote constituents, is counter to the principles "established by our forefathers in the Constitution."

Democratic Rep. Charles Bennett from north Florida condemns the "Louis 14th decision" of the President to cut off funds for the Cross Florida Barge Canal. But Republican Rep. Herbert Burke, an opponent of the canal from south Florida, has no constitutional objection to the decision.

Indeed, congressional complaints about impounding are highly selective. Critics of big Pentagon spending aren't saying much about the $1.3 billion of frozen military funds. Conservative lawmakers aren't loudly demanding release of $38 million in antipoverty money. Senate Democratic Leader Mike Mansfield has suggested the administration be taken to court for impounding appropriated funds, but there's an exception: Mr. Mansfield has been having a furious row with the new quasi-government railroad passenger corporation over curtailed service in Montana. Some $38 million in government start-up grants to the company are temporarily on the impounded list, and "as far as I'm concerned," says the Senator, "they can impound that from now till doomsday."

TWO POSITIONS OF JOHNSON

A typical Senate complaint about impounding goes this way: "I had thought that once the Congress passed the appropriation bill and the President approved it and signed it and said to the country that 'This has my approval' that the money would be used instead of sacked up and put down in the basement somewhere."

That is the familiar syntax of Lyndon Johnson, and the words were uttered when he was a Senator in 1959. But when he got to the White House he sent appropriations to the basement as freely as his predecessors had, and that's one of the Nixon administration's main answers to its critics: all Presidents impound funds when "necessary" to manage the government efficiently.

A 1950 law specifically authorizes the President to pace the spending of appropriated funds in ways that achieve economy and efficiency. The White House also argues it must regulate spending rates to comply with other laws that Congress fancies as inducements to general thrift: the stautory limit on the national debt, and a leaky 'ceiling' on total government spending. Finally, the administration says Presidents can hold back spending for construction projects that might be inflationary, under terms of the 1946 law requiring the government to "promote maximum employment, production and purchasing power."

Thus both sides have plenty of statutes and constitutional clauses to hurl at each other, and these are augmented with political brickbats. House Majority Leader Hale Boggs of Louisiana has accused the administration of hypocrisy for pushing its revenue-sharing plans while holding back $600 million available for present programs of aid to cities. This is becoming a major debating point for Democrats who don't want revenue sharing anyway.

There are hints from the administration that some impounded money may be released even before July 1. Budget-keepers are said to have determined that the statutory spending ceiling won't, after all, require the continued freezing of the entire $12.8 billion. Officials insist any turn of the spending spigot would be due to bookkeeping technicalities, not a conscious decision to hypo the economy or appease the opponents of revenue sharing.

THE CANAL AND THE AQUARIUM

Release of funds temporarily held up by a technicality, however, wouldn't quiet another branch of the controversy: impounding of money for projects the President wants killed for policy reasons. The blocking of spending on the Cross Florida Barge Canal is an example; President Nixon decided the canal was a menace to the environment and shouldn't be built. The Washington aquarium likewise falls into this category, as do past disputes over development of a new bomber and the size of the Marine Corps.

To increase congressional clout in such disagreements, some lawmakers would like to lace up their spending bills with language making the outlays mandatory. A prototype was last year's bill authorizing hospital construction funds and requiring that the entire annual appropriation be spent every year. Mr. Nixon complained vigorously about this assault on "Presidential options," and vetoed the bill. The veto was overridden, and the mandatory spending language now is law, a precedent for applying it to other programs.

Sen. Ervin says he's considering another approach. His bill, still being drafted, would require the President to send Congress formal notice he's impounding something, and why. Congress then would have 60 days or so to pass a resolution overturning the impounding decision.

This plan, however, is meeting resistance from Rep. Evins and others, who think it would give the President a new form of pocket veto; Mr. Evins says he prefers creation of a congressional committee just to ride herd on the doings of White House budgeteers.

WHAT'S A POCKET VETO?

Sen. Ervin has teamed with two fellow Democrats, Sen. Ted Kennedy of Massachusetts and Rep. Fred Rooney of Pennsylvania, in a separate money fight with the administration. This involves a dispute over the definition of a presidential pocket veto, which is a veto of a bill by failure to sign it after congressional adjournment.

Last Christmas, Congress gave itself the weekend off, after passing by nearly unanimous votes a bill authorizing funds for the training of family-practice doctors. President Nixon used a pocket veto to kill the bill on Dec. 24, on the ground that Congress had adjourned and wasn't in town to receive a regular veto message. Congress can't override a pocket veto.

When the Senate reconvened on Dec. 28, Sen. Ervin said the pocket veto had been improperly used. By neither signing the doctor-training bill nor returning it with his disapproval, the President actually had allowed it to become law, Sen. Ervin contended.

On this assumption, Sen. Kennedy and Rep. Rooney have asked the House Appropriations Committee to provide some money as if the disputed 1970 bill were law, wrapping it in mandatory-spending language and designating some specific medical schools as recipients. If the appropriation is enacted and the administration refuses to spend the money, a recipient school could start a suit leading to a Supreme Court ruling on the proper use of a pocket veto.

SCHOOL TUITION EXPENDITURES SHOULD BE MADE DEDUCTIBLE ITEMS FOR INCOME TAX PURPOSES

Mr. PELL. Mr. President, I present to the Senate a resolution entitled "Senate Resolution Memorializing Congress To Make School Tuition Expenditures Paid on Behalf of Dependents Deductible Items for Income Tax Purposes," introduced by Senator Donald E. Roch, and adopted by the State Senate of Rhode Island on March 19, 1971. I ask unanimous consent that it be printed in the RECORD.

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

RESOLUTION

Whereas, The existence of nonpublic education facilities greatly eases the cost of general education that is borne by the state, and

Whereas, The financial burden of nonpublic education has been increasing rapidly, and

Whereas, Those taxpayers making expenditures for school tuition on behalf of their dependents ought not to be required to pay an income tax on money so expended, now therefore be it

Resolved, That the Congress of the United

States be memorialized to enact legislation to make school tuition expenditures paid on behalf of dependents deductible items for income tax purposes, and be it further

Resolved, That the Secretary of State be and he hereby is authorized and directed to transmit duly certified copies of this resolution to the Senators and Representatives from Rhode Island in the hope that they will use every endeavor to influence favorable action by the Congress in this matter.

TRIBUTE TO WILLIAM D. RUCKELSHAUS

Mr. BAKER. Mr. President, Look magazine for May 4 includes an article written by Jack Shepherd on the Administrator of the Environmental Protection Agency, William D. Ruckelshaus. Mr. Shepherd has done remarkably well, I think, in capturing the essence of one of the finest public servants on the scene today.

Although the Federal antipollution effort has been underway for years, we are only now beginning to enter the most difficult phase of that effort—enforcement of the various standards that have been so painstakingly established. Without vigorous enforcement, the whole program is meaningless. And it is with enforcement that the hard economic issues will come to the fore with great force. We are finally being asked as a society to make some very difficult decisions about "tradeoffs" between unhibited economic progress and protection of our natural environment. It is not going to be easy.

As a Republican and as an American interested in the quality of environment, it is a matter of great comfort and satisfaction to me that Bill Ruckelshaus has been charged with the job of being the Nation's top antipollution cop. Without any derogation of other officials intended, I have felt since his appointment was announced that it is among the finest made by the Nixon administration. Together with Dr. Russell Train, Chairman of the Council on Environmental Quality, Mr. Ruckelshaus is a member of an environmental team of the very highest quality and competence.

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

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

INTRODUCING WILLIAM RUCKELSHAUS—WHO?

(By Jack Shepherd)

The introducer drawls into the microphone: "There's been lotsa articles in magazines about hot pants. Here's the guy who sits on about the hot-test seat in the United States. He's William D. Rick- uh, Rickelslus, the first administrator of the bran' new Environmental Protection Agency that's gonna clean up our air, water and just about a host of other things. He's a graduate of Princeton, cum laude, and Harvard Law School, and one of the best, if not the best bass fisherman in the state of Indiana. Some conservationists called his appointment 'the worst since Caligula made his horse a consul,' but things are happenin' over there at EPA—Mr. Ruckelsloose. . . ."

Wary applause.

Bill Buckelshaus unreels quickly from his seat. He's 6'4" and hits the podium with the enthusiasm of a bass popping bugs. "Thank you," he begins. "I lay claim to being the best bass fisherman in the country. That claim is disputed by a few. . . ." He talks fondly of fishing with his dad in Michigan every year for 30 years, of flying into a Canadian lake until it was closed by pollution, of taking Jill and the kids to Manitou Island in Lake Michigan, catching bass, camping, running wild for two weeks. Between speeches in his Senate campaign in 1968, Bill often stopped by the road and tossed a line into any Indiana pond. But there's not much fishing now.

"Ladies and gentlemen . . . ," he continues, "America is in an environmental crisis of the first magnitude. We are in deep trouble. . . ."

Now, Bill Ruckelshaus is a snake-oil salesman. He's on the road, making speeches, cajoling state health officials, mixing together 15 separate Federal divisions into the Environmental Protection Agency. EPA, started December 2, 1970, may be the most potent anti-pollution agency ever concocted. It will monitor and enforce standards for air, water, pesticides, noise, radiation and solid wastes.

He is also a magician. He's putting together an agency—scattered in ten regions across the U.S.—that must produce environmental results fast. If he sells out, or loses his magic, we'll all know—we'll taste it in our water and smell it in our air. In truth, however, Ruckelshaus may be only the rabbit, yanked out of the hat in a daring display by our new environmental President for that skeptic in the front row, Sen. Edmund S. Muskie, already billed as Mr. Clean for his efforts. How strong is Nixon's act on the environment? How free and agrressive can Ruckelshaus be? Will the snake-oil salesman/magician return to fishing? (Are there any fish left?)

". . . It is time for every member of our society to participate in the development of a new environmental ethic. We must no longer ask ourselves whether pollution control is worth it, whether we might be doing more than our share, whether our business competitors might be getting by with murder while we are limited to mayhem. There is no excuse for the delay and dalliance which have brought us to our current crisis. . . ."

Bill Ruckelshaus is young, 38, and big, 195 pounds, with shoulder-wide cheeks—"It all goes to my cheeks," he laughs. "I have 50 pounds in each cheek." He's intellectual, even solemn in public, but can break up his friends in private. He casts jokes with skill, and when he smiles, his face looks like a smallmouth bass took a jitterbug sideways. Ruckelshaus is a moderate Indiana Republican, a bright, candid and accessible man. His speech is studded with phrases like "I'd be less than honest to say . . . ," "to tell you otherwise would be untruthful. . . ." He believes in the law the way John Muir believed in trees. This, and his honesty, may carry the fight.

"We are victims of a long-obsolete point of view. This viewpoint holds that man must conquer nature. We have clung to this vision with such tenacity that we now inherit the spoils of a 300-year-old war against nature. . . ."

President Nixon, when he appointed Ruckelshaus, called him "the enforcer," and added, "You're going to be called a lot worse." Indiana newspapers groaned: "President Nixon has found himself an environmental Carswell." People accuse: "You ought to be called The Big Business Protection Agency."

"The only way I'll be able to dispel that attitude is by action," Ruckelshaus says. "If there were any industry Nixon had a hands-off policy toward, I would resign. I feel no inhibition whatsoever to enforce the laws—even if the polluter has contributed to campaigns. We're going after polluters—all of them."

When EPA was a week old, Ruckelshaus brought action against Atlanta, Detriot and Cleveland for violations of water-quality standards. A week later, he filed suit against U.S. Plywood-Champion Papers, Inc. and Jones & Laughlin Steel Corp. for water-quality violations. In January, he filed suits against ARMCO Steel in Houston and ITT Rayonier's pulp mill on Puget Sound. In February, he filed again, this time against Koppers Co., Inc., on the Ohio River. He also told Union Carbide Corp. to speed up air-pollution controls at its Marietta, Ohio, plant. EPA held enforcement conferences concerning water pollution in Dade County, Fla.; the Escambia River and Bay, and Perdido Bay, in Alabama-Florida; and the Long Island Sound and its tributaries. In March, Ruckelshaus asked the Interior Department to hold up the Alaskan pipeline for further study. He started administrative proceedings (scientific inquiries and public hearings) on DDT, 2,4,5–T, Aldrin, Dieldrin and Mirex pesticides.

He stands above the microphone and speaks coolly: "In some areas, where even maximum control is in effect on carbon monoxide from stationary sources, automobile traffic may have to be regulated or curtailed by 1975."

Ruckelshaus' grandfather was Republican county chairman and a county prosecutor in Indiana in the early 1900's. His father never missed a Republican convention between 1920 and 1960, and helped write the platforms. Bill was born in Indianapolis and raised a strict Catholic.

At Portsmouth Priory School in Rhode Island, he was an all-state football and basketball player for three years; he played end and guard: "Very deft, very deft," he jokes. "I wanted to bring the ball up court and bomb away." A football block injured his right knee—he was later operated on and it still buckles occasionally—and "ruined a truly fantastic career in sports." Bill went to Princeton and coasted for two years. But his father, who also served as chairman of the local draft board, had other ideas. Five days before Bill was to return for his junior year, a letter arrived: " 'Greetings,' " he recalls it said, " 'Your friends and neighbors have selected you. . . .' Hell, it was my old man." He smiles. "It was the best thing that ever happened to me." He spent two years in the Army, most of it as a drill instructor in the Signal Corps ("Wanna hear a dirty word in Morse code?") and packed fly rods out to the field with the radio equipment. He got back to Old Nassau, majored in politics, graduated with honors, and went on to Harvard Law.

"We need to bring environmental sanity to our country. We're not going to solve all our problems just by the existence of this agency. . . . We're going to have to bring a change in our life-style: What we thought of as waste isn't any longer. Resources on this planet are finite. We must preserve what we have."

After law school, Ruckleshaus joined the Indiana Attorney General's staff. In 1963, he drafted the Indiana Air Pollution Control Act. He prosecuted cities and industries for water violations. "That law dealt with something that meant a great deal to me"—clean water for fishing.

In 1966, after forming a Republican Action Committee and reorganizing the party in Marion County, Ruckelshaus won a seat in the Indiana House of Representatives. He led the ticket, and became the first freshman legislator elected majority leader. In 1968, he ran for the U.S. Senate against Sen. Birch Bayh, but the campaign bogged down in mud-slinging. Ruckelshaus lost by 62,639 votes. Nothing worked. He spent fistfuls on billboards, TV and radio spots to make Ruckelshaus a common noun in Indiana. After the campaign, on a flight back to Indianapolis, the pilot announced: "We have a distinguished Hoosier on board tonight, Mr. William Bucklenuts."

"Under the new Clean Air Act, a citizen can even sue EPA." He pauses, and smiles. "I wouldn't recommend that." They laugh.

In January, 1969, John Mitchell met with Ruckelshaus at the Hotel Pierre in New York City and offered him a job. For the next 23 months, Ruckelshaus was an assistant attorney general and head of the Justice Department's civil division, boss of 200 lawyers and 20,000 cases. He got the reputation of a skilled administrator and a cool hand. When student anger boiled over the Cambodian invasion last spring, Ruckelshaus went along with the demonstrators' demands for a rally on the Ellipse behind the White House. It marked the first shift in the Administration's don't-give-an-inch attitude toward antiwar protesters. Ruckelshaus led civilian disturbance teams and soothed New Haven during the Black Panther trials. He was the first man in the Department to go on campus to "improve communications" with antagonistic students: the kamikaze tour, he calls it. In October, onstage at Chapin Auditorium at Mount Holyoke, he faced 1,200 angry kids from five Massachusetts colleges. He started, "Now, I don't want to make a lengthy speech. . . ." A pretty girl waved a "F— Ruck" sign at him. ". . . I want to discuss the policy of the Justice Department. . . ." A black yelled: "What about Bobby Seale, you mother ———!" The debate ranged over drugs, civil rights, Women's Lib, war, and after an hour and a half, Ruckelshaus got solid applause.

In his new job, he still finds kids "a little suspicious" of Government, "but nothing like the Justice Department. They called us goddamn oppressors, picking on everybody, putting them in jail. Here, it's just the opposite: They want us to pick on everybody and put them in jail."

He leans his left arm on the podium, explaining: "Recycling is the direction we should go. Recycle waste and recycle what we use. Our raw materials are not inexhaustible, nor are air and water. . . ."

Ruckelshaus' public success has been scarred by personal tragedy. During his last year at Harvard, he met a girl from Baltimore in his juvenile-delinquency class, and they married. On March 31, 1961, she gave birth to twin girls, and died three days later of complications. Then on Labor Day weekend, 1962, Bill and his dad went fishing on Lake Michigan with friends. They anchored a boat about a mile and a half from Hog Island and rowed to some smaller islands. They wore waders, and walked in the rocky shallows fishing for smallmouth bass. The fishing was great, but a storm blew up, and they decided to return to the larger boat. Bill's father, another man and a boy started out. Bill saw the little boat overturn. Both men drowned, but the boy got his waders off and swam back to shore. Bill, Don Mosiman, a lifelong friend and now an assistant administrator at EPA, and the boy spent the night on the island before the Coast Guard picked them up.

Christmas, 1961, Bill met Jill Strickland at his aunt and uncle's in Indianapolis. "She told me she thought I was pretty stuffy." Jill, who became his second wife, has an MA in education from Harvard, and two years at Indiana University law school. The first year they were married, Jill entered the Indianapolis golf championship, and came in third. "She would-a made a helluva golfer if she hadn't married me," says Ruckelshaus. Jill is 5' 9" and a driver: She has a variety of volunteer jobs, including chairwoman of the Office of Economic Opportunity's advisory council. Bill calls her "Jilly." Sometimes she calls him "Mr. Solid Waste of 1971." They have four girls and a boy, William Justice. "He and I," says Ruckelshaus, "spend all our time running around raising the toilet seats."

"Public awareness is so intense it will demand that we come to grips with the problems. . . . Citizens simply rising up and saying we have to halt degradation are able to do remarkable things. It's tough work. It takes commitment. You have to stick with it longer than the fad some people think environmental cleanup may be—and isn't."

The speech ends, and Ruckelshaus' aides hustle him to a meeting with local EPA staff members. He hears about pulp-mill sludge, 300 million pounds of waste from seafood processing, runoff from 66,000 feedlots, lost railroad cars of 2,4,5-T, plus air, water, solid-waste and pesticide problems. Ruckelshaus studies black briefing books prepared by his staff. He knows the problems well; he's quick and sharp. He tells the staff: "Back me up. Give me a case with hard facts, and I'll go to the mat with 'em." He warns about industry that threatens to leave or shut down. "There are guys who are marginal, but also guys who've made up their minds to shut down and use the Federal order as an excuse. Or the third guy, who uses it as a threat to the state." The EPA staff is exploring ways of getting emergency loans into areas where pollution abatement orders close plants and cause unemployment.

Ruckelshaus is an articulate swearer. After a rough meeting with state officials, he stomps back to his rooms and lets loose: "I must be a masochist! . . . The ——— states are reluctant to set tough standards, well, ——— 'em, the Federal presence will come right in. They're tellin' me, 'You guys come in here and file suit and embarrass us.' What am I supposed to tell Congress: we can't enforce the law because we might embarrass somebody?" He lies on his bed tired, eyes narrowed to slits. "Well, ——— 'em, if I come in here and file suit, sure it's a tacit statement that the states have failed. I'm still goin' to do it!" Where shall we eat, an aide asks. "I don't give a loose ——— where we eat," Bill replies.

At an opening meeting that evening, he gives a short, extemporaneous talk, and asks for questions from the audience.

"Mr. Rooslouse," says a lady, "in the Nixon Administration, which comes first, the environment or the economy?"

"If the environment doesn't come first," he replies, "there won't be any economy. . . . We will make it profitable to clean up by making it unprofitable to continue business as usual." Someone mentions air pollution in Gary, Ind. It's so thick says Bill, "you can practically chin yourself on the particulate matter."

Later, an aide reads Ruckelshaus the names of groups at the meeting: Sierra Club, Ecology Action, the Junior League—"in the Junior League it's The Year of the Environment," the aide says, "and, oh, the consumers and utilities both said you were great.

"M'gawd!"—mock horror, eyebrows up, the word shoots from the side of Bill's mouth—"something's wrong. Those guys should be out there hitting each other."

Ruckelshaus, under mounting pressure, has few releases except his humor. He doesn't smoke. He is an amateur botanist, and once got up at 4 a.m. to work in his garden. On Friday nights, he watches the horror movies. "Jilly hides her head under the covers—scares her to death. The ones I like best are where, about ten minutes into the film, one guy says to another, 'It's someone . . . or something.'" He mentions Godzilla, a late-show horror, and can do a good hulking impression. Is Godzilla a pretty big thing for him? "Godzilla is pretty clearly a balloon," he says with disappointment.

On July 1, Ruckelshaus gets his first test. U.S. industry will begin applying for permits to dump effluent into our navigable rivers and tributaries under the 1899 Refuse Act. The U.S. Army Corps of Engineers will issue the permits, but EPA will have to check water standards and monitor the performances of the companies. Ecologists already are calling it a license to pollute.

Ruckelshaus' tougher encounter will come in early 1972, when Detroit may tell him it cannot meet the 1974 air-pollution guidelines for motor vehicles, and ask for a one year extension. If Ruckelshaus grants it, everyone will howl about dirty air, especially Senator Muskie, who wrote the bill; if Ruckelshaus rejects the request, Detroit could yell about cutbacks and layoffs. Nixon won't win either way.

For now, Ruckelshaus faces congressional hearings on Nixon's 12 environmental bills. EPA's budget could jump 91 percent (to $2.45 billion) and the staff could grow more than 40 percent (to 8,600). Ruckelshaus sees the most important bills as those on toxic substances, pesticides, ocean dumping and noise. "The water bill is a crucial one," he adds. EPA would get the power to improve punitive administrative fines up to $25,000 a day (with court fines up to $50,000) on industries and cities that pollute. "I think the agency will most likely be judged on air-and-water improvement," he says.

Bill Ruckelshaus will be judged on results. If he succeeds, "Mr. Solid Waste" may be the new Mr. Clean.

NATIONAL SECRETARIES WEEK, APRIL 18–24, 1971

Mr. HART. Mr. President, the purpose of Secretaries Week is to bring to the attention of management the role of the professional secretary. It is an occasion for a reexamination of the contribution the secretary can make by freeing her employer from time-consuming tasks, thus making it possible for her employer to redouble his effectiveness.

The contributions which can be made by a professional secretary are limitless, as the Members of this body are only too well aware.

Neither time nor business nor the secretarial profession stands still. Experienced secretaries are no longer satisfied with merely obtaining a position and then enjoying a static situation. They look for new challenges and set themselves increasingly higher goals.

In agreement with the purposes of Secretaries Week, I have introduced—for myself, Mr. HUGHES, and Mr. MILLER—Senate Joint Resolution 67, which would authorize the President to issue a proclamation designating the last full week of April as National Secretaries Week. I hope the Judiciary Committee will schedule this joint resolution for consideration at an early date.

RELEASE OF JAILED SOVIET JEWS SOUGHT

Mr. GRIFFIN. Mr. President, my attention has been called to the efforts of Prof. Herbert Paper of the University of Michigan to obtain the release of Mikhail Zand from Russia.

Mr. Zand, a student of Arabic and Persian literature, has been arrested by Soviet authorities.

Mr. President, I ask unanimous consent that an article published in the Detroit Jewish News be printed in the RECORD.

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

PROFESSOR TRYING TO WIN RELEASE OF JAILED SOVIET JEWS

Herbert Paper, professor of linguistics and Near Eastern languages at the University of Michigan, is actively seeking the release of the 40 Soviet citizens—one a personal friend—who were arrested while participating in a peaceful protest in Moscow Saturday. Two were sent to an insane asylum and the other 38 to prison for 15 days on a charge of "minor hooliganism."

They were protesting against the practice of Soviet authorities of holding a number of persons, contrary to Soviet law, beyond a certain time without bringing charges against them.

With the help of Abraham Udovich, a professor at Princeton now on research leave in England, Paper was able to learn that Mikhail Zand, a young specialist in Arabic and Persian literature and a mutual friend, was involved in the Soviet action.

Paper has sent a letter to the New York Times protesting the Soviet charges against the Jews and said he hopes to enlist the aid of his U. of M. colleagues and other scholars in a statement.

In his letter, Dr. Paper wrote that Zand is well known for his scholarly accomplishments. "Those who know him personally can attest that hooliganism and Zand are simply not a possible combination. He is a warm, gentle soul who exemplifies the best in scholarship. His letters to me have been models of professional probity and full of personal warmth about his family and his hopes for his son and daughter. It happens also to be a fact that he is in poor health.

"Not unrelated to Zand's arrest must surely be the news that on March 12 he formally submitted the required papers requesting exit visas for himself and his family to be united with relatives in Israel," Dr. Paper said.

"My appeal on Mikhail Zand's behalf would be as strong and passionate if he were only an ordinaary Russian Jew who had never published a word, and my protest is indeed registered on behalf of all who were arrested with him. I protest with all my heart against this further example of Soviet harrassment. Let Mikhail Zand's name be added to those magnificent valiant who have been publicly demanding their rights as human beings in the Soviet Union. I call specifically on fellow scholars to appeal to the Soviet government to rectify this reprehensible treatment of those individuals and especially to call attention to the plight of Mikhail Zand. What will it harm the mighty USSR if the Zands are permitted to live and flourish in Israel?"

Paper and Zand have corresponded in Yiddish since meeting at a conference in Iran several years ago.

The professor is trying to get further information from England that he can submit to scientific organizations in the Soviet Union in Zand's behalf.

THE JARRING MISSION—III

Mr. HATFIELD. Mr. President, since the passage of Resolution 242 by the United Nations in 1967 and the consequent appointment of Dr. Gunnar Jarring as special envoy to the Middle East, little hope for constructive progress was evident until the United States initiative in 1969. The Jarring mission was resumed as a result and a glimmer of hope was seen. In recent months, however, the talks have been stalled once again.

To help better understand the hopefully temporary impasse in the negotiations, Mr. Clyde R. Mark, of the Congressional Research Service, prepared an analysis of the exchange of letters between U.N. Ambassador Jarring and the Governments of Israel and the United Arab Republic. The study was completed March 30, 1971, and examines the letters exchanged through February 1971.

Mr. President, I highly commend this analysis to the Senate and to anyone interested in gaining a better understanding of the conflicts in the Middle East. I ask unanimous consent that the analysis and the texts of the letters exchanged, as reported in the London Times of March 11, 1971, be printed in the RECORD.

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

ARAB-ISRAELI PEACE NEGOTIATIONS: EXCHANGE OF LETTERS BETWEEN U.N. AMBASSADOR JARRING AND THE GOVERNMENTS OF ISRAEL AND THE UNITED ARAB REPUBLIC, FEBRUARY 1971

(By Clyde R. Mark, analyst in Middle Eastern Affairs, Foreign Affairs Division, March 30, 1971)

On March 1, 1971, the *Times* of London published what purported to be a letter from U.N. Special Representative Gunnar Jarring to the government of Israel, a similar letter from Jarring to the government of the United Arab Republic (Egypt), and the Egyptian and Israeli replies to Jarring.

Summaries of the main points of the letters are listed below. Following the summaries is a section of notes which attempts to point out the apparent differences in interpretation in the Jarring letters, the Egyptian reply, and the Israeli reply.

JARRING, FEBRUARY 8, 1971	UNITED ARAB REPUBLIC, FEBRUARY 15, 1971	ISRAEL, FEBRUARY 26, 1971
(1) Israel to withdraw from occupied U.A.R. territories to "the former international boundary."	(1) Israel to withdraw from the Sinai and the Gaza Strip.	(1) Israel to withdraw to "secure, recognized and agreed boundaries to be established in the peace agreement." Israel will not withdraw to the June 4, 1967, borders.
(2) Establish demilitarized zones.	(2) Establish demilitarized zones astride the borders and extending an equal distance on both sides.	(2)
(3) Arrange "Practical security" for Sharm al-Shaykh.	(3) Station a U.N. peacekeeping force at Sharm al-Shaykh.	(3)
(4) Guarantee free navigation through the Strait of Tiran.	(4) Guarantee free navigation through Tiran "in accordance with the principles of international law."	(4)
(5) Guarantee free navigation through the Suez Canal.	(5) Guarantee free navigation through the Suez Canal "in accordance with the 1888 Constantinople Convention."	(5) State explicitly Israel's right to free passage through Suez.
(6) Israel and the U.A.R. to accept a mutual commitment to end the war.	(6) Mutual commitment to end the war.	(6) Mutual commitment to end the war.
(7) Israel and the U.A.R. to acknowledge each other's independence.	(7) Mutual acknowledgement of independence.	(7) Mutual acknowledgement of independence.
(8) Mutual acknowledgement of each other's right to live in peace within secure and recognized boundaries.	(8) Mutual acknowledgement of right to live in peace within secure, recognized boundaries.	(8) Mutual acknowledgement of right to live in peace within secure, recognized boundaries.
(9) Each side to stop all hostile acts against the other.	(9) Stop hostile acts.	(9) Stop hostile acts.
(10) Mutual noninterference in domestic affairs.	(10) Mutual noninterference in domestic affairs.	(10) Mutual noninterference in domestic affairs.
(11) Set a high priority on a just settlement of the refugee problem.	(11) A just settlement of the refugee problem in accordance with U.N. resolutions.	(11) A refugee settlement to be negotiated—compensation to be paid for lands and property; planned rehabilitation for the refugees.
(12) Mutual, simultaneous commitment to all of the above points.	(12) ". . . accepts to carry out on a reciprocal basis all its obligations. . . . " ". . . the U.A.R. would give a commitment. . . ."	(12) "Israel would give undertakings . . . ."
(13)	(13) U.N. peacekeeping force to include four permanent members of the Security Council.	(13)
(14)	(14)	(14) Mutual nonparticipation in hostile alliances.
(15)	(15)	(15) Mutual prohibition against stationing of foreign troops hostile to either state.
(16)	(16)	(16) U.A.R. to end economic warfare and boycott.
(17)	(17)	(17) U.A.R. to end interference in Israeli international relations.

NOTES

(1) *Israeli Withdrawal:* Jarring's phrase "international boundary" refers to the line from the Gulf of Aqaba to the Mediterranean which served as the border between Egypt and British Mandate Palestine, and which became the Armistice line between Egypt and Israel from 1948 to 1967. Secretary of State William Rogers referred to the same international boundary in his speech of December 9, 1969, and his news conference of March 16, 1971.

If Egypt and Israel accepted the international boundary, the Gaza Strip would be in Israel. Egypt's reply to Jarring clearly demands Israeli withdrawal from the Gaza Strip and the Sinai. Israel's reply to Jarring clearly states that Israel will not return to the boundaries that prevailed on June 4, 1967. Israel wants to negotiate new boundaries.

(2) *Demilitarized Zones:* The Egyptian reply to Jarring adds that the demilitarized zones must straddle the borders—both Israel and Egypt would have a demilitarized space along their side of their common border. The "equal distant" phrase in the Egyptian reply means that both sides would have the same amount of demilitarized space on their side; for example, a ten-mile-wide demilitarized zone along the border would extend five miles into Egypt and five miles into Israel.

Israel did not respond to the Jarring point on a demilitarized zone. Israel has stated in the past that its territory is sovereign and will not be subject to any outside control. Israel also has stated that it would not allow foreign troops to be stationed on its territory, a possible point of contention should a U.N. peacekeeping force be formed to patrol borders or demilitarized zones.

(3) *Sharm al-Shaykh:* Egypt's concession of sovereignty to a U.N. peacekeeping force may answer Jarring's call for "practical security." The Egyptian answer also rebuffs any Israeli intention to keep Sharm al-Shaykh.

Israel did not respond to Jarring's point on Sharm al-Shaykh, probably because Israel includes the area among the to-be-negotiated border problems. Prime Minister Golda Meir has called Israeli's control over Sharm al-Shaykh a "legitimate security requirement." Apparently, Israel intends to keep Sharm al-Shaykh.

(4) *Strait of Tiran Navigation:* In the Egyptian reply, the phrase "in accordance with the principles of international law" could be interpreted in two ways: (1) that the International Court of Justice should adjudicate the matter of sovereignty and control; or (2) that the conventional laws of the territorial sea apply to the Strait.

Israel did not reply to Jarring's point on the Strait of Tiran. If Israel retains Sharm al-Shaykh, navigation through the Strait would be under Israeli control.

(5) *Suez Canal Navigation:* The 1888 Constantinople Convention contains ambiguous and conflicting wording on the status of the Canal in war. Israel wants a separate clause in a peace treaty specifically guaranteeing Israeli passage through the Suez Canal.

(6) *End of War:* Jarring, Israel, and Egypt appear to agree on this point.

(7) *Independence:* Apparent agreement.

(8) *Secure Boundaries:* Apparent agreement.

(9) *No Hostile Acts:* Apparent agreement.

(10 *Noninterference in Domestic Affairs:* Apparent agreement.

(11) *Refugees:* Jarring's suggestion of applying a high priority to the refugee issue probably meets with everyone's approval. The Egyptian caveat "in accordance with U.N. resolutions" is usually understood to refer to paragraph 11 of U.N. Resolution 194 (III) of December 11, 1948, which says that the Arab refugees should be offered a choice between compensation or repatriation. The Israeli suggestion for negotiations on the refugee issue is in keeping with past Israeli policy for resettlement of the Arab refugees in other Arab countries. Israel agrees to pay compnesation for land and property, but the Arabs usually include compensation for damages. The Israeli word "rehabilitation" is probably a euphemism for resettlement.

One point not raised by Jarring, Israel, or Egypt is the definition of refugee—does refugee include Jews who left property and land in Arab countries when they moved to Israel?

(12) *Commitment:* Egypt says it will make the commitment called for in the Jarring letter; Israel implies that it will also.

(13) *U.N. Peacekeeping Force:* Egypt wants to include troops from the "big four" nations, France, the United Kingdom, the Soviet Union, and the United States, in the U.N. peacekeeping force so that the big four will take an active part in the peace settlement. Israel opposes big four involvement.

(14) *Hostile Alliances:* An Israeli point added to nullify or counteract mutual defense pacts among the Arab states, such as the defense treaty which appeared in late May-early June 1967. In mid-March 1971, Syria and Egypt announced that their two countries had signed another mutual defense pact. If Egypt and Israel signed a peace agreement, Egyptian troops theoretically could be placed on Syrian soil, and could continue the war. Syria has refused to discuss peace with Israel. Two open questions are: Would this clause apply to Egyptian membership in the Arab League? Would this clause preclude a U.S.-Israeli mutual defense agreement?

(15) *Hostile Troops:* An Israeli point added to avoid stationing other Arab troops in Egpyt to continue the war after Egypt and Israel signed a peace agreement.

(16) *Boycott:* An Israeli point aimed at the Arab League boycott of Israeli goods and foreign firm which deal with Israel.

(17) *Interference with Israeli Foreign Relations:* An Israeli point aimed at Arab pressure on "third world" states to avoid contact with Israel.

CONFLICT OF VIEW BETWEEN ISRAEL AND EGYPT MADE CLEAR IN JARRING DOCUMENTS

Documents understood to be the original letter by Dr. Gunnar Jarring, the United Nations special envoy in the Middle East, to Egypt and Israel and the Egyptian reply, have been made available to United Press International by diplomatic sources in Cairo.

Dr. Jarring sought a commitment from Israel to withdraw from the whole of Sinai in return for an Egyptian undertaking to "enter into a peace agreement." Egypt agreed but insisted that the Israelis should also pull out of the Gaza sector. Israel accepted the principle of withdrawal but only to "secure recognized and agreed boundaries to be established in the peace agreement" and "not to the pre-June 1967 lines."

PROPOSALS TO BREAK DEADLOCK

CAIRO.—Dr. Jarring's letter is as follows:

I have been following with a mixture of restrained optimism and growing concern the resumed discussion under my auspices for the purpose of arriving at a peaceful settlement of the Middle East question.

My restrained optimism arises from the fact that in my view the parties are seriously defining their positions and wish to move forward to a permanent peace.

My growing concern is that each side unyieldingly insists that the other make certain commitments before being ready to proceed to the stage of formulating the provisions to be included in final peace agreement. There is—as I see it—a serious risk that we shall find ourselves in the same deadlock as existed during the first three years of my mission.

I, therefore, feel that I should at this stage make clear my views on what I believe to be the necessary steps to be taken in order to achieve a peaceful and accepted settlement in accordance with the provisions and principles of Security Council Resolution W242/67, which the parties have agreed to carry out in all its parts.

I have come to the conclusion that the only possibility to break the imminent deadlock arising from the differing views (of) Israel and the United Arab Republic as to the priority to be given to commitments and undertakings—which seems to me to be the real cause for the present immobility—is for me to seek from each side the parallel and simultaneous commitments which seem to be inevitable prerequisites of an eventual peace settlement between them.

It should thereafter be possible to proceed at once to formulate the provisions and terms of a peace agreement not only for those topics covered by the commitments but with equal priority for other topics and in particular the refugee question.

Specifically, I wish to request the Governments of Israel and the U.A.R. to make to me at this stage the following prior commitments simultaneously and on condition that the other party makes its commitments, and subject to the eventual satisfactory determination of all other aspects of a peace settlement, including in particular a just settlement of the refugee problem:—

Israel would give a commitment to withdraw its forces from occupied U.A.R. territory to the former international boundary between Egypt and the British Mandate of Palestine on the understanding that satisfactory arrangements are made for:

a.—Establishing demilitarized zones;

b.—Practical security arrangements in the Sharm el Sheikh area for guaranteeing freedom of navigation through the Straits of Tiran; and

c.—Freedom of navigation through the Suez Canal.

The U.A.R. would give a commitment to enter into a peace agreement with Israel and to make explicit therein to Israel—on a reciprocal basis—undertakings and acknowledgments covering the following subjects:

a.—Termination of all claims of states of belligerency;

b.—Respect for and acknowledgment of each other's independence;

c.—Respect for and acknowledgment of each other's right to live in peace within secure and recognized boundaries;

d.—Responsibility to do all in their power to ensure that acts of belligerency or hostility do not originate from or are not committed from within the respective territories against the population, citizens or property of the other party; and

c.—Non-interference in each other's domestic affairs.

In making the above-mentioned suggestion I am conscious that I am requesting both sides to make serious commitments but I am convinced that the present situation requires me to take this step.

[Delivered to both sides on Feb. 8, 1971.]

ISRAEL TERMS FOR AGREEMENT

TEL AVIV.—Following is the official English text of the statement delivered to Dr. Jarring on February 26, 1971, by Mr. Yosef Tekoah, Israel's Ambassador to the United Nations:

Pursuant to our meetings on February 8 and February 17. I am instructed to convey to you, and through you to the U.A.R., the following:

Israel views favourably the expression by the U.A.R. of its readiness to enter into peace agreement with Israel and reiterates that it is prepared for meaningful negotiations on all subjects relevant to a peace agreement between the two countries.

The Government of Israel wishes to state that the peace agreement to be concluded

between Israel and the U.A.R. should *inter alia* include the provisions set out below.

A.—Israel would give undertakings covering the following:—

1. Declared and explicit decision to regard the conflict between Israel and the U.A.R. as finally ended, and termination of all claims and states of war and acts of hostility or belligerency between Israel and the U.A.R.:

2. Respect for and acknowledgement of the sovereignty, territorial integrity and political independence of the U.A.R.:

3. Respect for and acknowledgement of the right of the U.A.R. to live in peace within secure and recognized boundaries:

4. Withdrawal of Israel armed forces from the Israel-U.A.R. ceasefire line to the secure, recognized and agreed boundaries to be established in the peace agreement. Israel will not withdraw to the pre-June 5, 1967, lines:

5. In the matter of the refugees and the claims of both parties in this connexion, Israel is prepared to negotiate with the governments directly involved on:—

a—The payment of compensation for abandoned lands and property; and.

b—Participation in the planning of the rehabilitation of the refugees in the region.

Once the obligations of the parties towards the settlement of the refugees issue have been agreed neither party shall be under claims from the other inconsistent with its sovereignty:

6. The responsibility for ensuring that no warlike act, or act of violence, by any organization, group or individual originates from or is committed in the territory of Israel against the population, armed forces or property of the U.A.R.;

7. Non-interference in the domestic affairs of the U.A.R.;

8. Non-participation by Israel in hostile alliances against the U.A.R. and the prohibition of stationing of troops of other parties which maintain a state of belligerency against the U.A.R.

B. The U.A.R. undertakings in the peace agreement with Israel would include:—

1. Declared and explicit decision to regard the conflict between the U.A.R. and Israel as finally ended and termination of all claims and states of war and acts of hostility or belligerency between the U.A.R. and Israel;

2. Respect for and acknowledgement of the sovereignty, territorial integrity and political independence of Israel;

3. Respect for and acknowledgement of the right of Israel to live in peace within secure and recognized boundaries to be determined in the peace agreement;

4. The responsibility for ensuring that no war-like act, or act of violence, by any organization, group or individual originates from or is committed in the territory of the U.A.R. against the population, armed forces or property of Israel;

5. Non-interference in the domestic affairs of Israel;

6. An explicit undertaking to guarantee free passage for Israel ships and cargoes through the Suez Canal;

7. Termination of economic warfare in all its manifestations, including boycott, and of interference in the normal international relations of Israel; and,

8. Non-participation by the U.A.R. in hostile alliances against Israel and the prohibition of stationing of troops of other parties which maintain a state of belligerency against Israel.

The U.A.R. and Israel should enter into a peace agreement with each other to be expressed in a binding treaty in accordance with normal international law and precedent, and containing the above undertakings.

The Government of Israel believes that now that the U.A.R. has through Ambasador Jarring expressed its willingness to enter into a peace agreement with Israel, and both parties have presented their basic positions, they should now pursue their negotiations in a detailed and concrete manner without prior conditions so as to cover all the points listed in their respective documents with a view to concluding a peace agreement.—Agence France Presse.

TEXT OF THE EGYPTIAN REPLY

The U.A.R. has informed your Excellency that it accepts to carry out on a reciprocal basis all its obligations as provided for in Security Council Resolution 242/1967 with a view to achieving a peaceful settlement in the Middle East.

On the same basis, Israel should carry out all its obligations contained in this resolution. Referring to your *aide-memoire* of February, 1971, the U.A.R. would give a commitment covering the following:—

1. Termination of all claims or states of belligerency:

2. Respect for and acknowledgment of each other's sovereignty, territorial integrity and political independence;

3. Respect for and acknowledgment of each other's right to live in peace within secure and recognized boundaries;

4. Responsibility to do all in their power to ensure that acts of belligerency or hostility do not originate from or are committed from within the respective territories against the population, citizens or property of the other party; and

5. Non-interference in each other's domestic affairs.

The U.A.R. would also give a commitment that:

6. It ensures the freedom of navigation in the Suez Canal in accordance with the 1888 Constantinople Convention;

7. It ensures the freedom of navigation in the Straits of Tiran in accordance with the principles of international law;

8. It accepts the stationing of a United Nations peace-keeping force in Sharm el Sheikh.

To guarantee the peaceful settlement and the territorial inviolability of every state in the area, the U.A.R. would accept:—

a. The establishment of demilitarized zones astride the borders in equal distances; and

b. The establishment of a United Nations peace-keeping force in which the four permanent members of the Security Council would participate.

Israel should, likewise, give a commitment to implement all the provisions of the Security Council's Resolution 242 of 1967. Israel should give a commitment covering the following:

1. Withdrawal of its armed forces from Sinai and the Gaza strip;

2. Achievement of a just settlement for the refugees' problem in accordance with United Nations resolutions;

3. Termination of all claims or states of belligerency;

4. Respect for and acknowledgment of each other's sovereignty, territorial integrity and political independence;

5. Respect for and acknowledgement of each other's right to live in peace within secure and recognized boundaries;

6. Responsibility to do all in their power to ensure that acts of belligerency or hostility do not originate from or are committed from within the respective territories against the population, citizens or property of the other party;

7. Non-interference in each other's domestic affairs.

To guarantee the peaceful settlement and the territorial inviolability of every state in the area. Israel would accept:

a.—The establishment of demilitarized zones astride the borders in equal distances; and

b.—The establishment of a United Nations peace-keeping force in which the four permanent members of the Security Council would participate.

When Israel gives these commitments, the U.A.R. will be ready to enter into a peace agreement with Israel containing all the aforementioned obligations as provided for in Security Council Resolution 242.

The U.A.R. considers that just and lasting peace cannot be realized without the full and scrupulous implementation of Security Council Resolution 242 of 1967 and the withdrawal of the Israeli armed forces from all the territories occupied since June 5, 1967.—U.P.I.

[Submitted Feb. 15, 1971.]

NEW PERSPECTIVES ON MIDDLE EAST

Mr. MUSKIE. Mr. President, I am sure that each of us constantly seeks new perspectives on the situation in the Middle East.

The continuing tensions there, the risk of renewed hostilities, and the risk of a great power confrontation underline the importance of a settlement between Israel and her Arab neighbors.

What should be the elements of such a settlement?

As we consider the frustrations of the current impasse, it is useful to review developments since the 6-day war.

Our former Ambassador to the United Nations, Arthur J. Goldberg, has given us such a review in an address delivered at Chatham House in London on April 6, 1971.

So that Senators may have the benefit of that review, I ask unanimous consent that the full text of Ambassador Goldberg's address be printed in the RECORD at the conclusion of my remarks.

In his address, Ambassador Goldberg recited three principles which guided our policy in the period following the 6-day war and culminating in Security Council Resolution 242 on November 22, 1967:

1. To return to the situation as it was on June 4, 1967, is not a prescription for peace, but for renewed hostilities.

2. Clearly the parties to the conflict must be the parties to the peace. Sooner or later it is they who must make a settlement in the area. It is hard to see how it is possible for nations to live together in peace if they cannot learn to reason together.

3. That others can and should help, but their contribution should be "to promote and assist efforts to achieve a peaceful and accepted settlement."

I agree with Ambassador Goldberg's assessment that these principles still make sense.

The Ambassador also reviewed the history of Resolution 242 and its application to the question of withdrawal of Israel forces. That the question of "secure and recognized boundaries" was to be the subject of negotiations is clear.

Finally, the Ambassador reviewed the concessions which have been made by Israel to date in the search for peace.

I commend Ambassador Goldberg's address to the attention of the Senate.

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

THE CONTEXT OF PEACE EFFORTS IN THE MIDDLE EAST

(By Hon. Arthur J. Goldberg)

It is a natural temptation for one who, as United States Ambassador to the United

Nations, for three years played a key role in the debates and negotiations involving conflict and peace in the Middle East to offer his personal blueprint of how peace can best be achieved.

I do not propose to yield to this temptation. It is one thing to express concern about the situation in the Middle East and to voice the fervent hope that a peace treaty between Israel and the Arab states will be achieved—better sooner than later. It is quite another thing to profess a monopoly on the prescription which thus far has eluded Israel, the Arab states, Ambassador Jarring and governments, including my own and Great Britain, in attaining a peace agreement.

Accordingly, in lieu of a blueprint, I wish to offer some general observations about the road to peace in the Middle East. Most of these relate to expressions emanating from my own country. I have noted some similar attitudes from Great Britain.

Perhaps the best way to start is to recall the principle that guided my government, and others at the UN during the long period of debate and negotiations following the six-day war and culminating in the unanimous adoption of the critically important Resolution 242 by the Security Council on 22 November 1967. This is what I said at the time, not once but repeatedly: "To return to the situation as it was on June 4, 1967 is not a prescription for peace, but for renewed hostilities".

I believe that this principle was accurate then. I believe it is accurate now. And, as an American, I express the fervent hope and expectation that our respective governments will remain faithful to this principle, derived as it is from the history of the last two decades.

I think it is appropriate to recall also what my government, immediately after the June war, said about the nature of a peace settlement in the Middle East: In the words of President Johnson, "But who will make this peace where all others have failed for 20 years or more? Clearly the parties to the conflict must be the parties to the peace. Sooner or later, it is they who must make a settlement in the area. It is hard to see how it is possible for nations to live together in peace if they cannot learn to reason together." I am not aware that the British Government in any way disagreed with or disassociated itself from this formulation when made.

Again, I believe that this insight was right then. I believe it is right now. As an American I again express the fervent hope and expectation that our governments will remain faithful to this insight.

Finally, we might also recall another principle agreed upon by our governments, namely that others can and should help, but their contribution should be "to promote agreement and assist efforts to achieve a peaceful and accepted settlement." That is the exact language of Resolution 242 of 22 November 1967; it is also Ambassador Jarring's mandate, and is also binding on both our governments which were principal architects of that resolution.

In light of these principles, the concept recently bruited about in the Four-Power discussions in New York and elsewhere of a Big-Four Power UN peacekeeping force, including American and Soviet "fighting forces" is, in my opinion, a non-starter, completely lacking in substance and fraught with the most dangerous possible consequences. It is true that this proposal has been somewhat blunted in the last fortnight by a welcome declaration of Secretary of State Rogers that my government would not support such a proposal unless both Israel and the UAR agreed. Perhaps this moots the proposition since it is inconceivable to me that Israel would or should accept it, in light of the tragic experience of 1967. But whether Israel accepted it or not, I would, nonetheless, be opposed to such a proposal on the basic ground that participation by the Soviet Union and the United States in particular, or the big powers in general, through contingents of fighting military forces under a UN peacekeeping umbrella would be contrary to America's interests, Britain's interests and the interests of world peace.

I think it therefore essential that those governments and statesmen seeking to help the parties resolve this dispute, as well as responsible commentators, should recall the history and language of Resolution 242, since all seem to agree that this resolution is the key to a peace agreement between the parties. If the dramatic events preceding and occurring during the six-day war of early June, 1967, have dimmed in public recollection, this is doubly the case with respect to Resolution 242. Just last week, for example, the New York Times reported a meeting between Soviet Ambassador Dobrynin and Secretary Rogers, following which the Soviet Ambassador told newsmen that it is up to Israel, if peace is to be achieved, to accept the November 22, 1967 resolution and implement it. The Soviet Ambassador seems to have a lapse of memory. Israel has accepted the resolution. The important thing to recall, however, is that the Security Council, when it adopted the Resolution, did not adopt the Soviet version of it, and with good reason. Moreover, the resolution is not self implementing but depends ultimately upon agreement of the parties.

Resolution 242 was not adopted in a vacuum. It was the product of months of debate and negotiation at the United Nations extending from May 1967 before the war actually broke out, until November 22 of the same year, the date of its adoption.

In May of 1967 the late President Nasser of the UAR moved substantial Egyptian forces into the Sinai, ejected the UN peacekeeping forces, reoccupied the strategic and previously demilitarised Sharm-el-Sheik and proclaimed a blockade of the Straits of Tiran.

These were ominous measures. Israel, which under American pressure had withdrawn its forces from Sinai and Sharm-el-Sheik in 1957, had consistently affirmed that a blockade of its ships and cargoes seeking to pass through the Straits of Tiran would be a causus bellum. Moreover, faced with divisional forces of well armed UAR troops on its borders and increasingly provocative statements by Nasser and other Arab leaders, Israel had little choice but to order mobilization of its largely civilian army.

It was justified concern which, therefore, prompted the Western powers, including our two countries, to take the initiative in convoking the Security Council in an attempt to avert a conflict by restoring the situation.

These attempts in the Security Council and through private diplomatic channels failed because of Arab objections supported by the Soviet Union. Apparently, whatever the reason, both were ready to risk war rather than reestablish the conditions which had previously prevailed in the area.

It was only on the second day of the war, after it became publicly apparent to all that Israel for all practical purposes had already won the war, that agreement was reached in the Security Council on a simple resolution calling for a ceasefire.

The ceasefire resolutions which were ultimately adopted during the tense days of the war differed dramatically, however, from previous resolutions of the Council in the Israeli-Arab wars of the preceding nineteen years. In the earlier resolutions, the call for a ceasefire was usually accompanied by a demand for a withdrawal of troops to the positions held before the conflicts erupted. In June of 1967, however, no withdrawal provisions were incorporated as part of the ceasefire resolutions. This was not by accident but rather as a result of the reaction by a majority of the Security Council to what had occurred.

As the debates revealed, the Council was unwilling to vote forthwith withdrawal of Israeli forces because of the conviction of a substantial number of the members of the Council that to return to the situation as it was before the June 1967 war would not be a prescription for peace but a formula for renewed hostilities. Proof that this was so is provided by the action of the Council with respect to a resolution pressed at the time by the Soviet Union. The Soviet representative offered a specific resolution not only reaffirming the Council's call for a ceasefire, but additionally, condemning Israel as the aggressor and demanding a withdrawal of its forces to the positions held on June 5, 1967 before the conflict erupted. But this resolution of the Soviet Union, although put to a vote, did not command the support of the requisite nine members of the Security Council.

The unwillingness to support the Soviet resolution for a withdrawal of Israeli forces to the positions they held before June 5, 1967, was based upon the conviction of a substantial number of the Security Council members that the withdrawal of Israeli troops should this time be in the context of a just and lasting peace settlement putting an end to the state of belligerency which had prevailed for two decades resulting from the Arab States unwillingness to acknowledge and respect Israel's sovereignty and right to live.

The Soviet Union did not allow the matter to rest with its defeat in the Security Council. It called for a special session of the General Assembly which convened on June 17, 1967. It is important to recall that the General Assembly also refused to adopt by the requisite ⅔ majority a resolution offered by Yugoslavia and several other members and supported by the Soviet Union and the Arab states, differing somewhat in tone but not in substance from the prior Soviet resolution.

With the adjournment of the Special Session of the General Assembly in September 1967, the matter once again reverted to the Security Council and again became the subject of further public debate as well as intensive private negotiations. These finally culminated in the November 22 resolution.

The resolution offered by the British Representative, my distinguished friend, Lord Caradon, stemmed in substantial degree from the General Assembly resolution of the Latin Americans and a United States resolution offered to the resumed Security Council meeting. The unanimous support for this resolution was the product in considerable measure of intensive diplomatic activity by the United States and Great Britain both at the United Nations and in foreign capitals throughout the world. This is not to say that the various Latin American countries, India and others were not actively engaged in the negotiations and diplomatic activity, but it cannot be gainsaid that the United States together with Great Britain took the lead in the adoption of the November 22 resolution. Impartial observers reported at the time that the United States' role was the primary one. As its representative, I now confirm the validity of this observation.

It should be noted that before the vote on the November 22 resolution, the Soviet Union offered a draft resolution again calling for withdrawal of Israeli troops to the June 5 lines. It did not, however, press the resolution to a vote. Then, and only then, was the stage set for the adoption of the November 22 resolution.

It is to the text of the resolution that I now turn, since it is the text of the resolution, illuminated by its legislative history, which expressed the will of the Security Council.

It is of great significance in interpreting the resolution that it does not specifically require Israel to withdraw to the June 5, 1967 lines. Rather, it enunciates as a principle "withdrawal of Israeli armed forces from territories occupied in the recent conflict".

The word "all" does not precede "territories" in this formulation or principle. Nor does the article "the" precede "territories" in the English text which was the negotiated document. This was not accidental but was the product of negotiated design.

Coupled and linked with the withdrawal provision is the enunciation of the deeply-held conviction by many UN members: the time had come for the termination by the Arab states of all claims of a state of belligerency and respect for and acknowledgment by them of Israeli sovereignty and its right to live in peace within secure and recognized boundaries. In this linkage, the Security Council realistically acknowledged that the Arab states could not be left free to assert the rights of war, as they had been doing, while Israel was being called upon to abide by the rules of peace. While the resolution speaks in terms of respect for the sovereignty of all states in the area, it is obvious that its main thrust is to obtain acknowledgment of Israel's sovereignty, something the Arab states have been unwilling until now to do.

The resolution further affirms the necessity for guaranteeing freedom of navigation of international waterways in the area, of achieving a just settlement of the refugee problem, and for guaranteeing the territorial inviolability and political independence of every state in the area, through measures including the establishment of demilitarized zones. In light of reports concerning the role of the Security Council, and particularly its four leading permanent members, in connection with the peace settlement, it is important to note that the language of the resolution speaks in terms of guarantees rather than imposition.

While the provisions relating to withdrawal, renunciation of belligerency, freedom of navigation and settlement of the refugee problem are numbered paragraphs 1 and 2 in the resolution, they are all stated in terms of principles for a settlement. The really operative part of the resolution is in paragraph 3 which requests the Secretary General to designate a special representative to the Middle East to establish and maintain contacts with the states concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement.

It is this paragraph pursuant to which Ambassador Jarring was designated to undertake his delicate mission. It is his mandate and sets forth the ultimate object of the whole enterprise, namely, to help bring about agreement between the parties to ensure a just and lasting peace in the area. The concept of a just, agreed upon and lasting peace in which every state in the area can live in security is emphasized and repeated throughout the resolution. It cannot be disputed that this concern is the very essence and goal of Resolution 242.

Given this diplomatic history, it is appropriate for me to take note of some recent developments. President Sadat of the UAR has advised Ambassador Jarring that his government is willing to sign a peace agreement with Israel, although this offer is conditioned with reservations not embodied in the November 22 resolution. And Israel, of course, has long stated its fervent desire to conclude a peace treaty with the UAR. In this connection, I would like to emphasize the value of patience in the resolution of grave diplomatic dilemmas such as this. Patience and fortitude can bring their own rewards. In the years following the 1967 war many diplomats adhered to the view that the UAR would never agree to sign a peace agreement with Israel under any circumstances. Israel's insistence upon a peace agreement led to charges of unrealism and inflexibility on its part. But events and the recent offer of President Sadat have, at least to some extent, justified Israel's patient resolve on this point.

And not only has Israel proved to be right in this respect, but I have always believed that, given the opportunity through appropriate negotiations, Israel will effectively discredit the all-too-prevelant conception, held even among some friends, that Israel is inflexible and unwilling to display magnanimity for peace. The concessions to date made by Israel in the search for peace are too often overlooked.

Israel wanted to start with direct negotiations but agreed to begin with indirect negotiations under Ambassador Jarring's auspices.

Israel wanted the Jarring talks to be held on the foreign minister's level, but agreed to begin on the ambassadorial level.

Israel wanted the discussions to be held close to the Middle East, but agreed to commence in New York.

Israel wanted a restoration of the agreed-upon ceasefire with an indefinite duration but agreed to resume negotiations through Ambassador Jarring with the ceasefire limited by a unilateral declaration of the UAR.

Israel wanted the removal of missiles and sites constructed in violation of the cease-fire understanding arranged by the United States, but agreed to proceed with the talks despite the Soviet and UAR breach of this understanding.

These are not insubstantial concessions. In my view, they reflect the fervent desire of the government and people of Israel for the long sought goal—a just and enduring peace in the area.

In light of these considerations, I welcome the assurances of my government that Israel will not be pressured in the search for a just and lasting peace which will serve the interests of Israel and its Arab neighbours. It is precisely such a peace that is mandated by Resolution 242.

The time has long passed when great powers can or should impose their views on small states. Greatness alone does not assure a monopoly on wisdom. Rather, all powers and people genuinely interested in a settlement in the Middle East should lend their influence for a negotiated peace treaty between the parties to the 1967 conflict. In this uncertain world, no one can guarantee that anything done today will endure forever. But I am strongly of the conviction that there is no other way to lasting peace in the Middle East than the way in which nations throughout history made peace which lasts—through negotiated agreements between the affected parties reflecting both magnanimity and a true and realistic recognition of the needs and interests of those directly concerned.

MARY CREESE: A TALENTED AND DEDICATED JOURNALIST

Mr. HANSEN. Mr. President, a distinguished member of the profession of journalism in the Rocky Mountain States died Sunday. Many throughout our region, and especially in her chosen profession, and in Government where objective reporting is appreciated, mourn the passing of Miss Mary Kathryn Creese.

Mary had exceptional talents and versatility. She was blessed with a rare commonsense that, in my opinion, is so important to news reporting and editing.

The Rock Springs Daily Rocket-Miner, the newspaper she edited in Wyoming for almost 10 years, briefly summarized Mary's accomplishments in an obituary this week. I ask unanimous consent that the article be printed in the RECORD.

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

MARY CREESE DIES SUNDAY

Mary Kathryn Creese, 56, veteran newswoman and news editor of the Rock Springs Daily Rocket-Miner for nearly 10 years, died Sunday at 2 a.m. at Memorial Hospital of Sweetwater County, where she had been a patient since Friday.

Miss Creese, once nominated for a Pulitzer Prize in Journalism, had more than 35 years' experience in newspaper work in Wyoming and Colorado. She had been in failing health for the past several months.

Before coming to Rock Springs in August 1961, Miss Creese had been wire editor for two years on the Loveland, Colo., Reporter-Herald. She also worked 23 years on the Longmont, Colo., Times-Call in the city news department.

Miss Creese devoted one full year exclusively to free-lance photography and writing daily for the Denver Post, which she also served as a correspondent from Longmont and Loveland.

She had articles published in trade and law enforcement magazines, with the latest story on news and law enforcement in the October 1970 Federal Bureau of Investigation Law Enforcement Bulletin. Miss Creese was the first woman outside law enforcement to have an article in the publication. The same article was printed in the Congressional Record of Oct. 14, 1970.

In November 1956 Miss Creese and a co-worker, Jim Matlack, were nominated for a Pulitzer Prize in Journalism for coverage of the crash of the United Airlines DC6B near Longmont. The crash resulted from the explosion of a bomb. They also received the Associated Press Managing Editors Association Citation for "outstanding participation in the news report and for first and solid information on the crash, and sharing the unusual story with AP members."

Born in Robinson, Ill., Aug. 12, 1914, she moved to Colorado with her family at the age of two, living in Colorado Springs for two years before going to Longmont, where she resided for 40 years. She lived in Loveland, Colo., three years before coming to Rock Springs.

Miss Creese attended Longmont schools and was graduated from Longmont High School in 1932. She attended the University of Colorado at Boulder and at the time of her death was completing the Famous Writers School ccurse of study in fiction writing.

She was interested in flying for many years, and at one time owned and flew her own airplane on a national flight to all of the 48 continental states.

As a police reporter Miss Creese participated in the organization 22 years ago of the Boulder, Colo., Crime School, which offered in-service training for police officers.

Her wide range of interests included books, music and dramatics. She was organist for several churches in Longmont, Boulder and Estes Park, Colo., and for a number of years played the piano in a small dance band.

She maintained her interest in dramatics, having assisted in staging a Little Theatre productions in Longmont and the opera season at the time it opened in Central City, Colo.

She was a member of the Central Presbyterian Church of Longmont and had attended the First Congregational Church while a resident of Rock Springs.

Miss Creese was well respected by news personnel throughout the state for her ability and had gained a reputation as a determined newswoman, who always had time to laugh despite deadline pressures.

She is survived by three brothers, Loren of Lakewood, Colo., Vernon of Wheat Ridge, and Donald of Boulder; one sister, Mrs. Henry (Margaret) Starkel of Denver; her stepmother, Mrs. Floy M. Creese of Canon City, Colo.; and several nieces and nephews.

Funeral services will be conducted Tuesday at 1 p.m. at the Vase Funeral Home, the

Rev. Nick Natelli of the First Congressional Church officiating.

The body will be taken to Longmont, Colo., for services Wednesday at 2 p.m. at the Howe Funeral Chapel, the Rev. Doug Wasson, former pastor of the First Congregational Church of Rock Springs, now of Colorado Springs, officiating.

Burial will be in Mountain View Cemetery in Longmont, Colo.

Friends may call at the mortuary chapel, 154 Elk St., Tuesday until time of services.

BRINKSMANSHIP AT THE MALL

Mr. HART. Mr. President, in its final report, the National Commission on the Causes and Prevention of Violence addressed itself to the importance of keeping open channels of peaceful protest.

The Commission found:

Obstructions to peaceful speech and assembly—whether by public officials, policemen, or unruly mobs—abridge the fundamental right to free expression . . . Society's failure to afford full protection to the exercise of these rights is probably a major reason why protest sometimes results in violence. . . .

To substantiate that finding, we need to look no further back in our history than to the Chicago demonstrations of 1968 and the counterinaugural in Washington in 1969.

In the first instance, there was a policy of tight restrictions designed to discourage protestors from coming to Chicago; in the second, permits to demonstrate peacefully were issued liberally.

The difference in the outcome of those two demonstrations make the case for the Commission's finding.

The chronology of that policy went like this:

April 16, the U.S. district court granted the request of the Justice Department for an injunction prohibiting the veterans from sleeping on the Mall.

April 19, the U.S. court of appeals reverses that decision.

April 20, the Chief Justice, acting on the request of the Justice Department, reinstates the original ban.

April 21, the full Supreme Court upholds the ban.

At this point, the veterans voted to defy the ban, and the situation had reached the brink.

Fortunately, the administration retreated from the brink and refused to enforce the ban.

And finally, permission to use park land was granted to both the veterans and another group of protestors.

Unhappily, in its handling of the Vietnam war veterans, the lessons of Chicago and of the counterinaugural seem to have been forgotten.

Instead of welcoming the exercise of the veterans' right to petition peacefully, the Federal Government adopted a policy which led to civil disobedience and to the brink of potential violent demonstrations.

The brinksmanship policy has been dropped, but our system of government, respect for the right to petition peacefully would have been better served if the policy had never been followed.

Let us add this experience to the lessons learned from Chicago and the counterinaugural.

Let us not forget the lessons the next time a group wishes to exercise the right to petition its Government.

EXECUTIVE BRANCH REORGANIZATION

Mr. DOLE. Mr. President, I am pleased to join the distinguished senior Senator from Illinois (Mr. PERCY) in sponsoring S. 1430, S. 1431, S. 1432, and S. 1433. These bills will promote more effective management of the executive branch by establishing four new departments to consolidate functions relating to community development, natural resources, human resources, and economic affairs.

PRESIDENTIAL LEADERSHIP

The President has eloquently set forth the need for long overdue reform and restructuring of the domestic departments of Government in his message to the Congress of March 3, 1971. In this message the President noted that good men and women in public office are often handicapped in performing their functions by fragmented and outdated Government structures. The President correctly pointed out that inadequate organization frustrates those charged with serving the public and dissipates money which this country cannot afford to waste.

The President has proposed the most far-reaching reorganization of the executive sector of the Government since the adoption of the Constitution, and I am glad that he has had the courage to tell the Congress and the country that these steps needed to be taken—and with dispatch. The President has thus pointed the way for the kind of fundamental improvements in our executive machinery needed to restore the faith of our citizens in the efficiency of our Government and its ability to get things done.

BIPARTISAN SUPPORT

I am especially heartened to note the bipartisan support which the four departmental bills have already elicited. The junior Senator from Utah, the senior Senator from Connecticut, and the junior Senator from Washington have all sponsored one or more of the reorganization bills, and I am confident that many additional Members of the Senate will join as sponsors as they find an opportunity to review these vital measures.

CAREFULLY STUDIED PROPOSALS

Prior to presenting these proposals for the reorganization of the domestic departments, the President had the benefit of careful studies conducted by Roy Ash, a prominent American who has served as the principal executive of one of the Nation's largest industrial enterprises. Associated with Mr. Ash in this work were other outstanding Americans of great reputation in the management of governmental and private enterprises. In addition, the President had the benefit of other studies of Executive organization conducted in recent years, as well as the experience which he and members of his administration have gained in attempting to make our Government function effectively.

FUNCTIONAL EFFICIENCY: THE GOAL

It is particularly significant that the President seeks to organize around the major purposes of Government rather than by constituencies or processes. By using the great objectives of our Government as a principal guide to how the departments should be arranged, it is possible to reduce the total number of departments from 11 to 8, while at the same time eliminating a number of independent agencies. It will thus be possible for the President to work with a smaller number of key administrators and to hold them accountable for results.

The more broadly oriented departments will also permit the Secretaries to decide innumerable issues of Government which are now entrusted to the dubious workings of interagency committees or unnecessarily added to the burdens of the Presidency. The reorganization will, in short, revitalize the executive departments and make the Cabinet officers genuine lieutenants to the President in matters of policy and administration.

Numerous programs of a similar nature which are now scattered throughout the Government will be placed under one management umbrella in the proposed departmental reorganization. For example, income security programs now operated by three departments and the Railroad Retirement Board will be united in the Human Resources Department. Major education programs currently directed by HUD, OEO, Labor, Agriculture, and the Office of Education also will be merged in the new Human Resources Department. A multiplicity of water resources programs will function more effectively if combined within a Department of Natural Resources. Joining similar programs together will vastly improve the Government's ability to respond to national needs.

FULL AND EARLY HEARINGS

I recognize that many questions will be raised concerning these reorganization proposals, and this is only proper. I hope that the distinguished Senator from Arkansas and chairman of the Committee on Government Operations will see his way clear to schedule early hearings so that all points of view can be considered. The proposed reorganizations are so important to this country that their approval should be preceded by full public debate and careful consideration by the Congress. Where changes are in order to improve the bills as introduced, we should make them. In the last analysis, it is most vital that we act, and that we in this Congress take full advantage of this unique opportunity to make a monumental contribution to the functioning of our Republic.

THE RIGHT TO READ

Mr. PELL. Mr. President, 25 million American workers cannot get better jobs because they cannot read well enough.

Some 18½ million adults in this country cannot read simplified forms for medicaid, driver's license, bank loan, and welfare applications.

Fifteen million American schoolchildren have reading deficiencies which, if

not corrected, may cause them to join the growing ranks of 847,000 annual school dropouts.

The current cost to taxpayers of having one out of every 20 children repeat a grade is $1.5 billion per year.

These rarely publicized figures reveal just how serious a reading crisis exists today in a country which spends more money on education than the rest of the world combined.

Walter W. Straley, vice-president for Environmental Affairs for the American Telephone and Telegraph Co., and chairman of the National Reading Council, claims that these figures not only are realistic but that the outlook for the future is bleak unless immediately steps are taken to combat illiteracy and reading deficiencies in this country.

He hopes that this can be accomplished through the National Reading Center, the operating arm of the council which has set 1976 as its goal for a major breakthrough on this problem.

On March 15, in Los Angeles, Mr. Straley delivered the keynote speech at a reading seminar, and I found his address, entitled "On the Morning of the Fifth Day," of such great interest that I ask unanimous consent that it be printed in the RECORD.

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

KEYNOTE SPEECH

(By Walter W. Straley)

ON THE MORNING OF THE FIFTH DAY

There is in our nation a decreasing faith in our own institutions. Be it Church, or School, or Business Corporation, or Government, there seems a gathering uncertainty that our institutions produce our personal views of progress, or reflect the values which we suppose to be our own. I say we suppose the institution does not reflect our own values: for we are not altogether sure we possess the high moral values which once we hoped to live by; and we seem only certain that the values of others are even more suspect than our own. Thus we build our frustration, based upon self-doubt and suspicion. And we turn increasingly to confrontation. It takes many forms.

If you are grumbling aloud to your TV set, and many of us are doing more of that these days, this is confrontation; fairly satisfying, for we can have the last word. More people are calling and writing presidents of corporations and universities, and school superintendents, and Congressmen, and Bishops—and this is confrontation. And more of us are looking for and joining groups and subgroups and splinter groups where we can find a matching indignation toward those idiots in other groups whose values and goals are obviously wrong.

Sooner or later this grouping process leads to physical confrontation, to the committee charged with seeking redress, to the mass march on City Hall. Often we attack our own institutions for their lack of foresight, for their failure of initiative on our behalf, knowing at least subconsciously that the attack itself will produce a natural defensive stance of self-protection—less risk taking, fewer innovations and retreat to the relative safety of the status quo. We require change, chiefly a change from our own emptiness of spirit, we demand *results* which we assure ourselves can only accrue from the efforts of others, we assume that at some distant place solutions will be found to the problems *we* create.

I suppose we believe that a great and simple program will be devised, if we scream hard enough, which will produce self-serenity and return to us our faith in each other. If we continue to use accusative confrontation to produce such a program, there is only one likely to emerge and that, I suppose, is a program of hydrogen extinction, the logical ultimate in confrontation.

You may think this an ominous introduction to a few remarks about reading. Perhaps it is.

I work down the street from City Hall in New York. And on Friday last we escaped the crush of a threatened quarter million people massed around City Hall to protest a prospective 40 million dollar deficit in the school system's billion and a half budget. The 40 million was found in the bookkeeping fiction of next year's budget.

I was an intimate participant in the New York School crisis of 1968–69 during which we battered each other over the helpless figures of a million children, each of us claiming, often shouting, that only we could be trusted to serve the child. We all turned into villains. No heroes emerged from that fiasco.

Across the country, more than half of last year's school bond issues were defeated in confrontations of often, angry voters. Taxpayers strike against their schools, teachers strike against school boards, administrators cut staff and strike curricula, many schools must close before normal terms are ended. And probably a million children will strike this year by simply dropping out, many to drugs and decay.

Into this anger and turmoil and sadness, I drop this matter of literacy. And the reason for my introduction is that I think of reading and learning to read as one, but perhaps an important path to a new kind of confrontation—a loving confrontation between a person who reads and one who doesn't read well enough. Perhaps one of every four Americans can't read well enough to get their full "shot" in our society. If this be so, there are three people in four who can read pretty well. Suppose half of those "reading" people could teach somebody else how to do it. (Now I hear the cries, "but they would have to be trained," "they would need materials," "they would interfere with school process," etc.) Let's lay all that aside for a moment and just bear in mind that there might be 75 million people who *could* teach another person how to read.

Let me make what I hope will not be a digression by quoting from Dr. Luvern L. Cunningham, Dean of the College of Education at Ohio State University, and his recent article called "Shut It Down."

"I am not advancing a namby-pamby approach to solving the nation's reading problem—or any other for that matter. This is an earnest, deadly serious proposal. I recommend that we use (unshackle if you prefer) our total capacity in a massive assault. And that we give our complete, undivided attention to the problem by shutting the nation down.

"Let us visualize a nation closed down and a maximum mass education effort. It is not a holiday; but no one goes to school, no one goes to work, no one plays golf. We simply inform ourselves about this national deficiency and search for ways to eliminate it. Think of continuous radio and television programming on reading; newspapers carrying no news (only legal notices and obituaries)—just stories on reading. Picture the supplementary roles that schools could play. Visualize churches and thousands of other voluntary and civic associations turning their attention to the problem. All other news, problems, world events would be set aside, shelved for a brief period. Total attention, zeroed in on reading.

"Can you imagine it? The nation closed down. Total saturation programming on radio and television, all stations, all channels, for four days. Newspapers and other printed materials devoting complete attention to the national reading problem. Just imagine. Comprehensive, in depth, learned attention to the problems and issues in reading. Programming so rich that it will attract the interests of everyone—toddlers and teenagers, gurus and grandpas, potters and Ph. D's."

Now I wish Dr. Cunningham well in his recommendation to shut the country down for four days of concentration on the reading problem. But I don't envision his success, mostly because I don't think he can get people to stop playing golf for four days. It's fun, however, to speculate on possible results of such single mindedness.

On the morning of the fifth day, I think we would see the professional educator as a devoted, often over-burdened, sometimes highly successful teacher of reading, puzzled as to why her successes don't seem to spread to other places and people of even greater need.

I suppose we would *all* discover the millions of children who need food or medicine, or glasses or hearing aids, or help with whatever their handicap, *before* they can read successfully.

Perhaps mothers and fathers and older brothers and sisters might become interested in teaching the baby to read before he goes to school.

We might come to pity, and through it, determined to rescue the adult from illiteracy.

We might even decide that in certain bilingual areas we would keep right on teaching in Spanish as well as English all the way through high school.

We might conclude that, if Television and Radio and Newspapers could teach us so much about reading in four days, they should teach a little reading every day thereafter.

Maybe, we would ask whether every child who is learning to read shouldn't be allowed to have his very own books, and perhaps we would start to revolutionize the book distribution system.

We could decide after four days of concentration to make reading a national game, "simple Scrabble for everybody," reading lessons on cereal packages, peanut butter jars, pop bottles, candy wrappers. I suppose we'd think business ought to really fall to in making reading teaching of its reading-lame employees "the business of business."

There's one certain thing. From among those 75 million prospective reading teachers, there *would* appear on the morning of the fifth day many millions of Americans who had determined to engage in a new confrontation; not in groups, but struggling alone or in couples into schools mostly, or maybe community centers, or child care centers, or churches. Children and aged, and mamas and clerks and tycoons, and the campus young. And when they got to where they were going they would say, "I'd like to teach someone to read" or "I have come to help."

This would not be a grand, Federally directed program. It would be local, and chaotic, confusing, distressing and altogether a lovely outpouring of poor and rich people, villagers and farmers, and commuters and high-rise dwellers who at long last would say, as they used to say, "this needs to be done. I'd better go and do it."

And I think the teachers and the parents and the children and the principals and the superintendents and the social agencies would find ways to channel this person-to-person flood of good people into union with one child or one needful adult. Yes, on the morning of the fifth day a great loving confrontation of learning might begin.

Now, what does this all have to do with our National Reading Council and its National Reading Center?

Most importantly, the Council and its Center are a symbol of what may exist of a Na-

tional determination to solve our reading problem. It is a place of partnership, where the professional educator, the parent, the child, the communications expert, the business man may offer their contribution toward reading success.

The Council exists because President Nixon and Secretary Richardson brought it into being. Upon its formation the President said, "I hope the Council will serve as a catalyst for the nation in producing dramatic improvement in reading ability for those requiring it."

We count as a valued colleague, Commissioner Marland, and acknowledge with affection and respect the father of Right to Read, former Commissioner James Allen.

But this sponsorship and support gives us no license to overpromise nor to interfere with people and processes already under way. We are already under way. We are small. We will have under Dr. Donald Emery, a small, but lively staff not much larger than a baseball team roster. At the outset we will try to do these things, mostly in conjunction with the Office of Education and other people and agencies.

Build an information service where people can find how they can fit into reading progress.

Help spread national information to build national determination to lick this problem.

Serve the people who are building community networks of volunteer tutors. Help them with training and materials.

Stimulate the communications media to a greater effort to stress the importance of reading teaching and to do more of it in their own media.

Assistant librarians, publishers, distributors, others to break through some of the roadblocks to book ownership by the reading student who can't own them now.

Encourage a coalition of cartoonists, games people, packagers who can help to make reading learning a national game that everybody can play.

Excepting the building of our Information Center, it is important to note that every suggested accomplishment rests in the prospective hands of others. Millions of others.

We will try, as the President has charged us, to be a catalyst, and to be a small but visible working symbol of his and your and our determination to produce dramatic reading improvement in this decade.

Not long before her death, Marilyn Monroe was supposed to have said, "People say I'm a sex symbol. When I see some of the other things people are symbols of, I guess I don't mind."

If, as Dean Cunningham suggests, we were to shut the country down for four days to sweat out the disgrace of our own illiteracy, I assume that we would begin on the morning of the fifth day to offer millions of personal symbols of willingness to make real the "Right to Read."

If we of the National Reading Council can serve as one of today's symbols of the "Right to Read," it's all right with me. It would also be all right with me if you and I could learn (without the shut-down), how to come with personal urgency, personal understanding, personal determination, each to our own "morning of the fifth day."

DEMOCRACY'S STAKE IN VOLUNTARY ARMED FORCES

Mr. HATFIELD. Mr. President, Senate action draws nearer on the question of military conscription and an all-volunteer armed force. I cannot stress too strongly the profound weakening of our social fiber, the undermining of the individual's faith in his Government and his hope for his future, the military draft inculcates. Edward L. Ericson, leader of the Washington Ethical Society and president of the American Ethical Union, on March 21, 1971, delivered an address at the meetinghouse of the Washington Ethical Society in which he spoke decisively in favor of a volunteer armed force, calling for nonextension of the President's authority to induct.

Mr. President I commend this address to the Senate and ask unanimous consent that it be printed in the RECORD.

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

DEMOCRACY'S STAKE IN A VOLUNTARY ARMY: THE NEED TO END THE TYRANNY OF CONSCRIPTION

(By Edward L. Ericson)

For the first time in a generation there is serious discussion in high places on the desirability to end the military draft and rely on voluntary recruitment for the armed forces. For the first time in twenty-three years, when the Selective Service Act of 1948 introduced the first long-standing "peacetime" draft in American history, there is an influential bloc in the Congress attempting to terminate the draft with the expiration of the present law on 30 June. And for the first time since World War II, there is a President in the White House who agrees in principle that voluntary recruitment should be the goal and who made the end of the draft a plank in his personal platform for the presidency during the 1968 campaign.

It is to Mr. Nixon's credit that he took the initiative to propose the end of the draft when most other politicians were avoiding the issue or even advocating the draft as the most "democratic" and "equitable" way to raise an army. As a result of Mr. Nixon's initiative, a Presidential Commission was appointed, known after its chairman as the Gates Commission, which studied in depth the feasibility of raising an army by voluntary means and found the concept sound.

But now Mr. Nixon has weakened his own position by proposing to continue the draft for two years beyond its 30 June expiration and by seeking to retain indefinitely the presidential power of reinstituting conscription without special congressional authorization. This proposal seriously flaws Mr. Nixon's announced goal of bringing the draft to an end, and threatens even more seriously the strict-constructionist view of constitutional powers to which he and his party are pledged. The strange recommendation that the President be authorized to reinstitute the draft at his pleasure makes a mockery of his proposal. His own Commission called such an arrangement "the worst of both worlds." A law which would bequeath to the President stand-by authority to activate conscription nullifies the clear mandate of the Constitution which reserves to Congress the authority to raise an army.

I submit that Mr. Nixon should reconsider his present compromised posture on this question.

THE DRAFT FACILITATES UNDECLARED PRESIDENTIAL WARS

In recent times the power to activate the draft has so enlarged the domain of the President over military manpower that we live under a system of virtual presidential dictatorship with respect to the means to make and sustain war without congressional authorization. At every crucial point, the Congress has failed us—and for good reason, for the political and military clout have already been surrendered to the President. That balance must be righted before anything else in the restoration of representative democracy is even possible. The draft is a built-in tap on manpower for presidential wars.

THE DRAFT REPUDIATES THE AMERICAN TRADITION

I address you on this issue from the standpoint of one who is thoroughly committed to the democratic process in its historic American framework. But because I believe that liberal democracy in the classic sense—which means a constitutional democracy with clearly defined individual rights which the state is obliged to respect—is so important, I must express utmost dismay when I see the effect of those who erode the name and concept of liberalism by claiming its sanctions while undercutting its historic principles. The worst offenders in this respect, in my opinion, are those who have made a generation of "cold" and "brushfire" war against communism the occasion for abandoning the very element of voluntarism which ought to set our system apart from all other systems of government, including especially that of the communists.

We are the voluntary society, or we are nothing. Voluntarism is a general characteristic of liberal democracy and its preservation ought to be its principal object. The method of recruiting military manpower is only a special case (albeit a crucial case) in upholding or subverting that general principle.

The thrust toward a freer, more voluntary society has been the chief engine of American history. It was the quest for personal freedom, for the power to command one's own life, the power to be a man and no man's serf, which steered the west-bound ships and opened the continental trails to the Pacific. It drives today's movements to secure more consistent civil liberties and civil rights for the individual citizen.

EQUALITY CANNOT BE SECURED BY SACRIFICING FREEDOM

The thrust toward a voluntary society has even taken precedence over the legitimate and necessary effort to secure equality—and I believe that this ordering of values is the correct one. We have become progressively more attached to the principle of human equality because we increasingly recognize that equality of rights and opportunities is the necessary condition for the realization of personal freedom. In this respect the approaches of liberalism and communism are fundamentally opposed. The liberal democratic tradition (which is the truly conservative tradition of American democracy) says that our equality must follow from and facilitate our freedom. Communism proceeds in the opposite direction: we must be equal so that at some future date we may become free. I submit that these two precepts are irreconcilable; we cannot compromise our basic approach without undermining the free society.

If you think I stress the historic difference between these opposing propositions too sharply, let me cite the course of our national history. The central, dominating event of American history through most of the first century of nationhood was the struggle to abolish slavery; this struggle and the war which it produced, remain the epic events of American history. Yet almost no white man in 1860 would have shed a drop of his blood to defend the proposition that black men are equally endowed with white men. Most whites of that period accepted superiority of the white race as a self-evident truth.

Abraham Lincoln was undoubtedly honest when he argued that the black man's freedom ought to be affirmed quite apart from his assumed racial limitations, which Lincoln along with most of his contemporaries accepted as a fact.

But Abraham Lincoln—despite the faulty anthropology of his age—was entirely clear in his recognition that the logic of the free society required the liberation of the slave. The nation could not survive half-slave and

half-free. Lincoln answered those who justified slavery on the ground of the assumed inferiority of the Negro race by saying that if I am to be the master of the man who is my inferior, I must then be the slave of the first man who is my better. The choice for Lincoln, as for emancipationists generally, was to give first priority to personal freedom as a human right—and as a political necessity for the maintenance of a free nation.

I think that such a guiding philosophy of history is essential if we are to recognize and reject the many high-sounding and well-meaning arguments which are now being offered in defense of conscription (involuntary military servitude) as the fairest, most democratic, and safest way to maintain an army.

IDEALISTIC ARGUMENTS OFFERED BUT FOUND WANTING

We are told that conscription offers the fairest way to raise an army, since voluntary recruitment, it is alleged, would put the burden of military service disproportionately upon the black and the poor—which even as a factual assumption the Gates Commission finds to be unwarranted, as we shall review later.

We are told that conscription offers the most democratic way to maintain an army, since it spreads the liability of military service most equally and appeals to a sense of patriotism and national duty rather than to "mercenary" motives.

And we are told that conscription offers the safest way to recruit military manpower, since a large army of voluntary "professionals" could lead to a self-perpetuating military caste which might gain control of the nation or overthrow constitutional government.

There are other more practical or pragmatic reasons offered for continuing the draft, which we shall consider later; but first we should determine what merit there may be in these "idealistic" or "patriotic" reasons which are offered in defense of the draft. These are the arguments of some of our most forward-looking senators and representatives; I do not question their motives, but I think their case is not only fallacious but perilous to the nation's future. It would be a bitter irony indeed, if future generations of youth were to be saddled with a system of military regimentation and indoctrination perfected by Frederick the Great and Bismarck to magnify both their military and political power—on the dubious argument that this Prussian system of modern military conscription becomes "democratic" and "just" when it is done by an American military establishment instead of a Prussian one.

IS CONSCRIPTION THE "SAFE" METHOD TO SECURE DEMOCRACY?

Let us take first the argument that conscription offers the "safest" way to raise an armed force, since, it is argued, draftees retain their democratic and civilian values, whereas an army of volunteers are assumed to be mere mercenaries or a militaristic elite. This is a particularly annoying assertion for the anti-draft advocate to confront continually, because the defenders of the proposition does not seem to be bothered by the facts.

Draw up a list of nations which during the past hundred years or so have had a succession of dictatorships, army coup d'etats, caudillos, juntas, and the like. That list will include dozens of chronically unhappy nations. These nations have been the seed-beds for almost all the great wars and recurrent civil upheavals. Yet, you will not find one nation, great or small, on that list of militarized or militaristic states which has a long-standing tradition of voluntary recruitment. This is a fact which the defenders of conscription eternally ignore, although it is a towering reality of our tortured and violence-wracked century.

We are told that conscript troops are a deterrent to military seizures of power or foreign adventures abroad. Tell that to Napolean, Bismarck, Mussolini, Hitler, Stalin, Franco, and a continent and a half of military adventurers in South and Central America, to a crowd of cutthroats and reigning cutthroats who have depended upon conscription to keep them in a bountiful supply of cannon fodder. Only recently Senator Cranson observed: "In Latin America, out of some 72 military coups in the last 25 years, 60 were with conscripted armies. European experience has been similar."

Again look at the list of nations which have had a long history of democracy governments and a tradition of individual civil rights. Among these nations the great English-speaking states are conspicuous—a family of nations which share a long social evolution toward democratic government and individual rights. These English-speaking democracies have stood out on the map of the world as the great resisters to the European continental system of conscription. The United Kingdom and Canada, and most of the smaller nations of the Commonwealth, continue to maintain the principle of voluntary armed forces, except for periods of extreme national crisis, such as World War II. Yet we are told that this family of nations, the most stable democracies to be found on this planet, follow a system of recruitment which places them in jeopardy of takeover by professional military castes. We are to suppose on the other hand that the conscript troops of Spain, Bolivia, Argentina, and a list too long to mention of military-dominated nations have presumably spread their populations the inconvenience of dictators, military castes, and disadvantaged armies of the poor.

When measured against past and present history, the claim that conscription is a force for democratic government or a check on military elites is a proposition totally without merit—a tragic and demonstrable farce which informed citizens ought to reject. The converse is more nearly the universal experience. Yet you may be sure that next week and the week after "concerned" voices will again be raised to offer the dire warning that a voluntary army would menace democracy!

The argument that conscription offers a way to prevent development of a military caste would be valid only if we followed the practice of drafting our top officers while filling the lower ranks voluntarily—in other words, if the privates were professional soldiers and their commanders draftees. But this is not what the conscriptionists want. They want authority to place every young man in the nation into a "manpower pool" which can be tapped at the pleasure of the President.

IS INVOLUNTARY SERVICE THE "FAIREST," MOST "DEMOCRATIC" WAY?

To turn to the two remaining "idealistic" arguments which are offered for the draft, we are told that this method is the fairest way to raise an army and that it is the more "patriotic" and democratic way.

The theory which supports this case argues that poverty and lack of economic opportunity will force a disproportionate percentage of "the black and the poor" into a voluntary army. I would have assumed that even a black man who is poor would prefer to have some choice in the matter of joining the army or solving his economic problem some other way. But apparently those who would play tzar over other men's lives, complete with the power to lock young men in prison for long sentences if they reject such direction, enjoy special insight into what is best for the black and the poor—and for everybody else. They offer the black and the poor the miserable wages of the conscript; but since they would also make everyone else equally miserable and unfree, they conceive themselves as great social equalizers.

We must provide adequate economic opportunity and protection for all members of our society. We have the resources to do so, and it is not necessary to strip citizens of their civilian rights for them to secure economic opportunity and human rights. This issue must be faced and resolved on its own merits. Using the power of conscription for the purpose of social leveling is indefensible. It is pernicious moral evasion to offer this monster to the nation as a means of "protecting" the black and the poor.

There is one, and only one, argument which has been historically acceptable to the American people as sufficient cause for depriving citizens of their freedom with a military draft. That reason is the one of extreme military necessity. If such necessity could not be established, they have had no case.

But this new breed of pro-draft advocates—now that the Gates Commission has robbed them of the claim that the draft is a military necessity—offer essentially non-defense related arguments for conscription. However they may disguise their case, I submit that they are guilty of the discredited use of the draft to "channel" manpower and to force young men against their will and under threat of criminal penalty into activities which have nothing to do with national necessity. This is a practice fraught with authoritarian and even totalitarian possibilities. If this be democracy, who needs dictatorship?

The third argument for conscription follows from the argument just considered: a conscript army is "democratic" while a voluntary army is "mercenary." I had always assumed that a man who did a job because he was offered patriotic inducements and a decent salary for volunteering was at least morally equal to the man who does a job because he is told that he must or be sent to jail.

However the advocates of permanent peacetime conscription may try to disguise their argument, their case for drafting men into the peacetime army, instead of persuading volunteers to serve, is a rehash of the old, discredited arguments which have been served up in every age to defend slavery, serfdom, and every other form of involuntary servitude. And of all the forms of involuntary servitude, military conscription seems to be curiously immune from recognition for what it is, since it so easily disguises its denial of personal freedom under the rhetoric of many duty and patriotic obligation.

The so-called "idealistic" and "democratic" arguments for perpetuating conscription will not stand up under analysis of their logic or examination of their historical assumptions. They are rationalizations for continuing a system which denies a portion of our population control over their lives and moral choice over their acts.

VOLUNTARY RECRUITMENT A PRACTICAL METHOD

Mr. Nixon's blue-ribbon Commission on an All-Volunteer Armed Force, headed by former Defense Secretary Thomas Gates, *unanimously* found the concept of voluntary recruitment to be within practical reach. They declared such a method to be more acceptable and more consistent with historic American practice and tradition than the method of involuntary service to which we have become habituated since World War II.

They estimated that a modest increase in pay for men in the lower ranks would sufficiently increase voluntary recruitment and reenlistments to supply manpower; and they argued that such salary scales for servicemen are deserved and overdue, since today draftees and volunteers alike are paid salaries woefully below the level of compensation for

civilian jobs which require comparable skills. We make the draftee subsidize his own service by denying him a wage equal to that of the man who is not drafted.

The Commission found that voluntary recruitment will not mean an army of the black and the poor. Their study revealed that even now a substantial majority of army personnel are true volunteers (men who did not volunteer to avoid being drafted). Therefore, making the army totally voluntary by inducing a higher percentage of reenlistments and new enlistments would not basically alter its class origin or color. All of these fears proved groundless when measured against the facts.

It is time to end the draft. National necessity does not require conscription. Personal freedom demands that it be terminated.

It is time to stop sending to prison an increasing flow of our best young men, men deeply opposed to an unnecessary draft. Only a handful can meet the rigorous definition of the conscientious objector, the objector to all war. But other men are entitled to have their principled objections and scruples respected, especially when the nation can so easily afford to raise its army by voluntary means.

History has shown that Americans will freely sacrifice their lives when they are morally convinced that such a course is necessary and right. But American history has also shown—and the present growing draft resistance is a case in point—that Americans will court draconian punishment rather than suffer slave-like subservience to the state. This is much more fundamental than opposition to a particular war. If this were not a historic fact about our national character we would have surrendered our ideals of freedom long before now.

Now is the time to bring the American system into line with our professed ideals of individual freedom and personal choice. We must end the draft now!

THE B–1 BOMBER PROGRAM

Mr. CRANSTON. Mr. President, I invite the attention of the Senate to an article published recently in Business Week concerning the management of the B–1 bomber program by the North American Rockwell Corp., Los Angeles Division.

The B–1 strategic bomber program seems to be setting a good example of how research and development on a major weapon system should be handled. The management of this important project has produced a program on schedule, within the funds appropriated, and, more important, within the cost estimates.

I ask unanimous consent that the article, entitled "Project Bosses Get More Power," be printed in the RECORD.

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

PROJECT BOSSES GET MORE POWER

PACKARD DRIVE FOR EFFICIENCY MAKES THE B–1 MANAGER AND OTHER CHIEFS CALL THE SHOTS

When the Air Force announced recently that it was scaling back North American Rockwell Corp.'s $1.4-billion development program for the B–1 strategic bomber, Pentagon watchers jumped to some interesting conclusion. They read the decision as a White House ploy to improve prospects for a strategic arms limitation agreement with Russia, a sign of Pentagon concern over escalation of the B–1's costs, or fallout from the missile-vs.-bomber debate.

They were all wrong. The scaleback decision originated neither in the White House nor in the Pentagon but was made by Brigadier General Douglas T. Nelson, B–1 program manager at Wright-Patterson Air Force Base in Dayton, Ohio. For this reason, the move has major implications not only for the military but for defense contractors as well.

Nelson had simply decided to take a new management tack in the B–1 program. His approach is something of a gamble, but it quickly won the endorsement of Air Force Secretary Robert C. Seamans, Jr., and Deputy Defense Secretary David Packard.

In a break with Air Force tradition, Nelson will telescope the classic pattern of testing prototype military aircraft. As a result, he can reduce the number of B–1 development aircraft he has ordered from NR and save perhaps as much as $300-million. His aim in shortening the period of testing—without compromising on its rigors, he emphsizes—is not only to save money, but also to enable the Air Force to decide slightly earlier than had been expected, probably in the spring of 1975, to move into production.

RESPONSIBILITY

To cynical students of the Pentagon, the fact that the cost of a military development program had been reduced without prodding from Congress was news of the first order. It is potentially more important, however, that the decision was made by the project manager and merely endorsed by his superiors.

Traditionally, the post of project manager has been a second-class job in the military establishment. At worst, it has been a dead-end assignment for an officer, at best, it was a way station on the road to a more glamorous operational command.

Under Packard's philosophy for Pentagon management, this is wrong. To help rid the Defense Dept. of inept management and huge cost overruns, he has therefore given officers in charge of major weapons development the authority to be true managers, not mere errand boys or yes-men for their bosses.

"Management will be improved only to the extent that capable people with the right kind of experience and training are designated to manage," he says. "In order to be effective, program managers must be given adequate authority to make decisions on major questions." In the case of General Nelson, this translates to a full endorsement of his decision to telescope the testing of the prototype B–1. Furthermore, it reflects Packard's insistence that other members of the executive branch of the government also respect the right of project managers to manage.

WARNING

Privately, Packard has laid it on the line to the military services that there will be a price for the delegation of this kind of authority. Henceforth, project managers will have to be good at their jobs, and they will have to assume responsibility when things go wrong.

In the past, Packard has complained, too many program managers lacked expertise in contracting, engineering, management, or industrial operations. Even when they were experts, they allowed too much of their time to be taken up with briefing officers at intervening levels.

Such intermediaries, Packard has noted, seldom contribute anything substantial to the success of a weapons project but can often hold up or reverse a manager's decision.

Moreover, many managers of multi-billion-dollar projects stay on the job for only a year or so, hardly time enough to learn the intricacies of their task.

Packard has told the services to change all that. He wants project managers to stay put at least three years, with longer assignments in special cases. He has also acted to ease the "layering" problem—the numerous levels of review that used to be required between a program manager and his top bosses at the Pentagon.

Packard first cut through this layering in the McDonnell Douglas F–15 fighter program by arranging for Brigadier General Benjamin Bellis to report initially to the commander of the Air Force Systems Command, and then directly to Seamans. Now he is easing the reporting responsibilities for other project managers, too.

To enable project managers to discuss their mutual problems, Packard has begun a series of informal Saturday morning meetings in his office at the Pentagon. At the first such meeting last week, he met with Nelson and managers of eight other defense projects, including Captain L. E. Ames, chief of the Navy's F–14 fighter aircraft program and Colonel James Miller, head of the Army's SAM–D antiaircraft missile program.

Packard also is working to improve the training of younger officers in the procurement field who will one day become program managers. At his direction, the Defense Weapon Systems Management School now at Wright-Patterson, will soon move to Washington, D.C. Its curriculum will be upgraded and its course lengthened from 10 weeks to five months.

Vice Admiral Vincent P. de Poix, the Pentagon's Deputy Director for Research & Engineering Management, says Packard feels that "the best program manager should know when to abrogate or shortcut the rules to good effect"—even though "he takes his career into his hands when he does so." The fact that both Packard and Seamans quickly backed Nelson when he proposed veering from the rule book on aircraft testing seems to bear out the belief that this is the type of decision that they think project managers should make.

THE B–1 STRATEGY

Under Nelson's new approach, North American Rockwell will now build three B–1s for flight testing and one for ground testing, instead of five and two, respectively, as originally contemplated. Under the cutback order, General Electric Co. will provide 27, rather than 40, engines for the prototype planes.

Nelson will ditch the normal Category One and Category Two pattern of testing. Category One involves experimental flights and data-gathering by contractor personnel only. In Category Two, the Air Force takes over with its own crews and repeats about 50% of what the contractor has done. "Our plan," says Nelson, "is to knock out most of the duplication by having Air Force and contractor personnel fly side by side."

Nelson also is deferring some design work normally handled during an aircraft's development phase—design for production tooling, training equipment, and ground support equipment. And he is sharply cutting the volume of written reports the contractor must make; the Air Force instead will rely largely on the builder's in-house data.

To reflect the scaled-down development effort, the Air Force and NR are now renegotiating the B–1 contract. Just how much the price will drop is not yet certain. But Richard F. Walker, president of the company's Los Angeles Div. and general manager of the B–1, says the revised price, while lower than the original $1.4-billion, will still top $1-billion and that he is "very much enthused" about the program change.

"The net result of the testing reduction," says Walker, "is that we will be able to get to the point of a production decision by spending less money—eliminating some things considered unnecessary and deferring others." And since production, not development, brings profits to a company, that, by NR standards, is a desirable thing.

MINUTEMAN OF THE YEAR AWARD TO SENATOR THURMOND

Mr. BROCK. Mr. President, the distinguished senior Senator from South Carolina (Mr. THURMOND) was presented the coveted "Minuteman of the Year" Award by the Reserve Officers Association of the United States in February. The selection of Senator THURMOND for this high award was praised recently in an editorial appearing in the March 15, 1971, issue of the Nashville Banner in an editorial entitled "The ROA Has Chosen Well."

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

ROA HAS CHOSEN WELL

"A hard worker, a man of independent mind, a politician who has put country above himself, and a man who has put his principles and beliefs above his party."

Not words from one of his fellow Republicans, but a salute from not only another party, but another House.

Paying tribute to South Carolina Republican Sen. Strom Thurmond in presenting the Reserve Officers Association "Minuteman of the Year Award," the Speaker of the House of Representatives, Carl Albert, said Sen. Thurmond "believes a strong reserve is indispensable to the security of the United States."

Selected as the "'citizen who has contributed most to the national security," Sen. Thurmond illustrates perfectly—when it comes to the defense and military strength of the United States—there is no political division. And parity, as Sen. Thurmond said in accepting the award, is not the proper course for this great nation; superiority is the only course.

The South and the nation are proud of Sen. Thurmond. The reserve officers again have chosen well.

PROFESSOR HENKIN ARGUES "CONSTITUTIONAL LIMITATION" DOCTRINE INVALID

Mr. PROXMIRE. Mr. President, for the past few days I have argued that the Genocide Convention is properly a matter of international concern. I have further argued that it poses no conflict with the doctrine of constitutional limitations on the treatymaking power.

In the April 1969 issue of the American Journal of International Law, Louis Henkin discusses this question. Henkin says the "international concern" doctrine has been unduly and needlessly elevated to the level of an independent doctrine rather than being considered in "light of our whole experience and not merely in that of what was said a hundred years ago"—*Missouri* v. *Holland*, 252 U.S. at 433.

Explicitly, the Constitution contains no limitations on the treaty power. The term "treaty" in the Constitution does not limit agreements only to those of "international agreement" since "neither international law nor practice has ever known such a requirement."

Professor Henkin points out that this doctrine came from an address by Charles Evans Hughes before the American Society of International Law in 1929. Unfortunately, his address has been misinterpreted. He made it clear that he did not care "to voice any opinion as to an implied limitation on the treatymaking power." Much of Hughes' argument dealt with political advisability rather than constitutional power.

Mr. President, I ask unanimous consent that Professor Henkin's article be printed in the RECORD.

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

"INTERNATIONAL CONCERN" AND THE TREATY POWER OF THE UNITED STATES

(By Louis Henkin)

A generation ago Senator Bricker lost his battle to amend the Constitution in ways designed particularly to make it impossible for the United States to adhere to international human rights covenants. His principal proposal would have eliminated self-executing treaties, so that a treaty could not become law in the United States unless implemented by Act of Congress, and would have overruled *Missouri* v. *Holland*, so that Congress could not legislate to implement a treaty unless that legislation would have been within the powers of Congress in the absence of treaty. Some of us urged at the time that his efforts were misconceived: to cut the treaty power down to the size of Congressional power would reduce it very little, for the powers of Congress reached much farther than Senator Bricker seemed to recognize.[1] In regard to human rights in particular, further extensions of powers of Congress announced by the Supreme Court since the Bricker controversy—under the Commerce Clause and the Thirteenth and Fourteenth Amendments[2]—render it very unlikely that the Bricker Amendment would have effectively barred adherence to the treaties he feared.

Contemporary opponents of American adherence to human rights covenants have learned the lessons of the previous decade. They now insist that, although it was apparently not perceived by Senator Bricker and his supporters, the Constitution *as it is* forbids the use of the treaty power for adhering to human rights covenants, principally because they deal with matters that are not of "international concern." As regards the human rights covenants, their arguments have been widely—and I believe effectively—refuted, but in the debates both sides largely accepted (or assumed) that under the Constitution some matters are not proper subjects for treaties because they are not of "international concern."[3]

My purpose here is to urge re-examination of the constitutional doctrine that has been assumed. To open discussion, I assert the following propositions: that the "international concern" limitation may not in fact exist; that if there is some such limitation, it has been unduly and needlessly elevated to independent doctrine and its scope exaggerated; that, in any event, it is mislabeled and therefore likely to be misapplied.

Explicitly, the Constitution contains no limitations on the treaty power. It gave the President and Senate the power to make "treaties." The word "treaty," surely, does not imply that an agreement may deal only with certain subjects, those of "international concern," since neither international law nor practice has ever known such a requirement.

For 150 years no one claimed any such limitation, although other limitations on the treaty power were frequently suggested. Jefferson's famous *Manual* mentions four limitations, and revealed him as no friend of the treaty power, but even he did not suggest the one that concerns us. He did say that a treaty "must concern the other nation, party to the contract, or it would be a mere nullity, *res inter alios acta*." The requirement that there be "a thing done between others," would seem to require only that in addition to the United States there be another nation party to the agreement. That might reject a mock treaty, or some hypothetical document which another government signs as an accommodation to the United States, where there is in fact no treaty, and such a limitation can indeed be inferred from the word "treaty"; it does not suggest any limitations as to the subject matter of treaties. After Jefferson there were dicta in Supreme Court decisions, and statements by writers, suggesting various limitations on the treaty power, but not ours.

The limitation—and the phrase "international concern"—sprang full blown from the mind and mouth of Charles Evans Hughes in 1929.[4] He was not speaking *ex cathedra*, either as Secretary of State or as Chief Justice. (He had long ceased to be the one and had not yet taken his seat as the latter.) He spoke to the annual meeting of the American Society of International Law (of which he was then President), apparently extemporaneously, perhaps even impromptu, in response to urging from the floor. He was attempting to justify a position taken earlier by the American Delegation to the Sixth International Conference of American States (which he headed) that, in part for constitutional reasons, the United States "could not join" in a treaty to adopt the Bustamonte Code and establish uniform principles of private international law. Earlier, Hughes had attempted to justify that position in words that smack of the Tenth Amendment, suggesting that he had not accepted the implication of *Missouri* v. *Holland*.[5] His 1929 statement also had some such undertones, but this time he suggested that there might also be a different constitutional limitation: a treaty must deal with a matter of "international concern." The position of the American Delegation to the Inter-American Conference had been criticized by other leading international lawyers of the day, including Charles Butler and Manley Hudson. There is no indication that the critics were persuaded by the 1929 statement. (Today few would accept—on any theory—the conclusion he was justifying, that the United States could not adhere to a convention establishing uniform principles of private international law. The United States Government has recently adhered to the Hague Conference on Private International Law.)

Hughes made his suggestion as a suggestion. Earlier in the statement he said: "I should not care to voice any opinion as to an implied limitation on the treaty-making power." Later he said only that "there *might be* ground for implying a limitation upon the treaty-making power." (Emphasis mine.) Much of his argument dealt with political advisability rather than with constitutional power. But, perhaps, because he became Chief Justice of the United States shortly thereafter, perhaps because the constitutional law of American foreign relations has so little authoritative, hard, "case" law, the Hughes address was quickly and uncritically seized, shorn of Hughes's own *caveats* and hesitations, and accepted as authority. It has been incorporated in the case books and is taught to students. It has been invoked in a lower court opinion.[6] It has been enshrined, in first place and in black letters, in the *Restatement on the Law of United States Foreign Relations*.[7]

Where did Hughes find his proposed limitation? I commend reading the whole, brief address, but I quote the most relevant paragraphs:

. . . I should not care to voice any opinion as to an implied limitation on the treaty-making power. The Supreme Court has expressed a doubt whether there could be any

Footnotes at end of article.

such. That is, the doubt has been expressed in one of its opinions. But if there is a limitation to be implied, I should say it might be found in the *nature* of the treaty-making power.

What is the power to make a treaty? What is the object of the power? The normal scope of the power can be found in the appropriate object of the power. The power is to deal with foreign nations with regard to matters of international concern. It is not a power intended to be exercised, it may be assumed, with respect to matters that have no relation to international concerns.

So I come back to the suggestion I made at the start, that this is a sovereign nation; from my point of view the nation has the power to make any agreement whatever in a constitutional manner that relates to the conduct of our international relations, unless there can be found some express prohibition in the Constitution, and I am not aware of any which would in any way detract from the power as I have defined it in connection with our relations with other governments. But if we attempted to use the treaty-making power to deal with matters which did not pertain to our external relations but to control matters which normally and appropriately were within the local jurisdictions of the States, then I again say there might be ground for implying a limitation upon the treaty-making power that it is intended for the purpose of having treaties made relating to foreign affairs and not to make laws for the people of the United States in their internal concerns through the exercise of the asserted treaty-making power.

It is not fair to parse informal remarks and subject them to exegesis as though they were a text of a constitutional provision or statute, but since others have treated them that way, and they are all we have, one cannot avoid scrutinizing them. It is difficult to fault individual sentences but their seductive simplicities carry implications that do not remain persuasive. "The power is to deal with foreign nations with regard to matters of international concern." Of course, the treaty power is a power to deal with foreign nations. Of course, nations deal with matters that concern them. Of course, I have said, it was not intended that the President could call something a treaty which was not a treaty, perhaps even if some obliging foreign government went through a "mock marriage" with us. But what basis is there for the inferences Hughes sought to make—or which others have sought to attribute to him—that the Constitution intended more, that it sought to limit the subject matter of *bona fide* treaties, to exclude some which do not "concern" the parties in some particular ways?

Or: ". . . if we attempted to use the treaty-making power to deal with matters which did not pertain to our external relations but to control matters which normally and appropriately were within the local jurisdictions of the States. . . ." And then: ". . . it is intended for the purpose of having treaties made relating to foreign affairs and not to make laws for the people of the United States in their internal concerns. . . ." But how can there be a *bona fide* treaty that does not pertain to our external relations? And why the dichotomy between external relations and internal affairs? Every treaty that has any effect as the law of the land "relates to our foreign affairs" and "makes laws for the people of the United States in their internal concerns." Many a treaty pertains to our foreign relations *and* controls matters which—apart from the treaty—normally and appropriately are within the local jurisdiction of the States.[8]

Although Hughes did not spell it out, the argument presumably is that the treaty power must be seen in the context of the patern of government established by the Constitution. The power to make laws in the United States was, in effect, distributed between the Congress and the States; law would be made by treaty only when it served some "transnational" purpose of the United States. Agreed. But the argument will not carry the limitations on the subject matter of treaties which have been imposed upon it; for, by hypothesis, every treaty, regardless of subject, serves the external purposes of the United States. The argument would not even prevent treaties designed specifically to change law in the United States: that is the purpose and effect of every treaty which modifies the rights of aliens in this country.[9] There is nothing in international law, in the treaty power, in "the Constitution as a whole," that says that other changes in American law cannot pertain to the foreign relations of the United States. Is the suggestion that the principal motive, purpose, effect must be "foreign relations" rather than "domestic legislation?" But how do you disentangle and weigh the two? And Chief Justice Hughes would not have indulged such chemical analysis and such speculations about motives, purposes and effects of legislation in other contexts.[10] In any event, that would be a different and far narrower limitation than that for which Hughes has been cited.

I can conceive of no *bona fide* treaty that does not relate to our foreign affairs. If all the Hughes address means is that treaties must be *bona fide*, one needs no new doctrine to support that: it is implied in the word "treaty," as perhaps Jefferson long ago suggested. If the Hughes address means any more than that, I see no basis for it in the Constitution. Nor do I know what any such additional limitation could possibly mean, how "international concern" would be determined, how one kind of "international concern" that is constitutionally acceptable could be distinguished from another that was not.

I regret that Mr. Hughes sought to justify reluctance to adhere to the Bustamante Code in constitutional imperatives. I regret that lawyers eager to make constitutional bricks have seized on Hughes's straws, and that the *Restatement* now has enshrined them into the *Law of American Foreign Relations*. In my view, there is no relevant constitutional limitation worthy of that name and deserving independent identification—only what is implied in the word "treaty." I do not believe that the United States would ever conclude a treaty that would not pass constitutional muster as a treaty. I do not believe the Supreme Court would ever find that a treaty of the United States was not a *bona fide* treaty. I am confident that, if the Supreme Court ever faced the question, it would not find any special requirement of "international concern," if that is interpreted to exclude some subjects from international negotiation by the United States. I do not pretend to hope that Hughes's "doctrine" can now be "repealed." I hope that in applying that "law" it might be recognized that Hughes had a small point that went without saying, which should not be distorted to hamstring constitutional powers.

I conclude with a modest plea: At least, the Hughes doctrine should have a change of name; the phrase "international concern" is Hughes's, but he used other phrases even more frequently. He spoke of the power to make an agreement "that relates to the conduct of our international relations," not to deal with matters "which did not pertain to our external relations." He proposed "a limitation upon the treaty-making power that it is intended for the purpose of having treaties made relating to foreign affairs." Later, as Chief Justice, Hughes also spoke of the treaty power as reaching "all subjects that propertly pertain to our foreign relations."[11] The *Restatement*, too, while it gives black letters to "international concern," takes its comment from Hughes's other phrases: "An international agreement of the United States must relate to the external concerns of the nation . . ." Neither Hughes nor the authors of the *Restatement* intended two different standards, but there may be a difference between the two formulations—"international concern" and "relating to the foreign relations of the United States"—and the one that has crept into the legal language is the wrong one. "International concern" suggests an objective standard as to what matters do, or should, or properly may, concern nations generally. Especially since international law and practice know no such conception, there is no basis for finding that concept in the use of the word "treaty" or in the grant of the treaty power in the Constitution. On the other hand, the distribution of national power between the treaty-makers and the law-makers and between the Federal Government and the States does imply that treaties shall be used to further transnational foreign relations purposes of the United States, as the United States conceives them. The difference I am suggesting would not lead to different results as to the human rights covenants: human rights everywhere have been of deep "international concern" to nations generally; human rights, in the United States and elsewhere, deeply "relate to" American foreign relations. But if the limitation survives and ever proves meaningful, it might matter what the limitation is.

FOOTNOTES

[1] See, *e.g.*, Henkin, "The Treaty Makers and the Law Makers: the Law of the Land and Foreign Relations," 107 U. Pa. Law Rev. 903, 933–935 (1959).

[2] Compare, *e.g.*, Heart of Atlanta Motel *v.* United States, 379 U.S. 241 (1964); Katzenbach *v.* McClung, 379 U.S. 294 (1964); Jones *v.* Alfred H. Mayer Co., 392 U.S. 409 (1968).

[3] See, *e.g.*, MacChesney, "Should the United States Ratify the Covenants? A Question of Merits not of Constitutional Law," 62 A.J.I.L. 912 (1968), and materials there cited. I, too, joined the debates on that assumption. See Henkin, "The Constitution, Treaties, and International Human Rights," 116 U. Pa. Law Rev. 1012 (1968). I am now suggesting a position going beyond the one assumed there.

[4] 1929 Proceedings, American Society of International Law 194, 195–196. Jefferson, and others, suggested another limitation, that a treaty may deal only with "those objects which are usually regulated by treaty, and can not be otherwise regulated." That limitation might coincide with "international concern" to some extent, but is different in scope and significance. It has long ago been discarded. See Henkin, *loc. cit.* note 3, at 1020–1022.

[5] Hughes, "The Outlook for Pan Americanism—Some Observations on the Sixth International Conference of American States," 1928 Proceedings, American Society of International Law 1, 12.

[6] Power Authority *v.* FPC, 247 F. 2d 538 (D.C. Cir.), *vacated as moot*, 355 U.S. 64 (1957). That case, I believe, was wrongly decided but, in any event, it did not depend on the Hughes doctrine. The Court in effect said that a particular Senate reservation was not part of the treaty, because it related only to the American legislative process and did not concern Canada, the other party to the treaty, in any way. That would fall exactly within Jefferson's narrow proposition quoted above.

[7] § 117(1): "The United States has the power under the Constitution to make an international agreement if (a) the matter is of international concern. . . ."

[8] See, *e.g.*, Hauenstein *v.* Lynham, 100 U.S. 483 (1879); Santovicenzo *v.* Egan, 284 U.S. 30 (1931) (opinion by Chief Justice Hughes). Some matters which it was once thought "normally and appropriately are within the local jurisdiction of the States," apart from treaty, are no longer so, since the Court held

that the Constitution itself bars "intrusion by the States into the field of foreign affairs." Zschernig v. Miller, 389 U.S. 429 (1968).

As even the Restatement's comment recognizes: "Matters of international concern are not confined to matters exclusively concerned with foreign relations. Usually, matters of international concern have both international and domestic effects, and the existence of the latter does not remove a matter from international concern."

[9] Compare the treaties in the cases cited in note 8; also in Asakura v. Seattle, 265 U.S. 332 (1924).

[10] See, e.g., the opinions which Chief Justice Hughes joined in Sonzinsky v. United States, 300 U.S. 506 (1937); Magnano Co. v. Hamilton, 292 U.S. 40, 44–45 (1933). Associate Justice Hughes had joined the Court's opinion in Hoke v. United States, 227 U.S. 308 (1913).

THE POSTAL SYSTEM

Mr. JAVITS. Mr. President, I wish personally to commend the U.S. Postal Service for the efforts being made to improve the mail service.

The new airmail delivery system is welcomed. The Postmaster General's recent announcement regarding airmail delivery illustrates a major step in mail handling operation. He has promised that 95 percent of all airmail deposited by 4 p.m. weekdays in special white topped mailboxes on the street will be delivered the next delivery day in designated cities within a 600-mile radius, and that mail will be delivered within 2 days in practically all large cities in the United States.

The State of New York will certainly appreciate this improvement, which allows our correspondence to go out over the network quickly, accurately, and efficiently. The service the citizen-customer deserves is well underway, and I commend the Postmaster General for this major evidence of improvement and automating the Postal Service.

FINANCIAL STATEMENT OF SENATOR AND MRS. CASE

Mr. CASE. Mr. President, I ask unanimous consent to place in the RECORD the following combined statement for my wife and myself of our assets and liabilities at the end of 1970 and our income for that year.

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

Financial Statement April 23, 1971

ASSETS

Cash in checking and savings accounts (after provision for Federal income tax for 1970), approximately	$50,000
Life insurance policies with the following insurers (currently providing for death benefits totaling $138,500): U.S. Group Life Insurance, Aetna Life Insurance Co., Connecticut Mutual Life Insurance Co., Continental Assurance Co., Equitable Life Assurance Society, Provident Mutual Life Insurance Co. of Philadelphia, Travelers Insurance Co. (cash surrender value)	47,695
Retirement contract with Federal employees retirement system (providing for single life annuity effective Jan. 3, 1973 of $28,236 per annum) Senator Case's own contributions to the fund total, without interest	$37,672
Annuity contracts with Teachers Insurance and Annuity Association and College Retirement Equities Funds. As at Dec. 31, 1970, these contracts (estimated to provide a life annuity effective January, 1973 of $1,391) had an accumulation value of	12,340
Securities as listed in schedule A	407,137
Real estate: consisting of residence building lot on Elm Avenue, Rahway, N.J., and house in Washington, D.C. (original cost plus capital expenditures)	72,200
Tangible personal property in Rahway and Washington, estimated	15,000
Share in estate of Senator Case's mother, undistributed balance	728
Contingent interest in a small trust fund of which Chase Manhattan Bank of N.Y. is Trustee, 1970 Income, $28.	

LIABILITIES

None.

INCOME IN 1970

Senate salary and allowances, $42,732, less estimated expenses allowable as income tax deductions of $6,472 (actual expenses considerably exceed this figure)	36,260
Dividends and interest on above securities and accounts	17,777
Lectures and speaking engagements: Carnegie-Mellon University	454
Net gains on sales of property	2,580

Schedule A—Securities

	Principal amount
Bonds and debentures of the following, at cost (aggregate market value somewhat lower)	$51,205
American Telephone & Telegraph Co.	12,000
Cincinnati Gas & Electric Co.	4,000
Consolidated Edison Co. of N.Y.	5,000
Consumers Power Co.	5,000
General Motors Acceptance Corp.	5,000
Iowa Electric & Power Co.	5,000
Mountain States Tel. & Tel. Co.	5,000
South Western Bell Tel. Co.	5,000
Toledo Electric Co.	5,000
Stocks (common, unless otherwise noted) at market	355,932

Corporation:	*Number of shares*
American Electric Power Co.	919
American Natural Gas Co.	548
American Tel. & Tel. Co.	200
A.T. & T. Warrants	20
Cities Service Co.	144
Combined Insurance	35
Consolidated Edison Co. of New York	400
Consolidated Edison Co. of New York, $5 Pfd.	50
Continental Can	38
Detroit Edison Co.	100
DuPont	40
General Electric Co.	120
General Motors Corp.	270
Gulf Oil	140
Household Finance Corp. $4.40 Cum. Conv. Pfd.	100
International Business Machines Corp.	128
Investors Mutual, Inc.	2,641
Kennilworth State Bank	23
Litton Industries	89
Madison Gas & Electric Co.	275
Marine Midland Corp.	563
Merck & Co., Inc.	200
Mid-Continent Telephone	80
Morgan, J.	22
Owens-Illinois	80
Reynolds Industries	100
Tri-Continental Corp.	1,464
Union Carbide	48
Union County (N.J.) Trust Co.	1,157
Warner-Lambert Pharmaceutical Co.	260

CLIFFORD P. CASE.

THE URBAN INDIAN DEVELOPMENT ASSOCIATION HELPS INDIANS ADJUST TO URBAN LIVING

Mr. CRANSTON. Mr. President, for the past three decades, the city of Los Angeles has been attracting American Indians from all over the country. By the thousands, Indians have left the reservations and relocated in Los Angeles. Today Los Angeles has the highest concentration of American Indians of any urban center in the United States, with an estimated Indian population of 60,000.

They come to Los Angeles in search of a better life. But that better life all too frequently eludes them. They find, instead, that they lack the education and the skills to obtain a decent job. They are faced with tremendous language and cultural barriers. They find the urban environment overwhelming, confusing, and frightening. Cut off from family and friends—often by many thousands of miles—new communities are difficult to establish. Moving from neighborhood to neighborhood and shuttling back and forth between the city and the reservation, the urban Indian has become one of the most deprived, invisible, and least understood segments of the urban poverty population.

To deal with these many complex problems, Indians in Los Angeles have begun the process of building a community. Los Angeles boasts the oldest Indian center in the Nation, having been organized in 1935. Currently, there are 40 Indian organizations in the Los Angeles area, all working for the welfare of their fellow Indians.

One of these groups, the Urban Indian Development Association—UIDA—provides assistance for the economic development of Indians in the metropolitan Los Angeles area. Created in August 1969, by a group of local Indian businessmen, UIDA's unique approach has proven highly successful.

UIDA's first effort was the establishment of an Indian Business Development Center—IBDC—as a basis for off-reservation economic development. In its first grant to an urban Indian organization, the Economic Development Association funded UIDA's IBDC for $50,000. These funds were matched in cash and in kind by UIDA in the abount of $51,000. The EDA grant in May 1970, was soon followed by a small grant from the Small Business Administration.

In its first 10 months of operation, IBDC has assisted over 50 Indian businessmen. From the businesses assisted or initiated, 40 new jobs have been created. The number of Indian businessmen in the Los Angeles area has tripled since IBDC's inception.

The success of UIDA's first effort confirms that Indian leadership in partnership with Government and private enterprise can provide the initiative and direction needed to solve the unique problems faced by newly arrived urban Indians.

In January 1971, UIDA won a contract from the Bureau of Indian Affairs for $125,911. This is one of two contracts the BIA has awarded to nonreservation Indian organizations. The contract calls for UIDA to provide housing assistance, urban orientation, and avocation services to American Indians relocating in Los Angeles through the BIA's employment assistance program. To date, UIDA has assisted over 500 recently relocated Indians through this project, known as the relocation assistance program.

Through these activities, UIDA is an important factor in the adjustment of relocated Indians to urban life. Its success offers tangible evidence that the leadership of Indians themselves can help to solve many of the problems faced by growing numbers of urban Indians across the Nation.

I commend the Economic Development Administration, the Small Business Administration, and the Bureau of Indian Affairs for their farsighted and enlightened assistance to Indians in the Los Angeles area.

THE EQUAL RIGHTS AMENDMENT

Mr. COOK. Mr. President, I am sure that Senators are aware of the recent hearings that took place in the House Judiciary Committee on the equal rights amendment and other legislation pertaining to the rights of women. I invite their attention to some of the highlights of those hearings.

Of great importance is the testimony of Mr. William H. Rehnquist, Assistant Attorney General, who outlined the position of the Justice Department and the Nixon administration regarding the equal rights amendment. He stated:

> In spite of the reservations of the Department of Justice and of these developments which have intervened between the time that the President spoke in 1968 and the present time, the administration is committed to the support of H.J. Res. 208.

The present administration, then, is "committed" to the support of the equal rights amendment as provided in House Joint Resolution 208 and Senate Joint Resolutions 9 and 8.

The reservations of which Mr. Rehnquist and the senior Senator from North Carolina (Mr. ERVIN) spoke in their testimony were completely answered in the testimony of other witnesses before the subcommittee. It is to these experts that I would like to turn.

Certainly the testimony of Yale Law School Prof. Thomas I. Emerson, which I shall place in the RECORD at the end of my remarks, is an excellent reputation of all the criticisms of the equal rights amendment.

In addition to this statement, I would add only a few more points.

In regard to the need for a constitutional amendment to combat sex discrimination, I quote New Mexico University law professor Leo Kanowitz when he stated his hope that the Supreme Court would render the proposed equal rights amendment a redundancy by using violations of existing constitutional provisions in ruling on sex discrimination cases. This hope has been somewhat dampened by the recent decision in Phillips against Martin-Marietta. He said:

> In that case the court, construing title VII of the 1964 Civil Rights Act, held that an employer could not automatically preclude mothers of pre-school age children from consideration for employment when it did not preclude the fathers of such children equally. . . . Unfortunately, because of some language in the decision, it was only a partial victory at best, and perhaps even a defeat—only time will tell. For eight of the nine justices in remanding the case to the lower Federal Court for further evidence, suggested that certain "conflicting family obligations" if proved to be more relevant to job performance for a woman than a man, could justify separate treatment under the bonafide occupational qualification provisions of title VII.
>
> Characterizing his colleagues' approach in this respect, Justice Marshall observed that they had "fallen into the trap of assuming that the act permits ancient canards about the proper role of women to be a basis for discrimination."

Professor Kanowitz continued by saying:

> This event makes it even more urgent than before to adopt the equal rights amendment so as to eliminate any possibility that the equal rights principle will not be scrupulously observed by the United States Supreme Court.

I would like to include remarks of New York University law professor Norman Dorsen when he spoke of the drafting of women. Speaking of behalf of the American Civil Rights Union, he said:

> Similarly, the amendment would not mean the end of the draft, but would instead require conscription of both men and women insofar as each individual met minimum physical qualifications. This should not be regarded as a particularly daring suggestion in light of the military service being performed by women in the United States and other countries. Putting aside the question of the desirability of any draft, there is no reason to put the onus of military service solely on men. Furthermore, drafting women will make them equally eligible for important benefits of service—job training and experience, veterans' benefits, and participation as equals in the duties of citizenship. It is no answer to this argument to say that if military service is such a benefit, women are always free to enlist in one of the women's corps. Women are limited by regulation of the Secretary of the Army to two percent of the male service.

Mr. President, I ask unanimous consent that the Emerson testimony be printed at this point in the RECORD.

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

TESTIMONY OF THOMAS I. EMERSON BEFORE SUB-COMMITTEE NO. 4 OF THE HOUSE JUDICIARY COMMITTEE ON THE EQUAL RIGHTS AMENDMENT AND H.R. 916 AND H.R. 4589

My name is Thomas I. Emerson. I am Lines Professor of Law at Yale Law School. Most of my teaching and study over the past 25 years has been in the field of constitutional law, with particular emphasis upon political and civil rights. I wholeheartedly support the Equal Rights Amendment in the form in which it is now before this Committee. I also favor the enactment of H.R. 916 or a similar bill, but only as a supplement to, not a substitute for, the Equal Rights Amendment. I wish to address myself primarily to the Amendment.

There is no need, to describe to this Committee the manifold ways in which the laws, institutions and practices of this country relegate women to an inferior status. The facts are by now well-documented and widely acknowledged. Nor is it necessary to stress to this Committee that the mood of the country on these matters has matured over the past few years. The justice of the claim by women are equal status in our society has come to be widely recognized. We are, I believe, on the verge of a major breakthrough. The time is ripe for serious action.

Any real effort to establish equal rights for women must begin with our legal system. From the earliest period in our history the subordinate position of women has been entrenched in our laws, our governmental institutions, and our official practices. Some of these inequities are obvious, others are subtle; some are notorious, others appear in unexpected places. Whatever their form, however, they permeate the legal structure. It is for this reason, I believe, that the problems of securing equality for women can only be solved through constitutional amendment.

It can hardly be disputed that change of this scope and depth through the process of piecemeal legislation and administration would prove to be cumbersome, time-consuming and probably ineffective. Such a method would require Congress and 50 State legislatures to debate and agree upon the repeal or modification of hundreds of separate statutory provisions in scores of different areas of the law. It would require countless Federal and State bureaucracies to be persuaded to alter long-existing methods of operation. There is no need for such struggles to be conducted on an individual, case-by-case basis. Nor is the basic change to be made—elimination of different legal treatment because of sex—so hard to grasp or so difficult of application that it demands individual attention by the whole decision-making process in each separate situation. The problem can only be remedied by a broad statement of principle embodied in our fundamental law.

A change by way of judicial interpretation of the equal protection clause of the Fourteenth Amendment likewise is not presently feasible. The Supreme Court has taken the position that differences in legal treatment on account of sex do not violate the equal protection clause so long as the law-making body has reasonable grounds for making a classification along such lines. And the Court has so far not found any classification by sex to be unreasonable. The recent action of the Court in affirming, without even hearing oral argument, a lower court decision upholding the exclusion of one sex from a State university demonstrates that the Court is still clinging to its traditional stance. One can indeed only describe the Supreme Court's views on these issues as male chauvinist.

The only alternative remaining, therefore, is to proceed by constitutional amendment. In addition to avoiding delays and uncertainities this method has a number of posi-

tive advantages. For one thing a major reform of our legal system is appropriately accomplished by a formal alteration of the fundamental document. Those who complain that the Supreme Court has been exceeding its powers through interpretation of constitutional provisions should especially welcome the amending process. Moreover, a constitutional amendment furnishes a clear and uniform policy basis upon which legislative and judicial action by the Federal Government and the 50 States can be predicated. Further, adoption of a constitutional amendment would demonstrate a broad national commitment that the goal of equal status for women should be quickly and effectively achieved.

If one reaches the conclusion that a constitutional amendment provides the best method of going forward, then it becomes important to formulate a specific provision that will accomplish the purpose and receive general support. Fortunately this task has already been performed. The Equal Rights Amendment, in the form it was cast by the Senate Judiciary Committee in 1943, has been broadly accepted as a proper formulation. I agree with this conclusion. The present language embodies, succinctly and clearly, the central idea. Its wording is similar in tone and scope to other constitutional amendments protecting fundamental rights, notably the Fourteenth, Fifteenth and Nineteenth Amendments. I believe it constitutes a satisfactory vehicle for eliminating sex inequalities from our legal system.

While I do not think that the language of the Equal Rights Amendment requires modification, I do feel that it is important to have agreement upon the basic principles of law which the Amendment expresses and upon the main ways in which it will affect existing laws and practices. The failure of proponents of the measure in the past to formulate a clear theory of the Amendment and its application has confused consideration of the issues and left us without a satisfactory legislative history. It is not possible to discuss these matters fully here, but the underlying concepts can be briefly outlined.

The basic premise of the Equal Rights Amendment is that sex should not be a factor in determining the legal rights of women, or of men. The existence of a characteristic found more often in one sex than the other does not justify legal treatment of all members of that sex different from all members of the other sex. The same is true of the functions performed by individuals. The circumstance that in our present society members of one sex are more likely to be found in a particular type of activity than members of the other sex does not authorize the government to fix legal rights or obligations on the basis of membership in one sex. The law may operate by grouping individuals in terms of existing characteristics or functions, but not through a vast overclassification by sex.

The main reasons underlying this basic concept derive from both theoretical and practical considerations. The Equal Rights Amendment embodies a moral value judgment that a legal right or obligation should not depend upon sex but upon other factors, factors which are common to both sexes. This judgment is rooted in the basic concern of society with the individual, and with the right of each individual to develop her own potentiality.

The Equal Rights Amendment also expresses a political value judgment that the government cannot rely upon the administrative technique of grouping or averaging where the classification is by sex. There are many situations where it is permissible for the law to operate on the basis of groups or averages. Thus individuals can be classified by age—under 21 or over 65—even though there are individual differences as to maturity or senility. In such cases individual rights are sacrificed to administrative efficiency. But the Equal Rights Amendment makes the constitutional judgment that this is not acceptable where the factor of sex is concerned. Here, whatever the price in efficiency, the decision must be made on some other basis.

From this analysis it follows that the constitutional mandate should be absolute. The issue under the Equal Rights Amendment cannot be benefit or detriment, reasonable or unreasonable classification, strict scrutiny, compelling reasons, or the demands of administrative expediency. Equality of rights simply means that sex is not a factor.

There are two qualifications of this central principle, however, that must be stressed. One is that the Equal Rights Amendment does not preclude legislation (or other official action) which relates to a physical characteristic unique to one sex. Thus a law relating to wet nurses would cover only women, and a law regulating the donation of sperm would restrict only men. Such legislation does not, however, deny equal rights to the other sex. So long as the characteristic is found in *all* women and no men, or *all* men and no women, the law does not violate the basic principle of the Equal Rights Amendment; for it raises no problem of ignoring individual characteristics in favor of a prevailing group characteristic or an average.

Instances of laws directly concerned with physical differences found only in one sex are relatively rare. Yet they include many of the examples cited by opponents of the Equal Rights Amendment as demonstrating the nonviability of that proposal. Thus not only would laws concerning wet nurses and sperm donors be permissible but so would laws establishing medical leave for child bearing (though medical leave for child rearing would have to apply to both sexes). Laws punishing forcible rape, which relate to a unique physical characteristic of man, would remain in effect. So would paternity legislation. Laws dealing with homosexual relations would likewise be unaffected, for such laws also deal with physical characteristics pertaining only to one sex.

A second qualification of the central principle of the Equal Rights Amendment flows from the constitutional right of privacy, established by the Supreme Court in *Griswold* v. *Connecticut* (381 U.S. 479 (1965)). Thus the right of privacy would justify police practices by which a search of a woman could be performed only by another woman and search of a man by another man. Similarly the right of privacy would permit, perhaps require, the separation of the sexes in public rest rooms, segregation by sex in sleeping quarters of prisons or similar public institutions, and a certain segregation of living conditions in the armed forces. It is impossible to spell out in advance the precise boundaries that the courts will eventually fix in accommodating the Equal Rights Amendment and the right of privacy. In general it can be said, however, that the privacy concept is applicable primarily in situations which involve disrobing, sleeping, or performing personal bodily functions in the presence of the other sex. The great concern over these matters expressed by opponents of the Equal Rights Amendment seems not only to have been magnified beyond all proportion but to have failed to take into account the impact of the young, but fully recognized, constitutional right of privacy.

Opponents of the Equal Rights Amendment have argued that an interpretation of the Amendment which does not allow the legislature or courts to make "reasonable" exceptions is unworkable and leads to absurd results. I do not believe this is so. Taking into consideration the two qualifications just outlined, the Equal Rights Amendment is fully viable. In my judgment no exceptions are necessary or desirable. And certainly a construction or modification which allowed a category of exceptions, on the basis of "reasonable classification" or otherwise, would nullify the whole purpose of the Amendment. It would leave us just where we are now.

A great deal has been said about the uncertainty and confusion which would result from adoption of the Equal Rights Amendment. I think the picture, here also, has been grossly overdrawn. There can be no doubt that the transitional problems are important. But they are surely not beyond the capacity of our legislatures and courts. Under existing legal doctrines pertaining to severability much of the impact of the Amendment can be readily predicted and no further action will be required. In some areas present laws and practices will have to be changed or the legislature may want to consider alternative ways of complying with the mandate of the Amendment. There are many organizations and groups, including the law schools, which can aid the legislature in this task of law revision.

The Equal Rights Amendment does not become effective until two years after ratification. For practical purposes at least another year, during which the ratification process is going on, can be added to the waiting period. Thus a total of three years is available for study and action. We have achieved similar reforms in our laws in a shorter period of time. When the Social Security Act was passed in August 1935 it became necessary for every State in the Union to revise its entire welfare system, including the enactment of an unemployment compensation statute and establishment of machinery for its administration. This task was effectively accomplished by January 1937, less than 18 months later, when the Federal Unemployment Compensation Tax went into operation. I see no reason why the transition required by the Equal Rights Amendment should prove more difficult.

Mr. COOK. Mr. President, I think it also important to place in the RECORD a letter from Mr. Richard W. Velde, associate administrator of the law enforcement assistance administration, to the national organization for women concerning the extent of the 14th amendment's protection in the area of sex discrimination. I ask unanimous consent that the letter and a Washington Post article on the subject be printed at this point in the RECORD.

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

MARCH 5, 1971.

Miss LUCY KOMISAR,
Vice President, Contract Compliance Committee, National Organization for Women, New York, N.Y.

DEAR MISS KOMISAR: This is in response to your letter of February 6, 1971, to the Attorney General, relative to the recently issued regulations prohibiting discrimination in employment under Federal assistance programs of the Law Enforcement Assistance Administration. You protest the fact that discrimination on the ground of sex was not included in the regulations.

You will note that the regulations were issued pursuant to the Fourteenth Amendment. The extent to which Fourteenth Amendment protections prohibit discrimination because of sex is not fully settled legally. Because of this, we do not feel, at this stage, in a position to make a decision in this important matter.

I want you to know that we share your concern regarding discrimination in employment because of sex. We will closely follow

the development of the law in this area to guide us in future policies affecting the Law Enforcement Assistance Administration.

Sincerely,

RICHARD W. VELDE,
Associate Administrator.

ANGRY WOMEN ASK LEAA RULE ON EQUAL HIRING

(By John P. MacKenzie)

The Justice Department's failure to ban sex bias as well as race discrimination from anticrime programs which are federally funded has stirred the angle of the National Organization for Women—and so has the explanation offered by the department to explain the omission.

The women's liberation group has complained that sex was not included in the category of outlawed discrimination along with race, religion and national origin when the department's Law Enforcement Assistance Administration issued its guidelines last December.

The LEAA regulations are backed up by the threat of court action and the cutoff of funds to state agencies which are receiving millions of dollars to upgrade police, court and correction systems. The regulation requirement that fund recipients have equal employment policies is in accord with constitutional standards.

NOW's compliance officer, Lucy Komisar, wrote Attorney General John N. Mitchell to protest, stating that the Constitution protects the rights of women. Her reply was from LEAA, saying the agency's action was based on the unsettled state of the law of women's rights.

"You will note," said Associate Director Richard W. Velde, "that the regulations were issued pursuant to the 14th amendment." He added:

"The extent to which the 14th amendment protections prohibit discrimination because of sex is not fully settled legally. Because of this, we do not feel in a position to make a decision on this important matter."

"That's crazy," Miss Komisar said. "How can they say they haven't made up their minds? They could just as easily assume the 14th amendment does apply."

"I'm a little outraged, but not really very surprised," she said.

Informed of NOW's reaction, LEAA general counsel Paul Woodard admitted that a decision of sorts had been made when sex discrimination was excluded from the regulations.

Woodward said that after consultation with the Civil Rights Division, LEAA felt it would be "ill-advised" to insist on state observance of a right that had not yet been fully declared in the courts. He said the decision was "not final" and any complaints from women would receive serious attention from LEAA.

Federal law does not cover the problem, in LEAA's view. The employment section of the 1964 civil rights act bars sex bias in employment but doesn't cover government agencies, and Title VI, which provides for federal fund cutoffs, doesn't mention sex.

The 14th amendment says no state shall deprive "any person" of life, liberty or property without due process of law "nor deny any person within its jurisdiction the equal protection of the laws."

Women have won some constitutional battles in the courts but the judges have not considered sex discrimination in the same category with race or poverty—so evil that the state must show a "compelling" justification for discriminatory treatment.

Mr. COOK. Finally, Mr. President, I ask unanimous consent that the testimony of Prof. Leo Kanowitz be printed in the RECORD so as to clarify the differences between the two different versions of the equal rights amendment that have been introduced in this session of Congress.

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

PREPARED REMARKS OF PROF. LEO KANOWITZ

Mr. Chairman and Members of the Committee: My name is Leo Kanowitz. I am a Professor of Law at the University of New Mexico where I teach courses in Family Law, Labor Law, Federal Jurisdiction, and a seminar in Women and the Law. I am also the author of the book, *Women and the Law: The Unfinished Revolution*, and of a series of articles on sex discrimination in the law that have been published in various American law journals.

I regret that I do not have copies of my book, *Women and the Law*, to distribute to you this morning. But its contents are described generally in the accompanying copy of my prepared remarks before the full U.S. Senate Judiciary Committee on September 11, 1970, which I would like to file with these prepared remarks as part of the record.

When I testified last September before the Senate Judiciary Committee during its hearings on the proposed Equal Rights Amendment to the U.S. Constitution, I spoke in support of Senate Joint Resolution 61, which was the exact counterpart of the Equal Rights Amendment that had already been passed by the House in the 91st Congress.

I still support, wholeheartedly, the basic principle of that Amendment, which states that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex," and I shall explain the reasons for that support in a few minutes.

That principle, indeed its exact language, is contained intact in each of the three House Joint Resolutions presently before you on the subject of the Equal Rights Amendment Numbers 35, 208, and 231.

Of these three House Joint Resolutions, however, only one, H.J.R. 35, is exactly the same as the Resolution passed by the House during the 91st Congress.

This time, however, now that there is a choice to be made between resolutions, I should like to indicate my preference for H.J.R. 208, sponsored by Representative Griffiths of Michigan—emphasizing again that all three House Joint Resolutions are identical in their basic statement of principle.

What, then, are the differences between them, and why do I prefer H.J.R. 208 over H.J.R. 35 and H.J.R. 231?

Let us first compare H.J.R. 208 and H.J.R. 35. There are essentially three differences between them: H.J.R. 35 places no limit on the time within which the Amendment must be ratified by the legislatures of three-fourths of the states. By contrast H.J.R. 208 requires the amendment to be ratified by the requisite number of states within seven years after Congress submits it. Secondly, H.J.R. 35 provides that the Amendment will take effect one year after the date of ratification. By contrast, under H.J.R. 208 the amendment would take effect two years after ratification. Finally, H.J.R. 35 provides that both Congress and the states shall have power, "within their respective jurisdictions," to enforce the new article by appropriate legislation, whereas H.J.R. 208 does not mention the States, or "respective jurisdictions," but states simply that Congress shall have the power to enforce the provisions of the new articles by appropriate legislation.

H.J.R. 231, on the other hand, contains some features resembling those in H.J.R. 35, and others resembling those in H.J.R. 208. Thus, H.J.R. 231, like House Joint Resolution 208, limits the ratification process to seven years, and provides that the amendment will take effect two years after ratification. But unlike H.J.R. 208, and like H.J.R. 35, H.J.R. 231 provides that "Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation."

In expressing a preference for H.J.R. 208 over the two other resolutions, I am motivated in large part by my perception of the political feasibility of enacting this legislation in this session of Congress. Were all other things equal, I believe I would prefer no time limit on the ratification process, since very little is achieved by such a limit. But all other things are not equal. In particular, I am impressed by the fact that the seven-year limit has been proposed by Mrs. Griffiths and, in the Senate, by Senators Bayh and Cook—all of whom have been staunch proponents of the Equal Rights Amendment in recent times. Therefore, though I would prefer no limit on the time for ratification, I am willing to go along with the acceptance of such a limit by the three aforementioned members of Congress.

As for the two year delay in the Amendment's effective date, I would refer to my Senate Judiciary testimony of September 11, in which I stated: "[W]hile there is some merit to the idea that the state legislatures and Congress should be given more than one year to enact appropriate implementing legislation, a one-year period would be adequate since both state and Federal legislatures would have had time to prepare for their work while the ratification process was still pending."

In other words, though I preferred only a delay of only one year in the Amendment's effective date following ratification, I indicated that a two-year delay would also make sense for the reasons stated in that testimony. Therefore, once again, since Representative Griffiths and Senators Bayh and Cook have, in their respective joint resolutions, provided a two year delay in the amendment's effective date following ratification, I am perfectly willing to go along with this.

Perhaps the most complex of the areas in which the respective bills take a different approach concerns the language in H.J.R. 208 which provides that the Congress shall have the power to enforce by appropriate legislation the provisions of the new Constitutional article, but says nothing about the power of the states to enforce the provisions of the article by appropriate legislation. By contrast, the House-passed Equal Rights Amendment in the 91st Congress, and the present H.J.R. 231 and H.J.R. 35 all state that "Congress *and the several States* shall have power, *within their respective jurisdictions*, to enforce this article by appropriate legislation."

During the 91st Congress, Senator Cook of Kentucky introduced into the *Congressional Record* a letter from Dean Louis H. Pollock of the Yale Law School criticizing this language of the House-passed Equal Rights Amendment. Specifically, Dean Pollock noted that the Federal courts might read this provision as requiring the same degree of judicial deference to state statutes purporting to implement the Amendment as would normally be given to Federal statutes implementing the Amendment; this could mean that the parochial (and, as might often be the case, mutually inconsistent) statutes of state legislatures would assume an unprecedented degree of apparent dignity and consequent unreviewability merely because they were denominated implementations of this Amendment. Second of all, the phrase "within their respective jurisdictions" might be read by the federal courts as requiring some other constitutional basis for implementing legislation (e.g., Congress might be held to be without power to enforce the amendment with respect to intra-state commerce, etc.).

When Dean Pollock's concern about this particular wording of the amendment was first brought to the attention of the Amend-

ment's proponents, it was important, *for tactical reasons*, not to permit further revision of the original proposal. As a result, several legal scholars, myself included, submitted letters to Senator Cook, which suggested that the adverse court interpretations feared by Dean Pollock could be avoided if the legislative history clearly negated such interpretations.

However, now that Congress is considering this legislation as a new bill in the current session, the earlier tactical considerations are no longer relevant. I, therefore, believe it preferable that the language of the 91st Congress' House-passed Equal Rights Amendment be changed in this respect. That is, instead of providing as the House-passed Amendment did in the last session of Congress, that "Congress and the several states shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation" (which is the language of H.J.R. 35 and 231), it is preferable to adopt the language of Representative Griffiths' bill, H.J.R. 208, which states simply that "Congress shall have the power to enforce by appropriate legislation, the provisions of this article."

Eliminating any reference to the power of the States to enforce the new article represents no loss. For pursuant to their inherent police power, the States could still enact legislation to implement the principle of equality of the sexes under law. Such inherent police power has been the source of state authority in enacting fair employment, fair housing, and general civil rights law. In none of these instances have the States needed special authorization in the Federal Constitution, their inherent police power being sufficient for such purposes.

At the same time, by removing any reference to the States' power to enforce the new article by appropriate legislation, the Equal Rights Amendment as worded in Representative Griffiths' bill, H.J.R. 208 makes absolutely certain that Dean Pollock's feared court interpretations could not came to pass.

While the preparation of an appropriate legislative history could probably achieve the same result, it is preferable, in my opinion, simply to omit any reference to the power of the States to enforce the article by appropriate legislation.

Finally, it should also be noted that specifying only the Congress' power to enforce the new article by appropriate legislation, as is done in H.J.R. 208, is consistent with the language in the 13th, 14th, 15th, 19th, 23rd and 24th Amendments to the United States Constitution. Only in the 18th Amendment establishing Prohibition were the States expressly given concurrent enforcement powers, probably because of doubts that they would otherwise have them, in view of the drastic curtailment of freedom of choice effected by that Amendment.

So much for the differences between the three House Joint Resolutions, and my reasons for preferring H.J.R. 208. I understand the Committee would prefer witnesses to limit their testimony to fifteen minutes, so that questions can be posed. I am therefore not going to read the full statement previously made to the Senate Judiciary Committee. But that statement has now been filed for the record, and I hope that all members of this Committee and their staffs will have an occasion to read it in the near future.

But I would like to take this occasion to reemphasize some of the major points in that statement.

First, I would reiterate that, were it not for the United States Supreme Court's failure to apply existing Constitutional provisions to the sex discrimination areas, as they could be applied, we would not need an Equal Rights Amendment now.

Secondly, I still have hopes that, pending ratification of the Equal Rights Amendment, the Supreme Court, in ruling on sex discrimination cases in which violations of existing Constitutional provisions are asserted, will render the Equal Rights Amendment a Constitutional redundancy.

My hopes in this regard have been dampened somewhat, however, by the recent Supreme Court Decision in *Phillips* v. *Martin-Marietta*. In that case the court, construing Title VII of the 1964 Civil Rights Act, held that an employer could not automatically preclude mothers of pre-school age children from consideration for employment when it did not preclude the fathers of such children equally. This represented a victory for equal rights proponents. Unfortunately, because of some language in the decision, it was only a partial victory at best, and perhaps even a defeat—only time will tell. For eight of the nine Justices, in remanding the case to the lower Federal court for further evidence, suggested that certain "conflicting family obligations" if proved to be more relevant to job performance for a woman than for a man, could justify separate treatment under the bonafide occupational qualification provisions of Title VII.

Characterizing his colleagues' approach in this respect, Justice Marshall observed that they had "fallen into the trap of assuming that the act permits ancient canards about the proper role of women to be a basis for discrimination."

If Justice Marshall's fears are well founded in this respect, it does not bode well for the cases now pending before the court in which various types of official sex discriminatory practices and rules are being challenged on the ground that they violate existing Constitutional provisions.

This event makes it even more urgent than before to adopt the Equal Rights Amendment so as to eliminate any possibility that the equal rights principle will not be scrupulously observed by the United States Supreme Court.

Another point that I would stress is the need for the legislative history of the Equal Rights Amendment to be clear that Congress, in adopting the Amendment, does not thereby intend to dissuade the courts from vigorously interpreting *existing* Constitutional provisions so as to give life to the basic principle of equality under law without regard to sex.

I would also call to this Committee's attention my view that much of the present controversy surrounding the Equal Rights Amendment proceeds from a confusion about its probable effects by some of its proponents as well as its opponents. I would re-emphasize the position I urged before the Senate Judiciary Committee that, in very many respects, the Equal Rights Amendment, should it become part of our fundamental law, would require the extension of certain benefits to men which are now presently enjoyed by women only, rather than their abrogation. This would be true of such protective labor legislation as the minimum wage laws presently applicable to women only, the requirement of seats at work for women workers only, and the requirement of rest periods for women workers only. However, in so far as weight-lifting-limitation-laws and hours-limitation-laws are concerned, the solution I have proposed for implementing the equal rights without sacrificing the limited social gains represented by such laws, would require new state and federal legislation in each of these realms which is described in my accompanying statement.

Finally, with regard to the Equal Rights Amendment, as worded in Representative Griffiths' bill, House Joint Resolution 208, I would repeat what I told the Senate Judiciary Committee:

"I now believe that it is necessary for all branches of government to demonstrate an unshakable intention to eliminate every last vestige of sex-based discrimination in American law. The adoption of the Equal Rights Amendment at this time would give encouragement to the many American women and men who now see the need for substantial reform in this area. . . . [S]hould the next few years bear out my prediction that the Court will soon begin to interpret the existing Constitutional provisions so as to eliminate irrational sex discrimination in the law, no harm will have been achieved by the presence of the Equal Rights Amendment. Indeed, many examples can be cited in which laws and official practices may violate more than one constitutional provision at one time.

I should like to turn my attention to H.R. 916 introduced by Representative Mikva and others. Time does not permit a thorough exposition of all my reasons for supporting H.R. 916. But let me try to summarize these briefly.

As I see it, the bill is designed to add sex as a prohibited basis for discrimination in a number of anti-discrimination laws already in effect. There is ample precedent for this kind of action in the revision of Executive Order 11246 by Executive Order 11375, which added sex discrimination to other types of discrimination as a reason for cutting off government contracts.

H.R. 916 also provides, among other things, for the extension of the Equal Employment Opportunity Commission's jurisdiction by removing the present exemption of educational institutions from Title VII of the 1964 Civil Rights Act.

Perhaps most importantly, the bill would authorize the Equal Employment Opportunity Commission, upon complaint and hearing, to issue cease and desist orders, comparable to those presently issuable by the National Labor Relations Board. This would represent a marked improvement over the present remedial powers of the EEOC which are now limited to conciliation efforts. It would also relieve individual complainants of the need to pursue lengthy and costly legal proceedings on their own, following the EEOC's failure to conciliate the dispute. It would permit the EEOC to enforce its cease and desist orders in the federal courts of appeal.

The experience of the last few years has demonstrated the need for the legislative reforms contained in H.R. 916, and I would urge its passage. But I would stress the importance of not regarding H.R. 916 as an alternative for adoption of the Equal Rights Amendment. Both are urgently needed at this time. Especially with regard to the Equal Rights Amendment, the legislative momentum for its passage, which has been steadily gaining in recent years, must not be lost.

Mr. COOK. Mr. President, the need for this amendment becomes more obvious every day. I trust that Senators will become even more aware of this need and support the equal rights amendment.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there any further morning business? If not, morning business is concluded.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

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

The legislative clerk read as follows:

(S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The Senate resumed the consideration of the bill.

QUORUM CALL

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

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

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I am authorized by the distinguished majority leader, after consultations with the distinguished minority whip, the distinguished Senator from North Carolina (Mr. ERVIN), the distinguished Senator from Alabama (Mr. ALLEN), the distinguished Senator from Kentucky (Mr. COOK), and others, to propound the following unanimous-consent request:

I ask unanimous consent that at 1:30 p.m. today the distinguished Senator from Alabama (Mr. ALLEN) be recognized for not to exceed 15 minutes, and that, at the close of the 15 minutes—to wit, at 1:45 p.m. today—a vote occur on the pending amendment which has been offered by the distinguished Senator from Kentucky (Mr. COOK); and that any time on any amendments thereto—and we know of none—be limited to 10 minutes, to be equally divided between the mover of such amendment and the distinguished Senator from Kentucky (Mr. COOK).

Mr. GRIFFIN. Mr. President, reserving the right to object—and I do not intend to object—I believe that the distinguished majority whip would want to include in his agreement a provision for the division of the time between now and 1:30 p.m., and I wonder whether, in view of the fact that only 10 minutes would be allowed for an amendment to the amendment, it be understood that no such amendments would be in order except that they be germane?

Mr. BYRD of West Virginia. Yes, Mr. President, and I so request, that amendments not germane not be received; and, further, that time between now and 1:30 p.m. be equally divided between the author of the pending amendment, the distinguished Senator from Kentucky (Mr. COOK), and the manager of the bill, the distinguished Senator from Rhode Island (Mr. PELL) or his designee.

The ACTING PRESIDENT pro tempore. Is there objection to the unanimous consent request just propounded by the distinguished Senator from West Virginia?

Mr. GRIFFIN. Mr. President, again reserving the right to object—and I shall not object—I only wish to state that I have had the opportunity to confer with the distinguished ranking minority member, the Senator from New York (Mr. JAVITS), with the sponsor of the amendment, the distinguished Senator from Kentucky (Mr. COOK), and with a number of others on our side, and there is general agreement that this is satisfactory.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia? The chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, will the distinguished Senator from Rhode Island yield me one-half minute?

Mr. PELL. I am happy to yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, have the yeas and nays been ordered?

The ACTING PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. Who yields time?

ORDER OF BUSINESS

Mr. JAVITS. Mr. President, will the Senator from West Virginia yield me 1 minute.

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. Could I ask a question of the distinguished majority whip? I was delayed coming over here and could not meet the time for the morning hour. I have a bill I wish to introduce and I wonder whether I could put it in now.

WAIVER OF GERMANENESS RULE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that in this one instance, and because of certain extenuating circumstances, the Pastore rule of germaneness be waived for 1 minute so that the distinguished Senator from New York (Mr. JAVITS) may be recognized to introduce a bill.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

(The remarks of Mr. JAVITS when he introduced S. 1641 are printed in the RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. JAVITS. Mr. President, I thank my colleague from West Virginia very much for his courtesy in this regard.

Mr. BYRD of West Virginia. Mr. President, may I say that I hope Senators will not take the lifting of the Pastore rule of germaneness in this instance as any precedent that will be followed in the future, but because of an extenuating circumstance——

Mr. JAVITS. May I say to the Senator from West Virginia that I was actually on the subway car when the bells rang ending the period for the transaction of morning business. I had understood that that period would last from 11:45 to 12:15. I have a witness on the stand waiting for me to come back now. If those are not extenuating circumstances, I do not know what are.

Mr. BYRD of West Virginia. The agreement yesterday was to the extent that the period for the transaction of routine morning business would not extend beyond 30 minutes; it could, of course, be closed at any time short of 30 minutes, and thus I waived the Pastore rule of germaneness reluctantly in this one instance because the Senator had been misinformed.

Mr. JAVITS. I thank the Senator from West Virginia very much.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate resumed the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER (Mr. BENTSEN). Who yields time?

QUORUM CALL

Mr. PELL. Mr. President, I suggest the absence of a quorum, with the time to be charged equally to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ADDITIONAL COSPONSOR

Mr. COOK. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Michigan (Mr. HART) be added as a cosponsor to the pending amendment.

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

QUORUM CALL

Mr. COOK. Mr. President, I suggest the absence of a quorum, with the time to be evenly charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, I have followed the debate on this amendment with considerable interest, and recognize the merits on each side. As my colleagues know, as manager of the bill I voted in favor of the Dominick amendment, which struck attorneys' fees—section 11—from the bill, because I have a certain aversion to the use of public funds for private attorneys' fees. The differences between the amendment we shall be voting on today and the one we voted on the day before yesterday should be noted. In the pending amendment the costs will be borne by the local agencies, as opposed to the Federal Government. This amendment is permissive; the other was mandatory. Also, this one is permanent, and the other was for 2 years. I voted against section 11 in subcommittee and in full committee, and intend to vote along the same line on the floor. I will oppose the

amendment of the Senator from Kentucky. I am sure the majority of my committee disagrees with me.

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

(For nominations received today, see the end of Senate proceedings.)

RECESS

Mr. BYRD of West Virginia. Mr. President, will the Senator from Rhode Island yield?

Mr. PELL. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous that the Senate stand in recess until 1:20 o'clock p.m. today.

The PRESIDING OFFICER. Is the time for the recess to be charged against both sides?

Mr. BYRD of West Virginia. It is.

The PRESIDING OFFICER. Is there objection?

There being no objection, at 12:30 p.m. the Senate took a recess until 1:20 p.m. today.

On the expiration of the recess, the Senate reassembled, and was called to order by the Presiding Officer (Mr. BYRD of Virginia).

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally divided between both sides.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

ORDER FOR RECOGNITION OF SENATOR COOK AND FOR VOTE ON AMENDMENT OFFERED BY SENATOR COOK

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at 1:45 p.m. today the distinguished Senator from Kentucky (Mr. COOK), the author of the pending amendment, be recognized for not to exceed 5 minutes, and that the vote on the amendment offered by the Senator from Kentucky (Mr. COOK) then occur.

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

ORDER FOR RECOGNITION OF SENATOR TUNNEY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at 3:01 p.m. today the distinguished Senator from California (Mr. TUNNEY) be recognized for not to exceed 5 minutes, without prejudice to any Senator who may be holding the floor at that time.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I ask that the time be equally divided between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate resumed the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER (Mr. BYRD of Virginia). Under the previous order, the Senator from Alabama (Mr. ALLEN) is recognized for 15 minutes.

Mr. ALLEN. I thank the Chair.

Mr. President, I speak in opposition to the pending amendment offered by the distinguished Senator from Kentucky (Mr. COOK) and cosponsored by a distinguished array of Senators from both sides of the aisle.

So that the Senate can place this amendment in proper perspective, it must be remembered that on last Wednesday, an amendment was offered by the distinguished Senator from Colorado (Mr. DOMINICK). Section 11 of S. 1557 provided for the allowance of attorneys' fees for attorneys bringing desegregation suits. The bill also authorized an appropriation of $15 million to pay such attorneys' fees. Under the Dominick amendment, the provision allowing attorneys' fees and the section authorizing the $15 million appropriation were both striken from the bill.

Then, on yesterday, the present amendment was offered by the Senator from Kentucky (Mr. COOK), with the cosponsors that I have mentioned, which is much worse than the provision which was stricken out. I say it is much worse because it provides no limitation whatsoever in dollar amount for attorneys' fees for suits brought against local school districts seeking to compel desegregation of public schools. Instead of a $15 million limitation, as was contained in the original bill, which was deleted under the Dominick amendment, we now have an amendment that has no dollar amount ceiling whatsoever.

In the second place, the original provision provided that these attorneys' fees would be paid from an appropriation from the Federal Treasury, whereas the present amendment provides that they will be paid by the local school districts, which is another way of saying that these fees are to be paid by the schoolchildren in those districts, or from funds appropriated for their use. So instead of the attorneys' fees being paid by the Federal Government, as originally provided, the amendment would provide that they shall be paid by the local school districts, which means the local schoolchildren.

Where would these suits be filed? The overwhelming majority of the suits would be filed in the southern area of this country, because the Supreme Court has ruled that only that segregation resulting from official action is unconstitutional. So, under some sort of legal fiction, the types of segregation which exist in the North, and which are growing by leaps and bounds, have not been held to be unconstitutional. So there would be nothing to avail the attorney to file a suit in the North, because he would not be successful, and the payment of his attorney's fees depends upon the success of the action. Therefore, the overwhelming majority of the suits would be filed in the southern section of the country.

This would encourage litigation, Mr. President. It would encourage the bringing of lawsuits against local school boards. Already the local school boards, already the administrators and the faculties, are kept busy by filling in forms, answering questionnaires, applying for grants, going to court. Add this additional incentive for the bringing of suits, and we will find that the local school authorities are not going to have any time to consider the matter of educating the schoolchild. They are going to be kept busy defending suits brought against them, encouraged all the more by this very provision for the payment of attorneys' fees.

Mr. President, we have appropriations for the relief of this segment of the economy and that segment of the economy, and now we have a lawyer's relief fund set up under this amendment, or, at least, access to a lawyer's relief fund. The junior Senator from Alabama feels that this amendment is not in the public interest. It is not in the interest of the schools of Alabama and the South and the Nation. It would encourage harassment by attorneys bringing desegregation cases against local school boards for the primary purpose of the attorneys' fees involved.

Mr. President, if it takes the payment of an attorney's fee to prick or to alert the social consciousness of the attorneys, then, in the judgment of the junior Sen-

ator from Alabama, those attorneys do not have sufficient social consciousness.

S. 1557 is supposed to be an emergency school aid authorization, and its sponsors have come in and said, "Why, this is purely voluntary. We are not forcing any money on any local school board. Only those school systems that want grants need apply for them." Purely voluntary, but yet, Mr. President, there must be read into S. 1557 the Federal school policy that was all too clearly and the more forcefully declared by the Supreme Court on Tuesday—that there is, in fact, a dual Federal school policy for the desegregation of the public schools of the Nation. That policy as regards the South demands immediate desegregation now—and "now" is the word the Supreme Court likes to use time and time again about southern school systems, that they desegregate now—while at the same time, in areas outside of the South, segregation is fostered and encouraged and protected in the local school systems.

All too clearly, the effect of these decisions was that, as regards southern public school systems, anything goes, no matter how vicious. So we have got to read that Federal school policy into S. 1557. Then it becomes not altogether voluntary, because the southern schools must be desegregated now; but that situation, that mandate, that edict, that ruling does not apply to northern schools.

Mr. President, if segregation is evil, if it is inferior in the South, why is it not inferior in the North? They say, "Well, we do not have to desegregate. Our segregation is not unconstitutional."

But to desegregate would not be unconstitutional. So why are those in the North depriving minority group students of a good education? Why are they imposing upon the schoolchildren of racial minorities in the North a segregated school system?

Mr. President, what is the effect of this amendment—and I do not have any thought whatsoever that even a respectable vote is going to be cast against the amendment; it is all set, it is going to go right on through, sponsored heavily on both sides of the aisle.

It will encourage litigation in the South against public school systems. Any attorney's fee that is recovered will be paid by southern schoolchildren. How do they pay it? They pay it in the sense that they are deprived of the public funds that have been made available for their education, for adequate school buildings, for adequate facilities, for competent teaching personnel. That is how they are going to pay this bill.

Mr. President, nothing was said about where these attorneys will come from. The junior Senator from Alabama can envision teams of attorneys coming into Southern States and filing desegregation suits against local school boards for the purpose of collecting fees from such school systems.

Mr. President, this amendment providing for a lawyers relief fund should be defeated.

Now, having used the time allotted me, I yield the floor.

The PRESIDING OFFICER (Mr. BYRD of Virginia). The Senator from Kentucky is recognized for 5 minutes.

Mr. COOK. Mr. President, this amendment is not new to the law. It is merely, frankly, an extension of what has been written into the law on at least three occasions. It was written into the Civil Rights Act of 1964, under title II. It was a valid part of title VII of the 1964 Civil Rights Act. And it was reaffirmed, reestablished, and extended to punitive damages under title VIII of the Civil Rights Act of 1968.

I tried yesterday, to the best of my ability, to determine from the respective agencies how much had been spent, because the point was made by the distinguished Senator from Alabama that this was worse than section 11, because section 11 at least limited lawyers' fees to a total of $15 million, and this had no ceiling at all.

So we tried to the best of our ability, Mr. President, to find out from HEW how much money had been expended for attorneys' fees under the 1964 Civil Rights Act. The lowest estimated figure that we were able to get was approximately $100,000 in 7 years, and the highest figure we could get, by the outside stretch of the imagination, was $160,000.

I might say, Mr. President, that in the largest case undertaken by a national organization to protect the right to equal employment, the fee that was awarded by the court—and this was for a multiplicity of suits that were finally brought together, in litigation that involved about 5 years—when a decision was finally made, the court awarded an attorneys' fee of $20,000.

Mr. President, no limitation, the Senator has said, is worse than the $15 million. But our experience under the 1964 Civil Rights Act has proved that is not a correct asumption.

The Senator says one of the worst things about it is that the fees are paid by the local school board, and this takes money away from the schoolchildren. Mr. President, if someone violates the 14th amendment of the Constitution of the United States, who ought to pay that fee? The Federal Government because the local school board or State Board of Education violates the Constitution? I would think not. That was one of the reasons we were so opposed to title XI, because the Federal Government was to pay it regardless of who the guilty party was.

There has been an erroneous assumption on the part of the Senator from Alabama, Mr. President, because he asked who was going to pay these fees, and then stated that only the local school boards would pay them. That is not what the amendment says. The amendment says:

> Upon the entry of a final order by a Court of the United States against a local educational agency, a State (or any agency thereof), or the United States (or any agency thereof).

So it is the guilty party; it is not the local school board.

He says we are going to take money away from these schoolchildren. Mr. President, who represents the school boards when they defend these cases? It is a local attorney, hired by the school board on a permanent basis, paid 12 months of each year. Some of them are paid substantial sums of money, as lawyers on this floor know, on a retainer basis. If this is taking money from little schoolchildren, I do not know of any local school board attorney who, when he lost a case before the Supreme Court, ever wrote a letter to his local school board and said, "I lost this case I was defending for you, therefore I will not send you a bill, because I do not want to deprive these little schoolchildren of the money; I might take away a teacher, or in some other way deprive them of a part of their education."

The Senator's next argument was that the overwhelming majority of the suits would be in the South. After we passed the Stennis amendment yesterday, how could this claim possibly be true? Those of us who voted to pass the Stennis amendment—and I include myself in that group, with the Senator from Alabama—concluded that there should be a nationwide policy, that that nationwide policy should be established, to the effect that no one will flee from North to South to file these suits. As a matter of fact, the contrary could be true, now that the Stennis amendment is a part of this act: That the lawyers from the South will flee to the North to bring all these segregation suits, because we will have established a national policy. I doubt seriously that lawyers will roam through the South with mimeograph machines and bring suits against every school board because they want to collect a fee.

The Senator says this is a lawyers' relief fund. Mr. President, it is the people's relief fund, I say to the Senator from Alabama, because if a judgment is brought and a mandate is rendered that a violation of the law has occurred or that a violation of the 14th amendment has occurred, it is not for the benefit of the lawyer who may ask for a fee, but for the benefit of the clients the lawyer represents. That is the important thing. That is the thing that counts, and that is what we are after here.

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

Mr. ALLEN. I ask unanimous consent that the Senator's time may be extended for such time as he requires.

Mr. MANSFIELD. That would make it unlimited.

Mr. ALLEN. Five additional minutes.

Mr. MANSFIELD. Mr. President, would the Senator withhold that?

Mr. COOK. Yes. All I need is another minute.

The PRESIDING OFFICER. What is the motion?

Mr. MANSFIELD. The Senator from Kentucky says he needs 1 more minute.

Mr. ALLEN. I modify the request accordingly.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. COOK. Mr. President, it is said that this will encourage litigation in the South. This has not been the case. This has not been the case under the 1964 act or under title VII or under the 1968 act.

I can only say that what this does, in essence, is that it says a party is entitled to pursue his remedy if there is a violation of this act, if there is a violation of

the 1964 Civil Rights Act, if there is a violation of the 14th amendment to the Constitution of the United States. It says that, in the discretion of the court, if a mandate comes down, if a judgment is rendered, and if it was necessary to bring the action to see to it that the act was enforced, they could allow the cost and a reasonable fee for time expended. That is the extent of it.

I yield the floor, and I am ready to vote.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may be allowed to proceed for not to exceed 2 minutes, to make certain announcements to the Senate.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. MONDAY, APRIL 26, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock Monday morning next.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

PROGRAM

Mr. GRIFFIN. Mr. President, If the distinguished majority leader will yield for an inquiry, I should like to ask whether he can tell us what the program is for the remainder of the day.

Mr. MANSFIELD. Yes. When the pending amendment is disposed of, the distinguished Senator from North Carolina will offer an amendment, and he has agreed to a 20-minute limitation, 10 minutes to a side. I would assume that, on that basis, there would be another rollcall vote.

Mr. ERVIN. That is correct.

Mr. MANSFIELD. Furthermore, at the request of the minority side, I intend to speak to the chairman of the Committee on Appropriations to see if it would be possible, because of the time factor, to get the supplemental appropriation bill through this afternoon. What will happen beyond that, if we get that far, I do not know.

Mr. GRIFFIN. I thank the majority leader.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER. All time on the amendment having expired, the question is on agreeing to the amendment of the Senator from Kentucky. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). On this vote I have a pair with the senior Senator from Massachusetts (Mr. KENNEDY). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia (after having voted in the negative). On this vote I have a pair with the distinguished senior Senator from West Virginia (Mr. RANDOLPH). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from North Carolina (Mr. JORDAN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Wisconsin (Mr. NELSON), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I also announce that the Senator from Florida (Mr. CHILES), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Illinois (Mr. STEVENSON), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

On this vote, the Senator from Connecticut (Mr. RIBICOFF) is paired with the Senator from Mississippi (Mr. EASTLAND).

If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Mississippi would vote "nay."

On this vote, the Senator from Maine (Mr. MUSKIE) is paired with the Senator from Georgia (Mr. GAMBRELL).

If present and voting, the Senator from Maine would vote "yea" and the Senator from Georgia would vote "nay."

On this vote, the Senator from Illinois (Mr. STEVENSON) is paired with the Senator from Georgia (Mr. TALMADGE).

If present and voting, the Senator from Illinois would vote "yea" and the Senator from Georgia would vote "nay."

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. BAYH), and the Senator from Missouri (Mr. SYMINGTON) would each vote "yea."

On this vote, the Senator from Washington (Mr. MAGNUSON) is paired with the Senator from North Carolina (Mr. JORDAN).

If present and voting, the Senator from Washington would vote "yea" and the Senator from North Carolina would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT) is absent by leave of the Senate on official business.

The Senator from Kentucky (Mr. COOPER) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), and the Senator from Colorado (Mr. DOMINICK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Florida (Mr. GURNEY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Nebraska (Mr. HRUSKA), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), the Senator from Ohio (Mr. SAXBE), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

On this vote the Senator from Massachusetts (Mr. BROOKE) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Massachusetts would vote "yea" and the Senator from Texas would vote "nay."

On this vote, the Senator from Pennsylvania (Mr. SCOTT) is paired with the Senator from South Carolina (Mr. THURMOND). If present and voting, the Senator from Pennsylvania would vote "yea" and the Senator from South Carolina would vote "nay."

On this vote, the Senator from Ohio (Mr. TAFT) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Ohio would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 30, nays 24, as follows:

[No. 47 Leg.]

YEAS—30

Beall	Hughes	Mondale
Bellmon	Humphrey	Pastore
Boggs	Inouye	Pearson
Case	Jackson	Prouty
Cook	Javits	Proxmire
Cranston	Mathias	Schweiker
Dole	McGee	Smith
Griffin	McGovern	Tunney
Hart	McIntyre	Weicker
Hatfield	Metcalf	Williams

NAYS—24

Aiken	Byrd, Va.	Long
Allen	Cotton	McClellan
Anderson	Curtis	Montoya
Baker	Ellender	Pell
Bennett	Ervin	Roth
Bentsen	Fong	Spong
Bible	Hansen	Stennis
Brock	Jordan, Idaho	Young

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Byrd of West Virginia, against.
Mansfield, against.

NOT VOTING—44

Allott	Goldwater	Packwood
Bayh	Gravel	Percy
Brooke	Gurney	Randolph
Buckley	Harris	Ribicoff
Burdick	Hartke	Saxbe
Cannon	Hollings	Scott
Chiles	Hruska	Sparkman
Church	Jordan, N.C.	Stevens
Cooper	Kennedy	Stevenson
Dominick	Magnuson	Symington
Eagleton	Miller	Taft
Eastland	Moss	Talmadge
Fannin	Mundt	Thurmond
Fulbright	Muskie	Tower
Gambrell	Nelson	

So Mr. COOK's amendment was agreed to.

Mr. MONDALE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COOK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 48

Mr. ERVIN. Mr. President, I call up amendment No. 48 and ask unanimous consent that the reading of the amendment be dispensed with and that I be permitted to explain the amendment in lieu of having it read.

The PRESIDING OFFICER. Is there objection to the request of the Senator from North Carolina? The Chair hears none, and it is so ordered. The amendment will be printed in the RECORD.

The amendment ordered to be printed in the RECORD reads as follows:

AMENDMENT NO. 48

On page 11, line 13, insert the word "or" after the semicolon.

On page 11, line 14, strike out through line 19.

On page 11, line 20, strike out "(D)" and insert in lieu thereof "(C)".

On page 12, line 3, strike out "(C), or (D)" and insert in lieu thereof "or (C)".

On page 12, line 18, strike out "(C), or (D)" and insert in lieu thereof "or (C)".

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the pending amendment there be a time limitation of 20 minutes, the time to be equally divided between the sponsor of the amendment and the manager of the bill or whomever he designates.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

YEAS AND NAYS

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I assure all Senators that I believe they can vote for this amendment, even though it is offered by a southerner and even though it is an amendment to a bill that has racial overtones, if they understand the amendment.

Mr. President, I have been constrained to say on several occasions that the constant agitation for the forced integration of races in this country has impaired our national sanity. There is no stronger proof of this assertion than the provision which my amendment seeks to strike from the bill.

Mr. President, I invite the attention of the Senate to pages 10 and 11 of the bill and to these words:

No local educational agency shall be eligible for assistance under this act if it has, after the date of enactment of this act—

(C) in conjunction with desegregation or the conduct of activity described in section 5, had in effect any procedure for the assignment of children to or within classes which results in the separation of minority group from non-minority group children for a substantial portion of the school day;

My amendment would strike from the bill the words which appear in subsection (C).

Mr. President, I submit that school days are ordinarily 4 or 5 hours in length and that 15 or 30 minutes or 1 hour is a substantial part of a school day.

This provision is designed to make minority and nonminority children as inseparable as the Siamese twins. School boards cannot separate them for even a few minutes. That is a rank insult to intelligence. It is rank discrimination against all schoolchildren whether they be advantaged or disadvantaged.

Under the words of this provision a school board cannot receive any benefits under the bill if it separates for a substantial part of a day bright or diligent students for the purpose of enabling them to learn more than is taught the dull or lazy students. We cannot separate disadvantaged black children from the ghettos for the purpose of giving them remedial training.

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. There will be order in the Senate. The Senator from North Carolina may proceed.

Mr. ERVIN. Mr. President, I believe that every American child whether he belongs to a minority or nonminority group has an inalienable right to make of himself everything which God Almighty gave him any possibility of being. And this provision which I seek to strike says that Congress will deny bright children and dull children equally this inalienable right if it results in a separation for only a few minutes of minority and nonminority groups of children.

I say that is an insult to intelligence because it says as far as the bright or diligent children are concerned that if they separate minority and nonminority children for a few minutes during school days, the bright or diligent children cannot be taught anything more than the school board attempts to teach the dull or lazy children.

More than that, it says that the school board cannot arrange to have remedial teaching done for the benefit of disadvantaged black children from the ghettos if such action results in their separation for only a few minutes during the school day from advantaged white children.

Surely, in any bill for education Congress ought not to set limitations upon the capacity of a child to acquire knowledge. Especially, Congress ought not to put limitations upon the capacity of school boards to give remedial training to disadvantaged black children from the ghettos. And that is what the provision that I seek to strike does.

Let the Senate be intelligent on this. Let the Senate vote to accord to every child, black or white, of any origin, an opportunity to make of himself everything which God Almighty gave him any possibility of being.

This section would say that a school would be forbidden, if it wanted any of these funds, to afford bright and diligent students the opportunity to learn anything more than the school would teach dull or lazy students. Under this section a school could obtain no funds unless that it agreed that it would not separate the disadvantaged black children from the ghettos from advantaged white children in order to give them remedial education to overcome their handicaps.

Notwithstanding the fact that this amendment is offered by a southerner to a bill which has racial overtones, I am confident that the Senate will overlook that fact and vote to strike this provision from the bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I have listened to the comments of the Senator from North Carolina, and have studied his amendment. I have been trying to see worked out some language to bring about a compromise, and that is why I was not in the Chamber when the Senator concluded his remarks.

I speak as one who believes in a degree of ability grouping. I see nothing wrong with it. Our Nation will progress primarily because those who are gifted children will be better equipped to fulfill their capacities. Therefore, I have no argument with the concept.

This language in the bill seeks only to avoid ability grouping which is used as a guise or cover for segregation. To be specific, the amendment offered by the Senator from North Carolina very properly raises a question about the interpretation of some language in the bill. I have heard several lawyers arguing about what it does say. They do not seem to agree.

As I understand it, the language on lines 14 through 15 of page 11 does not prohibit special classes for gifted children or, for that matter, special classes for disadvantaged children. The clause which the Senator proposes to strike out must be read as a whole. The clause is introduced with the phrase "in conjunction with desegregation"; therefore, the following language simply prohibits procedures which are used to separate children on the basis of race. The language does not prohibit a legitimate use of ability grouping if it inadvertently results in a separation of minority group children from nonminority group children.

As a Senator who would be a conferee on this bill, if I found that this language was being used to prevent ability grouping, per se, I would be opposed to it. For instance, if there was a school in suburbia with three sections, a advanced section, a medium section, and a slow section, and if there were minority children in only the slow section, and it appeared that ability grouping was being used as a means of segregating children, then I would be opposed; but if it were a coincidence and had happened merely as the normal outcome of standard educational practice, then I would not be opposed.

Mr. ERVIN. The easiest way to determine what a law means is to read it, and the easiest way to determine what it means after reading it is to say that it means exactly what it says.

Section 5 deals with segregation. Here is what the statute states:

(C) In conjunction with desegregation or the conduct of an activity described in section 5,

No school can receive funds under this act if it has at any time after enactment:

any procedure for the assignment of children to or within classes which results in the separation of minority group from nonminority group children for a substantial portion of the school day;

That means, Mr. President, that a school board cannot separate bright students or disadvantaged students from the rest of the school to get extra or remedial training, no matter how righteous its conduct may be, if it results in the separation of minority or nonminority group children for a substantial portion of the school day.

Notwithstanding my good friend's assurance that he would try to keep it from meaning that in a conference committee, that is the construction the Court would have to place on it, because that is what this says and nothing more. It cannot be construed out of existence.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. PELL. I yield 3 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I am very sympathetic to the problem. I believe, however, with the legislative construction that the Senator from Rhode Island (Mr. PELL) placed upon this and the legislative construction that I, as the ranking minority member, will now place upon it, it will be brought into focus.

The Senator is correct when he stated that a statute means what it says. However, the provision states in the first clause:

In conjunction with desegregation or the conduct of an activity described in Section 5,

Now, the activities described in section 5 are activities relating to desegregation. That is what this is for. Therefore, if the tracking system is used as an effort to defeat desegregation which, in my judgment, is the clear intent of the paragraph, then I would naturally be against it and I would want this provision in the bill. On the other hand, I do not want to interfere with the normal pedagogical practice of ability grouping for selected subject instruction.

I have before me the guidelines which were being used in these matters by the Department of Health, Education, and Welfare. That is exactly what they said. I would like to read the language for the RECORD:

(G) that no practices or procedures, including testing, will be employed by the local educational agency in the assignment of children to classes, or otherwise in carrying out curricular or extracurricular activities, within the schools of such agency in such a manner as (i) to result in the isolation of minority and nonminority group children in such classes or with respect to such activities; or (ii) to discriminate against children on the basis of their being members of a minority group;

As so construed, I could in good conscience accept this provision without feeling I was striking down the pedagogical concept of ability grouping. That is what the Senator from Rhode Island had in mind and it is what I have in mind.

Mr. ERVIN. I am astounded that as able and distinguished a lawyer as the Senator from New York would suggest that the courts, when they interpret this, would interpret it to mean not what it says but what is said in an inapplicable regulation of the Department of Health, Education, and Welfare which is especially designed to prevent racial isolation as a permanent thing in school classes or, as it is expressly said, to make a discrimination on racial grounds.

This provision outlaws tracking systems, no matter how innocent they are, if they result in separation of minority and nonminority groups for any part of a day, which may well mean for only 15 minutes. Everything in this bill is connected with desegregation. This provision in its present form, as I said in the beginning, ties the minority and the nonminority children as close together as Siamese twins, and the school board cannot separate them even to give the bright students superior education or the disadvantaged students of a minority race remedial education.

Mr. President, I hope the Senate agrees to my amendment.

Mr. PELL. Mr. President, I yield to the Senator from Minnesota for 2 minutes.

Mr. MONDALE. Mr. President, the provision found in the pending bill which would be amended by the amendment proposed by the Senator from North Carolina is a provision which was recommended by the administration. In fact, it is less strong than the regulations on this subject promulgated by the administration with respect to the use of the first $75 million under the emergency school assistance program. Despite the existence of those regulations for the expenditure of that first money, the report of six civil rights groups last November, based on 295 districts, found over 100 cases of classroom segregation.

In other words, in the name of ability grouping, children were separated on the basis of race and continued to be segregated. They did not call it racial discrimination; they called it ability grouping. The white class was the bright class, and the black class was the dumb class. If anything, this kind of discrimination is more insidious, more insulting, and more discriminating than the old kind of discrimination, which just recognized that children were to be separated on the basis of race. The bitterness of minority group students who, finding themselves in segregated classrooms, discover that desegregation has proved a fraud, is easy to understand. Moreover, we cannot expect the benefits of integrated education to accrue to any child unless classrooms, as well as schools, are operated on an integrated basis.

If the amendment by the Senator from North Carolina is adopted, the word is out that what was done traditionally in the old dual school systems in the name of racial segregation can be done now in the name of what is called tracking. Whether they call it tracking or racial segregation, the effect on children is the same—failure, bitterness, division, a divided community.

The provision found in the pending bill is an administration-supported proposal. I support it strongly. I think it is essential to a balanced, strong measure, and I oppose the amendment offered by the Senator from North Carolina.

Permit me to say one final thing about that amendment——

The PRESIDING OFFICER. All time of the Senator from Rhode Island has expired.

Mr. PELL. Mr. President, I ask unanimous consent that we may have an additional 10 minutes, to be equally divided.

Mr. ERVIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD of West Virginia. Mr. President, I hope the Senator will not object.

Mr. ERVIN. Mr. President, my position is this: If this were done for discriminatory purposes, with intent to separate the races, it would be invalid under about 25 separate provisions of the bill. So nothing is necessary to outlaw discrimination. I think we ought to go ahead and vote.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time may be extended for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. Mr. President, the reason why I am going to object is that I have agreed to a 10-minute limitation, and if they come in here with some effort to change this, I have no time to discuss it. I do not think any discussion is necessary, because this says exactly what it means—that minority and nonminority students cannot be separated.

The PRESIDING OFFICER. Is there objection? All time has expired.

Mr. BYRD of West Virginia. Mr. President, I offer a substitute amendment.

The PRESIDING OFFICER. The clerk will read the substitute amendment.

Mr. BYRD of West Virginia. Mr. President, under my substitute, section 5(d)(1)(C) would remain as it appears in the bill, but following the semicolon on line 19, I would delete the "or" and insert the following language:

Provided, however, the foregoing does not enjoin the use of bona fide ability grouping by a local education agency as a standard pedagogical practice; or

Mr. President, I ask unanimous consent for 10 minutes, to be equally divided, for the purpose of discussing my substitute amendment.

The PRESIDING OFFICER. Will the Senator from West Virginia send his amendment to the desk?

Mr. ERVIN. Mr. President, I would like to have a copy of it. I do not understand it.

The PRESIDING OFFICER. The clerk will read the amendment.

Mr. COTTON. Mr. President, has the unanimous-consent request been agreed to?

Mr. BYRD of West Virginia. Mr. Pres-

ident, I modify my unanimous consent to allow for 5 minutes, equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none——

Mr. ERVIN. Mr. President, just a moment. I do not know what the amendment is.

The PRESIDING OFFICER. The Chair requests the Senator from West Virginia to withhold his request until the clerk can read the amendment.

The legislative clerk read the amendment of Mr. BYRD of West Virginia as follows:

On page 11, line 19, before the word "or" insert the following language:

; Provided, however, the foregoing does not enjoin the use of bona fide ability grouping by a local agency as a standard pedagogical practice; or

The PRESIDING OFFICER. Is there objection to the request?

Mr. COTTON. Mr. President, what was the request?

Mr. BYRD of West Virginia. The request was for 5 additional minutes, to be equally divided between the author of the substitute amendment and the distinguished Senator from North Carolina (Mr. ERVIN).

THE URGENT SUPPLEMENTAL APPROPRIATIONS BILL

Mr. COTTON. Mr. President, reserving the right to object—and I shall not object—the Senator from New Hampshire has to say that he regrets that he has to leave the floor. It was the intention and the hope of the Senator from New Hampshire to stay until the urgent supplemental appropriation bill was taken up, because of the fact that the distinguished Senator from Washington (Mr. MAGNUSON), as well as the Senator from New Hampshire, made a promise when the funds were not included in the earlier Urgent Supplemental Bill that we would see to it that the money for the new occupational safety legislation would be appropriated by April 28. We kept that promise. I anticipate we have not kept it in sufficient quantity to be satisfactory to the Senator from New York, and I anticipate that he will have some comments.

In the absence of the Senator from Washington, I had hoped to be here to cover it on behalf of our Subcommittee. I cannot do it, because I have to leave at once. I wanted to get that statement in the RECORD. I regret that I shall not be able to remain here and vote on it.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may speak for 30 seconds.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I wish to say I may not be able to be here, either. I did not intend to block the bill, but to record the inadequacy of the provision for occupational health and safety administration. My purpose is remedying that in the regular supplemental bill which will come up soon.

Mr. COTTON. Mr. President, I wish to say that the Senator from Washington and the Senator from New Hampshire realize that fact. We did keep our promise to get the part of the money needed to get the program going by April 28. We can now monitor and watch, their program with the idea that it will be taken care of when the Subcommittee shortly considers the regular 1972 bill.

CANCELLATION OF WHITE HOUSE TOURS TOMORROW

Mr. MANSFIELD. Mr. President, I have just received a message from the office of the Vice President.

It has been requested by the White House Tour Office to have an announcement made on the Senate floor today.

All special public and any other tours at the White House are canceled for Saturday, April 24, 1971. All people holding passes for that day may come to the White House on Tuesday morning, at which time they will be admitted for a tour.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill—S. 1557—to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia for 5 minutes, to be equally divided? Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I have listened to the Senator from North Carolina as he has explained his amendment. He seeks to provide a way by which local education agencies may allow for bona fide ability groupings, so that bright students will not have their progress impaired by being forced to study with students who are slow learners.

I have listened to the objection that was expressed to the Senator's amendment. The opposition accepts the viewpoint, apparently, that ability grouping should be permitted where there is justification, but the opposition is fearful that such might be used as a subterfuge for segregation on the basis of race.

Mr. President, my substitute language would reach the objective which the able Senator from North Carolina seeks, while, at the same time, guarding against the kind of thing the opposition fears. It would allow, not for the discriminatory separation of students on the basis of race, color, and so on, but for bona fide ability groupings by a local education agency which feels that such is justified and in accordance with good pedagogical practice.

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

Mr. BYRD of West Virginia. I yield.

Mr. PASTORE. As I understand this situation, which has led to a lot of confusion, the point is that both sides have the same objective in mind, but because of the ambiguity of the language, they drive in separate directions, and this clarifies the whole situation and brings them all together.

Mr. BYRD of West Virginia. Precisely.

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

Mr. ERVIN. Mr. President, if the Senator from West Virginia will withdraw his proposed amendment to my amendment, I will modify my amendment to provide that the semicolon on line 19 of page 11 be changed to a colon and that the following be added thereafter: "Provided, however, that nothing contained in this paragraph shall be construed to prevent any school board from adopting a system of ability groupings for any class of students, whether bright, average, or dull, if such ability grouping is not designed to promote discrimination."

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Mr. President, will the Senator permit the clerk once again to read my amendment so that it will be clearly understood by all Senators? I would be glad to withdraw my name from the amendment and substitute the name of the distinguished senior Senator from North Carolina, because my language does precisely what the Senator wishes to achieve.

Mr. ERVIN. I think the name of the Senator from West Virginia adds dignity and luster to the measure.

The legislative clerk read as follows:

In lieu of line 3 of the Ervin amendment, insert the following: *"Provided, however,* That the foregoing does not enjoin the use of bona fide ability groupings by a local educational agency as a standard pedagogical practice; or"

Mr. BYRD of West Virginia. I think that is what the Senator wants.

Mr. ERVIN. Read it again, please.

The PRESIDING OFFICER. The clerk will read it.

The legislative clerk read as follows:

Provided, however, That the foregoing does not enjoin the use of bona fide ability groupings by a local educational agency as a standard pedagogical practice; or

Mr. ERVIN. Will the Senator change the word "enjoin" to "prohibit"?

Mr. PELL. Mr. President, will the Senator yield 30 seconds to me?

Mr. BYRD of West Virginia. I yield.

Mr. PELL. The manager of the bill having followed this debate closely, and the ranking minority member of the committee having the same view, we would accept the amendment of the Senator from West Virginia, and recommend that our colleagues accept the amendment, but would not be opposed to the suggestion the Senator from North Carolina has just made.

The PRESIDING OFFICER. Does the Senator from West Virginia so modify his amendment?

Mr. BYRD of West Virginia. I believe the Senator misspoke.

Mr. PELL. We are supporting the amendment of the Senator from West Virginia, and would not oppose the amendment of the Senator from North Carolina.

Mr. ERVIN. Mr. President, I construe the amendment offered by the Senator from West Virginia to permit ability groupings for instructional purposes if such ability groupings do not——

Mr. BYRD of West Virginia. Mr. President, if the Senator will yield, I modify my amendment—in accordance with his wishes—to substitute the word "prohibit" for the word "enjoin."

The PRESIDING OFFICER. The amendment is so modified.

Mr. ERVIN. That is satisfactory to me.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia to the amendment of the Senator from North Carolina, as modified,

The amendment, as modified, was agreed to.

Mr. ERVIN. Mr. President, I ask unanimous consent that the order for the yeas and nays on the original amendment be rescinded.

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

The question now is on agreeing to the amendment of the Senator from North Carolina, as amended.

The amendment, as amended, was agreed to as follows:

On page 11, line 19 of the bill insert:

Provided, However, the foregoing does not prohibit the use of bona fide ability grouping by a local education agency as a standard pedagogical practice; or

Mr. MONDALE. Mr. President, where genuine, pedagogically motivated ability grouping is conducted, where it does result in separation of students—as for bilingual education, or for special classes in arithmetic—but not for most of the school day, or where bona fide ability grouping does not result in separation of the races, as in most cases it should not, it should be permitted. The amendment of the Senator from West Virginia clarifies this point.

As I understand it, the amendment of the Senator from North Carolina does not change the meaning of the provision of the committee bill, and on that basis I am happy to accept it.

Mr. MANSFIELD. Mr. President, it is now the intention of the joint leadership——

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. BYRD of West Virginia. I want to express appreciation to the Senator from North Carolina for the amendment that he offered, and for his cooperation. He has achieved the objective he sought, and I think that his efforts have served a very good purpose today. I also want to thank the distinguished manager of the bill for the cooperation and understanding that he and the Senator from New York (Mr. JAVITS) and other Senators on both sides of the aisle have shown with respect to the amendment offered by the able senior Senator from North Carolina, Mr. ERVIN.

Mr. PELL. If the Senator will yield for 1 more minute, I would like to add my words of thanks to the Senator from North Carolina for the contribution he has made here. What he was seeking to do was to spell out what we had intended to be the language of the bill.

I also thank the Senator from Minnesota and the Senator from New York, whose basic amendment this was originally, for their cooperation in working with the Senator from North Carolina.

Mr. JAVITS. I think we all thank, if the Senator will yield, the Senator from West Virginia, who came up with the right answer.

Mr. PELL. I join in that sentiment.

URGENT SUPPLEMENTAL APPROPRIATIONS, 1971

Mr. MANSFIELD. Mr. President, on behalf of the joint leadership—and we hope we have cleared this matter with all concerned—we would like at this time to call up House Joint Resolution 567, the urgent supplemental appropriation bill for 1971. I ask that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 567) making certain urgent supplemental appropriations for fiscal year 1971, and for other purposes, reported with amendments.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. MANSFIELD. Mr. President, I would say the chances are about 98 out of 100 that there will not be a rollcall vote on the pending measure. Of course, there is always the chance that something might happen. But the legislation being considered in this appropriation bill is statutory. There is a time limitation to be considered, and I would not anticipate that the consideration of this bill would take more than 10 minutes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. ELLENDER. Mr. President, some of the items in the pending urgent supplemental were included in the request from the administration for consideration in connection with the supplemental considered a few weeks ago; but, because they were not urgent at that time, we did not include them. Under a new procedure that was adopted by the Committee on Appropriations this year, each subcommittee considered the items under its jurisdiction, so that we had at least four subcommittees of the Appropriations Committee consider these various items prior to action by the full committee.

The Committee on Appropriations met in executive session this morning for the purpose of considering this urgent appropriation bill, which was reported by the House Committee on Appropriations yesterday morning and was passed by the other body yesterday afternoon. In this morning's meeting of the Senate committee, I was authorized to present this bill to the Senate today.

Budget estimates in the total amount of $1,042,294,000—contained in House Documents Nos. 92–60, 92–72, and 92–73—have been considered in connection with this urgent supplemental appropriation bill, and the committee recommendations total $1,037,872,000, a reduction of $4,422,000 in the estimates. Specifically, the committee considered eight budgeted items:

One request in the amount of $13 million, to be derived by transfer for "claims, defense." This item was not included in the House bill. However I have every reason to believe it will be accepted by the House so that a conference will be unnecessary.

Two requests in the amount of $433,779,000 and $302,200,000, which relate to veterans' compensation and pensions, and readjustment benefits.

Three line items totaling $16,315,000 for occupational safety and health activities; $265,000,000 for the disaster loan fund administered by the Small Business Administration.

Twenty-five million dollars for Disaster Relief, administered by the Office of Emergency Preparedness.

The committee has amended the bill by inserting a new chapter—Chapter 1—for "Claims, Defense," which provides $13 million, by transfer, as requested in House Document 92–73. The Department of Defense advised the committee that preliminary reports for the month of March indicate that the Department has obligated $35.7 million of the $39 million provided by Congress for fiscal year 1971 for this purpose. The remaining unobligated balance of $3.3 million will not finance adjudicated claims pending at the end of March, valued at $7.6 million notwithstanding the current policy of the Department to obligate only those claims involving personal hardships.

This additional $13 million, to be derived by transfer, will not increase the total amount of new budget authority recommended in the bill.

With respect to chapter II, Veterans' Administration, the committee recommended the full budget estimate of $433,779,000 for compensation and pensions. For compensation, $275,348,000 is recommended, of which $269,187,000 is for veterans and $6,161,000 is for survivors. Public Law 91–367, which became effective July 1, 1970, retroactively, increased most rates of disability compensation, on the average, by approximately 11 percent and, in addition, Vietnam era veterans continue to come on the rolls at a greater-than-anticipated rate.

For pensions, a total of $158,431,000 is provided. Of this sum, $100,186,000 is for veterans, $45,705,000 is for survivors, $4,-

140,000 is to cover the increase in subsistence allowance rates of veteran-trainees, and $8,400,000 is provided for reprograming of veteran-trainees and unit costs caused by the continued build-up of seriously disabled veterans associated with the Southeast Asian crisis.

The additional funds recommended under these two subheads will be required for making benefit payments in May and, thus, the urgency for this appropriation at this time.

For readjustment benefits, the committee has recommended the full budget estimate, $302,200,000—$238 million is required for increased average payments and increased demand by eligible veterans for academic and on-the-job training, as well as the increased participation by sons and daughters of post-Korean conflict veterans; $10,500,000 is provided pursuant to Public Law 91-584, approved December 24, 1970, which liberalized and expanded certain additional benefits for veterans, and the balance of the increase—namely, $8,700,000—results from passage of Public Law 91-666, approved January 11, 1971, authorizing automobiles and other conveyances for disabled veterans. Funds to meet these obligations will be required before the end of this current month.

In all, a total of $735,979,000 is recommended for the Veterans' Administration which is the same as the budget estimate and the House allowance.

The next three items in the bill, chapter III, relate to occupational safety and health activities, authorized under the Occupational Safety and Health Act of 1970—Public Law 91-596, approved December 29, 1970—and which becomes effective April 28, 1971.

Under the Wage and Labor Standards Administration, $10,900,000 was requested for its responsibilities under the act, and the committee has concurred in the House recommendation of $7,818,000, a reduction of $3,082,000 in the estimate. Of this sum $4 million is recommended for grants to States, as authorized under the act, and not to exceed $118,000 is to be transferred to the fund created by section 44 of the Longshoremen's and Harbor Workers' Compensation Act, as amended.

ORDER FOR RECOGNITION OF SENATORS TUNNEY AND MANSFIELD

Mr. BYRD of West Virginia. Mr. President, if the distinguished Senator from Louisiana will yield at that point, I ask unanimous consent that the previous order recognizing the distinguished Senator from California (Mr. TUNNEY) at 3:01 p.m. today be vacated; and I further ask unanimous consent that the distinguished Senator from California be recognized at the completion of the reading of the prepared statement by the distinguished chairman of the Appropriations Committee.

The PRESIDING OFFICER (Mr. WEICKER). Is there objection to the request of the Senator from West Virginia?

Mr. YOUNG. Mr. President, I should like to have 1 minute, as the ranking Republican.

Mr. ELLENDER. And, Mr. President, I would like to have the bill acted on as soon as possible, before the Senator from California speaks.

Mr. YOUNG. Mr. President, I object.

THE PRESIDING OFFICER. Objection is heard.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the junior Senator from California (Mr. TUNNEY) be recognized for 5 minutes immediately following the remarks of the able Senator from North Dakota (Mr. YOUNG) and the passage of the bill, and that the Senator from North Dakota be recognized immediately following the distinguished chairman of the Appropriations Committee.

Mr. MANSFIELD. If the Senator from West Virginia will yield, may I ask unanimous consent also that I be recognized immediately following the remarks of the Senator from California?

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

URGENT SUPPLEMENTAL APPROPRIATIONS, 1971

The Senate continued with the consideration of House Joint Resolution 567, a joint resolution making certain urgent supplemental appropriations for the fiscal year 1971, and for other purposes.

The Senator from Louisiana may proceed.

Mr. ELLENDER. Mr. President, of the $5,315,000 requested for environmental control under the Environmental Health Service, the committee has recommended $4 million, a reduction of $1,315,000 from the estimate.

For the Occupational Safety and Health Review Commission, $75,000 of the requested $100,000 is recommended to provide the initial funding for this Commission, whicl. was established by the Occupational Safety and Health Act of 1970, primarily for salaries and related expenses for three Commission members and a small staff.

Further details of the activities funded under these three items are included in the report. In all, a total of $11,893,000 of the $16,315,000 requested is recommended, which effects a reduction of $4,422,000 in this chapter of the bill.

For the Small Business Administration, chapter IV, $265 million is recommended, the same as the House allowance and the budget estimate. This sum will provide additional capital for the disaster loan fund, which will be depleted, the committee was informed, as of April 23—today's date, Mr. President. As Members know, loans are made from this fund to victims of natural disasters for rehabilitation of damaged or destroyed property.

Under chapter V, Disaster Relief, the budget estimate of $25 million is recommended, the same as the House allowance and the budget estimate. This action will insure that sufficient funds are available to cover emergency requirements during the remainder of this fiscal year. As the report states, $15 million of this sum is the estimated additional requirement for major disaster areas declared by the President, leaving a $10 million reserve for the normal spring floods from storms and melting snow, as well as for undeclared disasters.

Before concluding my remarks, Mr. President, I wish to advise the Senate that the Committee on Appropriations has been diligently engaged in considering the many budget estimates submitted for inclusion in the Second Supplemental Appropriation bill, 1971, totaling at the time of this reporting some $8.6 billion, including the items in the bill which is before us. Because of the number of items and the diversity of the supplemental appropriations requested, which I assure the Senate are under active consideration by the subcommittees of jurisdiction, it was realized that action on the Second Supplemental bill by both Houses, and in conference, could not be finalized in time to meet the obviously urgent needs represented in this urgent supplemental.

Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

Mr. YOUNG. Mr. President, I shall support the distinguished chairman of the Appropriations Committee on all of these items in the bill. The obligations of the Federal Government must be paid. They are of an urgent nature. It should be done now.

The bill, as it now is before the Senate, is a little different from what was approved by the House.

Mr. JAVITS. Mr. President, when the Williams-Steiger Occupational Safety and Health Act was enacted last December, it was properly and widely regarded as one of the most significant pieces of social legislation in many years. It is obvious that a major new program which will significantly affect millions of American workers requires adequate funding to assure its effective implementation.

It is for this reason that I am particularly disturbed at cuts which were made in the other body in funds appropriated to the program under House Joint Resolution 567, the urgent supplemental appropriations bill.

The House reduced the amounts requested for occupational safety and health activities by $3,082,000 in the Wage and Labor Standards Administration account and by $25,000 with regard to activities of the new Occupational Safety and Health Review Commission. In addition, the House action had the effect of further reducing by $118,000 the funds available to the Department of Labor under the new appropriation. It would specify that this amount would be transferred to the Longshoremen's and Harbor Workers' Compensation Act. The Department of Labor had requested that this amount be transferred from existing funds.

The cuts would affect critical aspects of the new law's authorized activities. The supplemental appropriation requested by the Department would have earmarked $5.8 million for planning grants to assist the States in developing

their programs and $5.1 million for start-up activities by the Federal Government. In reducing this request by approximately 30 percent, the House action would provide only $4 million for State grants and $3.7 million for performance of the Department's activities.

The Federal start-up activities would include:

First, the promulgation of Federal occupational safety and health standards; Second, the recruiting and training of an inspection staff in the field to obtain compliance with these standards; third, the development of training and educational programs to promote safe practices and voluntary compliance; and Fourth, the implementation of a comprehensive nationwide statistical program providing the data on occupational injuries and illnesses needed to formulate additional standards and to plan the direction of future compliance activities. Initial efforts have been made in each of these areas in preparation for the April 28 effective date of the act, utilizing existing funds within the Department relating to job safety and injury. The funds required for salaries and expenses plus nonlabor services through the balance of the fiscal year total $3.1 million. This provides for the costs of employing and training persons already hired and persons temporarily assigned on a full-time reimbursable basis to the headquarters offices of the newly created Occupational Safety and Health Administration within the Department of Labor. The remaining $0.6 million provided by the House action for the implementation of the Federal Government's responsibilities under the act are sufficient only to meet the needs for deployment, office space, and technical equipment requirements of the existing field safety staff, with no additional recruitment or training activity for the balance of the year.

Effectively, under the House bill, staffing for the new Occupational Safety and Health Administration will be frozen at approximately 50 percent of required strength. The promulgation of new Federal standards and efforts to eliminate hazards will thus be delayed, with continuing loss of safety benefits accruing in future years. More immediately, the shutting down of current efforts to build-up to desired program levels will result in losses of efficiency in the current recruitment and training activity, plus a possible irretrievable loss of qualified applicants who are presently available for Federal employment as a result of recent layoffs in the defense and aerospace industries.

Further, the timetable for State operational programs is contingent upon the full funding of planning grants for States to develop the operational programs. The present timetable which anticipated operational grants beginning July 1, 1972, for at least all States where agreements have been made with respect to preemption was based upon the assumption that the full amount requested for fiscal year 1971 would be available to support the preparatory and planning efforts of the States immediately.

Reduction of the level of funding for State grants in fiscal year 1971 will severely impair and delay the entire State participation program in occupational safety and health.

The grant moneys—$5.8 million—requested for fiscal year 1971 were to be utilized in funding 90 to 100 State planning grants—5 million for program planning grants for States to assess their needs and responsibilities and to develop operational programs, and $0.8 million for statistical planning grants. These planning grants are considered essential to the entire program as a means of encouraging States to participate and, of enabling States to develop the capability to assume responsibility for occupational safety and health as intended by the act.

The $4 million for State grants allowed by the House for fiscal year 1971 would reduce proportionately the program planning and statistical planning grants to $3.4 million and $0.6 million respectively.

The Department of Labor estimates that program planning grants will require an average of $100,000. Therefore, the $3.4 million level for these grants will result either in reducing the number of States which can receive program planning grants—by at least 30 percent in fiscal year 1971—or in only partial funding of these grants. Either alternative will prove detrimental to the program in terms of credibility, delay, and efficiency.

Specifically, if States cannot receive funding or the amount required for the initial planning grants for this program, the Federal Government's ability to fulfill its statutory obligation to encourage States will be subject to question by the States and may result in a serious lack of confidence in the program.

The 10 staff positions requested this year for the Occupational Safety and Health Review Commission need to be filled as soon as possible after the April 28 effective date of the act to enable the Commission to develop practices and procedures and otherwise prepare for handling the anticipated workloads under the act.

The three Commissioners already have been confirmed by the Senate and candidates for the remainder of the required staff have been identified. It is expected that each of the 10 employees will be on duty for approximately 2 months this year rather than 1 month as provided for in the supplemental request. The General Services Administration has arranged to rent space to house the Commission and staff although rental costs were not provided for in the original estimate on the assumption that the Commission would be housed in a Federal office building. These unanticipated requirements coupled with other startup costs and necessary contractual and housekeeping arrangements make appropriation of the full amount of $100,000 included in the supplemental request a bare minimum if the Commission is to fulfill its basic responsibilities under the Occupational Safety and Health Act.

Mr. President, I recognize that the first order of priority is to assure that money is immediately provided to get this important program moving. I am not going to propose that we restore the House cuts here, because that would delay the enactment of any appropriation. I am asking that this body pass the House proposal without delay and then give prompt and favorable consideration to a second supplemental bill which would restore the cuts which have been made.

Mr. BYRD of West Virginia. Mr. President, on behalf of the distinguished Senator from New Jersey (Mr. WILLIAMS), I ask unanimous consent that a statement by him relating to the Occupational Safety and Health Act be printed in the RECORD.

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

SUPPLEMENTAL APPROPRIATIONS, OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. WILLIAMS. Mr. President, one of the most important pieces of legislation passed by the 91st Congress was the Occupational Safety and Health Act of 1970. It was appropriately hailed as landmark legislation by Members on both sides of the aisle. It was passed by an overwhelming vote in the Senate and in the House, and had the strong endorsement of the President. The point was made then, and it is even clearer now, that this important new program would need sufficient resources to carry out its mission.

The Congress chose to make the effective date of the Occupational Safety and Health Act April 28, 1971, with the understanding that a supplemental appropriation would be necessary in order to make possible its prompt and meaningful implementation. A supplemental appropriation was requested to implement the Act from the effective date in the sum of $10,900,000 for the Department of Labor, $5,315,000 for the Department of Health, Education, and Welfare, and $100,000 for the newly established Occupational Safety and Health Review Commission.

Mr. President, these sums are extremely modest in terms of the needs of the job to be done. Yet yesterday, in acting on this supplemental appropriation bill, the other body reduced the requested amounts by over $3 million for the Department of Labor, over $1.3 million for the Department of Health, Education, and Welfare, and $25,000 for the Review Commission. Mr. President, I am distressed by these reductions because of the impact they will have on the critical start up phase of this important new program. However, the April 28 effective date is hard upon us, and money must be made available immediately. Therefore, I urge the Senate to act favorably on the supplemental appropriation bill before us and I express my earnest hope that a further supplemental appropriation will restore the full amounts requested.

The PRESIDING OFFICER (Mr. WEICKER). Without objection, the committee amendments will be considered en bloc, and without objection are agreed to en bloc.

The committee amendments agreed to en bloc are as follows:

On page 1, after line 5, insert the following language:

CHAPTER I. DEPARTMENT OF DEFENSE—MILITARY

OPERATION AND MAINTENANCE

CLAIMS, DEFENSE

For an additional amount for "Claims, Defense", *not to exceed $18,000,000 may be de-*

rived by transfer in amounts not to exceed (a) $3,000,000 from "Defense production guarantees, Army", (b) $4,000,000 from "Defense production guarantees, Navy", and (c) $6,000,000 from "Defense production guarantees, Air Force".

on line 6, strike "CHAPTER I" and insert "CHAPTER II"; on page 2, line 4, strike "CHAPTER II" and insert "CHAPTER III"; on page 3, line 9, strike "CHAPTER III" and insert "CHAPTER IV"; line 15, strike "CHAPTER IV" and insert "CHAPTER V"; and on page 4, line 3, strike "CHAPTER V" and insert "CHAPTER VI".

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and third reading of the joint resolution.

The House Joint Resolution 567 was ordered to a third reading, was read the third time, and passed.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from California (Mr. TUNNEY) is now recognized for 5 minutes.

THE AEROSPACE INDUSTRY

Mr. TUNNEY. Mr. President, no industry is more vital to our Nation than aerospace, for not only will it keep us preeminent in the skies and in the heavens beyond, but it will also provide the technological skills that will enable us to clean our air and our waterways and combat other problems right here at ground level.

The industry is one that pioneers on the frontiers of the imagination and opens the way to discoveries that advance the quality of our lives.

For these reasons, I shall support the guarantee of a loan of $250 million for the Lockheed Aircraft Corp., provided, of course, that the Treasury Department believes this is feasible and seeks congressional authorization for it.

Such a Government guarantee will permit Lockheed to continue with its promising airbus—L–1011—program, and its impact will radiate through our economy and to that of Great Britain.

The guarantee will preserve Lockheed and the more than 60,000 jobs it now provides, most of them in my home State.

It will offer the assurances that the British Government believes vital if it puts its treasury behind Rolls Royce, which will make the engines for the L–1011.

It will spur continued competitiveness in the development of the airbus—the logical next generation in air travel.

The L–1011, along with the DC–10 airbus now being built by McDonnell-Douglas—will open the skies to cheaper, more convenient travel by millions of Americans.

I would insist, of course, that any guaranteed loan would be so strictly drawn and so rigidly implemented by the Department of the Treasury that it would be the last spent and the first repaid by Lockheed.

To be sure, the national treasury should not be thrown open merely to provide funds to rescue businesses that may be going under. Only a vital national interest should dictate a Government-guaranteed loan to any business, and I believe such a national interest is clearly involved in this case.

The L–1011 airbus means jobs—17,000 at Lockheed and 14,000 among subcontractors.

It represents a total investment of more than $1.3 billion in private capital.

It will permit Lockheed to recover from the impact of a $500 million loss because of defense contracts and the unexpected collapse of Rolls Royce.

The impact of our economy of the loss of the jobs and the dollars and, maybe, even of the company itself defy accurate prediction. But it is clear that the setback would be enormous.

For one thing, such losses, I believe, would cripple whatever confidence is growing in the country that we can pull ourselves out of the current recession and its twin devils of inflation and rising unemployment.

And it would be a decisive setback to the competitiveness upon which our free enterprise system depends.

Furthermore, I believe in the airbus. It will provide transportation of convenience rather than of extravagance as represented by the SST.

There are other striking differences between the airbus and the SST.

It will carry millions of Americans, while the SST would have carried only those willing to pay a premium to fly supersonically.

Its financing, for the most part, is private, while the SST would have gotten 90 percent of its money from the taxpayer.

It will not break the sound barrier and dirty the stratosphere with pollutants, while the SST would.

I am convinced that any guaranteed loans proposed by the Treasury Department will be sensible for Lockheed and prudent for the United States, and I shall work for its authorization by Congress.

Mr. President, I might point out that it appears that Congress will be faced with this problem within the next 2 weeks. Lockheed has recently received commitments of $50 million in secured loans from banks without any Government underwriting. However, it appears that this is the end of the line. Unless the Government acts promptly and Congress authorizes the money, I feel that Lockheed will be in a serious financial condition. I hope that Congress will act swiftly.

SECRETARY ROGERS' TRIP TO MIDEAST

Mr. MANSFIELD. Mr. President, I note that the distinguished Secretary of State, William P. Rogers, is leaving on Monday to attend a meeting of SEATO in London. Subsequently, he will be going to a conference of CENTO in Ankara. At the conclusion of his business in Ankara, the Secretary is planning to travel in the Middle Eastern countries of Egypt, Jordan, Lebanon, Saudi Arabia, and Israel.

This is the first time in 18 years that a Secretary of State has taken the time to visit the countries on his itinerary. For all these years—18 years—we have been conducting our basic diplomacy with the Middle East, so-to-speak, at arm's length.

I am delighted, therefore, that the Secretary, on the instructions of the President, is going for a firsthand look. In my judgment, he could hardly spend his time to better purpose at this moment than in meeting with the heads of these Middle Eastern states. Their relationships are interwoven with the stability of peace in that region.

The Secretary can be counted on to look to the realities of the situation when he visits, Israel, Saudi Arabia, Jordan, Lebanon, and Egypt. He can be counted on to listen and to learn and, when he speaks, to make a most constructive contribution. He can strengthen the ceasefire and encourage the tentative negotiations or, more accurately, the feelers which, extended from Egypt and Israel, are groping for the beginnings of a durable settlement in the Middle East.

The Senate joins with me, I know, in wishing Secretary Rogers a most successful mission.

Mr. AIKEN. Mr. President, I call to the attention of the Senate that for the first time since 1953 an American Secretary of State will be visiting the Middle East.

Secretary William P. Rogers plans to visit four Arab countries—Egypt, Jordan, Lebanon and Saudi Arabia and then go to Israel during the first week of May.

It is notable that the Secretary will be in the Middle East after attending a meeting of the Southeast Asian Treaty Organization next week in London, and the Eighteenth Annual Council of Ministers Meeting of the Central Treaty Organization sessions in Ankara, Turkey, scheduled for April 30 and May 1.

I am especially pleased that the President and the Secretary of State have concluded that a firsthand visit to the Middle East is in order.

The Secretary of State has won worldwide respect for the way he has helped to bring about a peace—even though it may be temporary—to the long troubled Middle East.

I feel it is worth repeating a comment made by the Secretary at his news conference this morning.

He said, and I quote:

I want to say at the outset that this trip should be viewed and understood in light of our expressed willingness to play a constructive and responsible role in continuing efforts to achieve peace in the area.

I do not anticipate any dramatic results or breakthroughs from this visit.

But I do trust that it will provide an opportunity to explore ways in the evolving situation to maintain and hopefully accelerate the momentum toward peace.

It is well that the Secretary is going to the Middle East for a firsthand observation and I know I speak for my colleagues on the Committee on Foreign Relations that we look forward to hearing his report on his return.

Mr. President, I ask that the Secretary's opening press conference remarks be printed in the RECORD.

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

OPENING STATEMENT ON UPCOMING TRIP

(Secretary Rogers' News Conference, April 23, 1971)

Following is the transcript of Secretary of State William P. Rogers' News Conference, which is authorized for direct quotation:

Secretary ROGERS: Ladies and Gentlemen, as you know, I plan to leave Monday for London where I will head the United States delegation to the Sixteenth Annual Ministerial Meeting of the Southeast Asia Treaty Organization on April 27 and 28. This will also afford me an opportunity to meet with Foreign Secretary Sir Douglas Home, and his colleagues for discussion on a number of matters of mutual interest.

I will leave London on Thursday April 29 for Ankara, Turkey to attend the Eighteenth Annual Council of Ministers Meeting of the Central Treaty Organization on April 30 and May 1. On the way to Ankara I plan to stop in Paris on April 29 to consult with French Foreign Minister Maurice Schumann.

I am looking forward to both the SEATO and CENTO Meetings. In London, the SEATO meetings will provide an opportunity to discuss continued cooperation with our allies on mutual security in Southeast Asia and to reenforce our efforts to encourage other nations to assist in the economic development of Indo-China as the war comes to a close.

In Ankara the CENTO Meeting, which as you may remember was held last year in Washington, will provide an opportunity to share views on regional and international problems, and especially to get to know the new leaders of the Turkish Government.

From Ankara, I plan to go to four Arab countries—Egypt, Jordan, Lebanon, and Saudi Arabia, not necessarily in that order, that is alphabetically listed,—and to Israel. On my return, I will make a stop in Italy for talks with officials of the Italian Government.

The last visit of an American Secretary of State to the Middle East—an area of such rich and abiding historical and cultural significance—was in 1953. As I embark on this trip, I am quite conscious of the ancient traditions that exist in the area and the profound spiritual and religious beliefs of the people who live there.

This is a visit I have long wanted to make as you know. It underscores the importance we attach in the United States to our relations with the Middle East countries. I look forward to meeting with the leaders of the countries that I will visit and for the opportunity to strengthen the ties between us.

I want to say at the outset that this trip should be viewed and understood in light of our expressed willingness to play a constructive and responsible role in continuing efforts to achieve peace in the area. I do not anticipate any dramatic results or breakthroughs from this visit. But I do trust that it will provide an opportunity to explore ways in the evolving situation to maintain and hopefully accelerate the momentum toward peace.

I intend to reiterate our strong dedication to the objective of reaching a contractually binding and lasting peace settlement in accordance with United Nations Security Council Resolution 242 and our full and constant support for Ambassador Jarring's efforts to this end. We believe there is an exceptional opportunity—and an opportunity that must not be missed—to build on the progress that already has been made.

For almost nine months the shooting has stopped. This has given people in the area some reason for hope where previously there was little or none. We believe that the negotiations which have been undertaken under Ambassador Jarring must succeed—the climate will never be better.

President Nixon believes that the United States should seek every opportunity, expend every effort, take every chance in playing a constructive and energetic role in the search for peace in the area. It is for these reasons—or should I say in that spirit—that President Nixon has asked me to take this trip.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate resumed the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 45

Mr. ERVIN. Mr. President, I call up amendment No. 45 and ask unanimous consent that the reading of the amendment be omitted and that I be permitted to explain the amendment in lieu of its being read.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be printed in the RECORD.

The amendment ordered to be printed in the RECORD, reads as follows:

AMENDMENT NO. 45

On page 18, line 1, strike out "and private nonprofit".

On page 18, line 9, strike out "and private nonprofit".

On page 18, line 11, strike out "nonpublic" and insert in lieu thereof "public".

On page 19, beginning with line 6, strike out through the words "section 5" in line 9 and insert in lieu thereof the following:

"(A) local educational agencies eligible for assistance under section 5 to develop curricula".

On page 19, strike out lines 19 through 21.

On page 19, line 22. strike out "(C)" and insert in lieu thereof "(B)".

On page 19, line 25, beginning with the word "clauses" strike out through line 3 on page 20 and insert in lieu thereof "clause (A)".

On page 20, lines 7 and 8, strike out "clause (C)" and insert in lieu thereof "clause (B)".

On page 20, line 11, strike out "clause (C)" and insert in lieu thereof "clause (B)".

On page 20, beginning with line 15, strike out through line 5 on page 21 and insert in lieu thereof the following:

"(2) (A) In order to be eligible for a grant or contract under this subsection a local educational agency must establish a program or project committee meeting the requirements of subparagraph (B), which will fully participate in the preparation of the application under this subsection and in the implementation of the program or project and join in submitting such application."

On page 27, strike out lines 10 through 21. Renumber the succeeding paragraphs in section 9(a) accordingly.

On page 31, line 12, strike out "or private nonprofit".

Mr. ERVIN. Mr. President, the first amendment provides in part that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

The pending bill in its present form provides that Federal tax moneys shall be allocated through the agency of local boards of education to church schools which are established and maintained by religious organizations for the primary purpose of teaching religion, which teaching is not permitted by the Constitution in the public schools.

Mr. President, to make this amendment understandable, it is necessary for us to consider the first amendment in detail. This amendment was designed to make Americans spiritually free.

If we are to understand the first amendment, we must recur to history. This is so because we cannot understand the institutions and laws of today unless we understand the historical events out of which they arise.

As we recur to history, we will do well to remember that a nation which ignores the lessons history teaches is doomed to repeat the tragic mistakes of the past. Let us pray that America may not do this in respect to church and state relationships.

The most heart-rending story of history is that of man's struggle against civil and ecclesiastical tyranny for the simple right to bow his own knees before his own God in his own way.

As one of America's wisest jurists of all time, the late Chief Justice Walter P. Stacy, of the Supreme Court of North Carolina, declared in the opinion he wrote in *State* v. *Beal* (199 N.C. 278):

For some reason, too deep to fathom, men contend more furiously over the road to heaven, which they cannot see, than over their visible walks on earth. It would be almost unbelievable, if history did not record the tragic fact, that men have gone to war and cut each other's throats because they could not agree as to what was to become of them after their throats were cut.

The Founding Fathers who wrote the Constitution of the United States were acutely aware of these truths.

They saw with the eyes of history the throwing of Christians to the lions in the Colosseum at Rome; the bloody crusades of the Christians against the Saracens for possession of the shrines hallowed by the footsteps of the Prince of Peace; the use by the papacy of the dungeon and the rack to coerce conformity and of the fiery fagot to exterminate heresy; the unspeakable cruelties of the Spanish Inquisition; the slaughter of the Waldenses in the Alpine valleys of Italy; the hanging and jailing by Protestant kings of England of Catholics for abiding with the faith of their fathers; the hanging and jailing by a Catholic queen of English Protestants for reading English Scriptures and saying Protestant prayers; the hunting down and slaying of the Covenanters upon the crags and moors of Scotland; the killing of half the people of Germany in the Thirty Years' War between Catholics and Protestants; the massacre of the Huguenots of France; the pogroms and persecutions of the Jews in many lands; the banishing of Baptists and the execution, jailing and branding of Quakers by Puritan Massa-

chusetts; and the hundreds of other atrocities committed in the name of religion.

The Founding Fathers knew, moreover, that even during their own lifetimes those who did not conform to the doctrines and practices of the churches established by law in the places where they lived, such as Scotch-Irish Presbyterians in Ulster, Catholics in England and Ireland, and dissenters in various American Colonies, had been barred from civil and military offices because of their faiths, had been compelled to pay tithes for the propagation of religious opinions they disbelieved, and had had their marriages annulled and their children adjudged illegitimate for daring to speak their marriage vows before ministers of their own faiths, rather than before clergymen of the established churches.

The Founding Fathers were determined that none of these tragic historical events should be repeated in the nation they were creating.

To this end they inserted two provisions in the Constitution of the United States.

The first of these provisions appears in article VI and declares that "no religious test shall ever be required as a qualification to any office or public trust in the United States."

The second appears in the first amendment, and states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

What did the Founding Fathers intend to do when they embodied these words in the first amendment? The answer to this question becomes clear when we consider the events which preceded the writing of the first amendment.

At the time of the settlement of the Thirteen Original Colonies, every nation in Western Europe and the British Isles had what were known as established churches. These churches were established by law, and the law compelled all persons, including those who dissented from their religious beliefs, to attend their services. The law furthermore required all persons to pay taxes for the construction of church buildings and the support of the clergy of the established churches.

An overwhelming number of the colonists who came from Europe to America came primarily to secure religious liberty and freedom from taxation for the support of established churches. Unfortunately, when they came to America, they found that in many of the colonies predominant groups had set up established churches here, and that in consequence they were compelled, in such colonies, to pay taxes for the support of churches whose religious doctrines they disbelieved.

There is more than a modicum of historical truth in the statement of Artemus Ward to the effect that—

> The Puritans nobly fled from a land of despotism to a land of freedom, where they could not only enjoy their own religion, but could prevent everybody else from enjoying his.

The Colonies of Virginia, North Carolina, South Carolina, Georgia, and Maryland had established churches, and the Anglican Church was the favorite under their laws.

In the Colonies of Massachusetts, Connecticut, and New Hampshire, the Congregational Church was established by law.

In the Colony of New York, the Dutch Reformed and Anglican Churches, in turn, were established by law.

The people of these colonies were compelled by law to pay taxes for the support of these established churches, and in some cases to attend their services.

The dissenters rebelled against these requirements. They believed it tyrannical for government to attempt to regulate by law the relationship between the individual and his God. Moreover, as they pondered the words of verses 15 to 22 of the 22d chapter of Matthew, "Render, therefore, unto Caesar the things which are Caesar's, and unto God the things that are God's," they also concluded that in addition to being tyrannical, the attempt to regulate religion by law was sinful.

So they demanded the separation of church and state. As they envisaged it, the separation of church and state required these things:

First. The abolition of religious tests for public office.

Second. The recognition of the right of all men to worship God according to their own consciences.

Third. The disestablishment of financial and legal support of religion by government.

During the Revolutionary and early national periods, nonchurch members and even some adherents of the churches established by law, who had come to believe in religious freedom, joined the dissenters in their demand that church and state be separated and kept separate in the newly independent nation.

The separation of church and state presented no problems in Rhode Island, where Baptists led by Roger Williams had settled under a royal charter granting complete religious freedom to all, or in Delaware, New Jersey, and Pennsylvania, where establishment never acquired a foothold.

When their revolt against England converted the Thirteen Original Colonies into self-governing States, Rhode Island retained separation under its original charter, and Delaware, New Jersey, and Pennsylvania did so under Constitutions adopted in 1776. North Carolina, New York, Georgia, and Virginia granted the right of freedom of worship to all and disestablished all religion within their borders before the drafting of the first amendment, and South Carolina did likewise before the amendment was ratified.

As a consequence, the only States maintaining any financial and legal relationship to religion at the time the first amendment became a part of the Constitution were Maryland, Connecticut, New Hampshire, and Massachusetts. The last of these States to dissolve such relationship was Massachusetts, which did so in 1833.

The first amendment was originally designed to apply to the Federal Government only, and it was not until 1940 the Supreme Court held in *Cantwell* v. *Connecticut*, 310 U.S. 296, that the 14th amendment had made it applicable to the States. Nevertheless history makes it clear that the fight for separation of church and state in the original States and the fight to place the first amendment in the Constitution were integral parts of the same movement. For this reason, history illuminates the meaning of the first amendment.

The first amendment contains a freedom of religion clause which declares that "Congress shall make no law—prohibiting the free exercise" of religion, and an establishment clause which provides that "Congress shall make no law respecting an establishment of religion."

History joins language in revealing that the freedom of religion clause was framed to strip government of all power to interfere with the religious beliefs of any individual or group.

During recent times those who seek to justify the use of tax moneys to finance religious activities have advanced the theory that the establishment clause forbids Congress to create a single established church, but permits Congress to appropriate on an impartial basis tax moneys for the use of all religious institutions which it may deem to be respectable.

This theory is incompatible with history, which shows exactly what James Madison meant when he insisted in writing into the first amendment the words "an establishment of religion."

In 1776, Virginia, acting as an independent Commonwealth, adopted a new constitution. As a delegate to the convention which drafted this constitution and as a member of the legislature of 1776 which met after its adoption, James Madison displayed much interest in religious matters.

He was able to persuade the legislature to provide that no dissenters should be compelled to pay any taxes to the established church of Virginia, the Anglican Church, which had been established in 1629. Moreover, he secured the passage of a law which suspended for the time being the requirement that even members of the Anglican Church should pay taxes for its support.

But the legislature of 1776 expressly postponed for future decision the most crucial question confronting Virginians at that time: Whether general taxes should be levied for the support of all the denominations which the controlling element in Virginia deemed to be respectable denominations.

This question arose in the Virginia Legislature of 1779, and a bitter controversy ensued between those who advocated a bill introduced by James Henry and those who supported Thomas Jefferson's bill for religious freedom.

The Henry bill undertook to establish, by law, virtually all of the Christian churches as the established churches of Virginia, and to lay taxes for the support

of all of them on an impartial basis. It is significant that in this bill references to an establishment of religion appear at a number of points, in contexts which clearly show that James Henry and the others of his day understood the term "an establishment of religion" to mean an official connection between the State and one or more churches, whereby the State recognized such church or churches and provided for taxation for its or their support.

Thomas Jefferson's bill for religious freedom was one of the great documents which preceded the Constitution. It laid down three propositions: First, that there should be no religious qualification for public office; second, that it is sinful and tyrannical to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves; and, third, that no man should be compelled to frequent or support any religious worship, place, or ministry whatsoever.

The opposing forces in the Virginia Legislature of 1779 were so nearly equal in power that it was impossible to secure the enactment of either of these bills.

The contest was renewed in the legislature of 1784 when James Madison introduced Thomas Jefferson's bill for religious freedom and Patrick Henry sponsored a new bill entitled "a bill establishing a provision for teachers of the Christian religion."

There was an acrimonious contest between James Madison and Patrick Henry and their respective followers in the Virginia Legislature of 1784. The legislature was on the verge of passing the bill sponsored by Patrick Henry, which would have recognized the legal interest of the State in virtually all the Christian churches then functioning in Virginia, and which would have imposed taxes on all Virginians for the support of such churches. But Madison, at the last moment, was able to persuade the Legislature of Virginia to put off the final vote on the bill sponsored by Patrick Henry until the next session of the legislature, which was scheduled for November 1785.

Between that time and the time when the legislature next met, James Madison made one of the greatest of all appeals for religious freedom. It was called the Memorial and Remonstrance Against Religious Assessments. The memorial of James Madison is crucial in determining what the Founding Fathers meant when they yielded to the insistence of James Madison and wrote into the first amendment the provision that Congress shall make no law respecting an establishment of religion.

On a number of occasions in his remonstrance, which was a protest against the bill sponsored by Patrick Henry to levy taxes for the support of virtually all Christian churches in Virginia, James Madison used the word "establishment" at least five times in contexts which showed that in his mind "an establishment of religion" meant an official relationship between the State and one church or many or all churches and the imposition of taxation for the support of one chuch or many churches or all churches.

I make the assertion without fear of successful contradiction that no man can read James Madison's remonstrance without coming to the conclusion that what James Madison and the other men of his generation had in mind when they wrote the first amendment was that there should be no official relationship of any character between government and any church, or many churches, or all churches, and no levying of taxes for the support of any church, or many churches, or all churches, or any institutions conducted by any of them.

Madison caused his remonstrance to be widely distributed throughout the State of Virginia. As a result of his remonstrance, when the members of the legislature which was scheduled to convene in November 1785 were elected, those who supported Madison in his fight for religious freedom were in an overwhelming majority. They enacted into law Jefferson's bill for religious freedom. We cannot overmagnify the importance which Thomas Jefferson and James Madison attributed to Jefferson's statute for religious freedom or their demand that people should not be compelled by law to support in an official manner or by taxes any religious institutions.

I believe the clearest proof of the transcendent importance which Thomas Jefferson attributed to that statute is shown by the epitaph on the gravestone which he is said to have written himself.

As one ascends the hill which leads to Jefferson's home at Monticello, he passes the burial ground of members of the Jefferson family. He passes the spot where the mortal remains of Thomas Jefferson rest in the tongueless silence of the dreamless dust. On the gravestone of Thomas Jefferson is the epitaph which speaks with as much eloquence as Jefferson used in writing the Declaration of Independence or the statute of Virginia for religious freedom. The statement is as follows:

> Here was buried Thomas Jefferson, author of the Declaration of American Independence; of the Statute of Virginia for Religious Liberty; and father of the University of Virginia.

At the time that Jefferson decided that those were the words which he wished to have engraved on the stone which marks his last resting place, he had been a member of the Legislature of Virginia; he had been Governor of the State of Virginia; he had represented Virginia in the Continental Congress; he had served as American Minister to France; he had officiated as Secretary of State in George Washington's Cabinet; he had been Vice President of the United States under John Adams; and he had been twice elected to the highest office within the gift of the American people—the Presidency itself.

Yet, Thomas Jefferson was not concerned that he should be remembered for the high offices which he had filled, but he was concerned that he should be remembered as the author of the Virginia statute for religious freedom, one of the greatest documents ever penned by man. It lays down the proposition that it is sinful and tyrannical to compel a man to make contributions of money for the propagation of opinions that he disbelieves.

After the drafting of the Constitution of the United States, many Americans were dissatisfied with it because it did not contain any bill of rights, and particularly because it did not contain any provision which would guarantee religious freedom beyond the provision which merely specified that no religious qualification should ever be required as a test for holding public office in our Nation. When New York, New Hampshire and Virginia ratified the Constitution they adopted resolutions which insisted that the Constitution should be amended by incorporating in it a guarantee of religious freedom and a guarantee of freedom from taxation for the support of religious institutions.

My own State of North Carolina and the State of Rhode Island both postponed ratifying the Constitution, and their conventions stated in substance that they would not ratify the Constitution unless it were amended so as to provide for a total disestablishment of religion.

As a result of the demands of these five States, and the demands of thousands of other Americans throughout the other original States, the Constitution was amended in this respect. It was amended at the instigation of James Madison, who was elected to serve in Congress from the State of Virginia in the first Congress which met under the Constitution. As soon as this Congress convened, he began his great fight to have the first amendment written into the Constitution.

I wish I had sufficient time to detail the fight which occurred in Congress on this point. There were some who wished to maintain some vestige of religious support by Government, and some who merely wished to put in the restriction that there should be no single established church. But Madison insisted at all times that the first amendment should embody in it the provision that Congress should pass no law respecting an establishment of religion or prohibiting the free exercise of religion.

James Madison triumphed after much effort. On September 23, 1789, Madison made a report to the House of Representatives concerning the action of the conference committee of the Senate and House, which had been appointed to reconcile varying views as to the language of the first amendment. This conference committee agreed with Madison and recommended the words which now are incorporated in the first amendment.

So we can say that James Madison whom historians call the Father of the Constitution, was responsible for the phrasing of the first amendment. The meaning of the words of the first amendment that "Congress shall make no law respecting an establishment of religion" is crystal clear. By those words, James Madison and his contemporaries intended to prohibit the Government from establishing any official relation between Government and religion and to prevent the Government from using tax money to support or assist in the support of any religious institutions of any character whatsoever.

As Justice Black said in *Everson v. Board of Education*, 330 U.S. 1:

The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

I have attempted to set out as clearly as possible the conviction of James Madison and his contemporaries that there should be no establishment or religion, and the meaning which they attributed to the words "establishment of religion." Those words clearly implied to them that there should be no official relationship between Government and any religious organization, and no support of any religious organization by tax moneys.

It is interesting to note that the Supreme Court of the United States has consistently adhered to this meaning of this term, "an establishment of religion," when it has dealt with cases involving the first amendment.

I wish to read some excerpts from opinions of the Supreme Court dealing with this question. Justice Jackson declared in the Everson case:

This freedom (i.e., religious freedom) was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the States' hands out of religion, but to keep religion's hands off the State, and above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse.

Justice Rutledge declared in the Everson case:

Not simply an established church, but any law respecting an establishment of religion is forbidden * * *. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.

Justice Black, writing the majority opinion in *McCollum* v. *Board of Education*, 333 U.S. 203, said:

For the first amendment rests upon the premise that both religion and Government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson case, the first amendment has erected a wall between church and state which must be kept high and impregnable.

Justice Frankfurter asserted this in the McCollum case:

The great American principle of eternal separation—Elihu Root's phrase bears repetition—is one of the vital reliances of our constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the State and best for religion."

Justice Douglas said in *Zorach* v. *Clauson*, 343 U.S. 306:

There cannot be the slightest doubt that the first amendment reflects the philosophy that church and state should be separated. And so far as interference with the free exercise of religion and an establishment of religion are concerned, the separation must be complete and unequivocal. The first amendment within the scope of its coverage permits no exception; the prohibition is absolute.

Justice Douglas also declared in his concurring opinion in *Abington School District* v. *Schempp*, 374 U.S. 203. 229:

But the Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. * * *

The most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance their religious schools. Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others. But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members.

So much for the statements of Justices of the Supreme Court of the United States in respect to the objectives of the establishment clause of the first amendment. The greatest declaration as to the overall meaning of the provisions of the first amendment denying to Congress the power to make any laws respecting an establishment of religion, or prohibiting the free exercise thereof, is that contained in the majority opinion written by Justice Black in the Everson case. This is what he said:

The establishment of religion clause of the first amendment means at least this: Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a State nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between church and state.

If any provision of the Constitution can be rightly said to be more precious than the others, it is the provision of the first amendment which undertakes to separate church and state by keeping government's hands out of religion and by denying to any and all religious denominations any advantage from getting control of public policy or the public purse.

This is so because the history of nations makes this truth manifest: When religion controls government, political liberty dies; and when government controls religion, religious liberty perishes.

Under the first amendment, all Federal taxpayers have the basic right "to be free of taxation to support a transgression of the constitutional command that the authorities 'shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" As an incident of this right, they are entitled not to have any Federal tax moneys being disbursed to institutions or organizations owned, controlled, or operated by religious groups.

There are many clauses in the pending bill which violate the provision of the first amendment declaring that Congress shall make no law respecting an establishment of religion. The bill makes provisions which, in substance, declare that tax moneys of the United States shall be used to aid church schools in the same manner in which Federal tax money is to be used for the support of public schools.

It also contains a provision that a local school board, in applying for funds under this act, must make an application which requests that Federal tax moneys be made available to church schools within their areas in a manner which is consistent with what they ask for their public schools.

Despite the statement I have just read from an opinion of the Supreme Court, that there can be no transaction or agreement, secret or otherwise, between the representatives of the State and the representatives of any religious denomination looking to use of tax funds in violation of the first amendment, this bill contains an express provision that in applying for funds, each public board of education must first consult with the officials of church schools and that they must in effect make requests in compliance with the wishes of the officials of these church schools.

For these reasons, this bill constitutes a flagrant effort to circumvent and disobey the provisions of the First Amendment which declare that Congress shall make no law with respect to the establishment of religion.

In closing, I wish to assert that all Members of Congress have taken an oath to support the first amendment. That oath obliges them not to pass any legislation which will make Federal tax moneys available for the support of churches or institutions operated by churches for the purpose of teaching religion in any form. The church schools which would be given the benefit of Federal tax moneys under this bill were established because the people who support those church schools believe that schools should teach religion, and the Constitution of the United States has been interpreted to forbid public schools to teach religion.

We have had several school prayer cases in which the Supreme Court has expressly declared that the State cannot use public school property, even for a moment, to instruct students in religious matters. It is inconceivable to me that a constitution which forbids such action on the part of a State could be construed to provide that, while Government cannot use public school property for the teaching of religion, even for a moment, Government is permitted to take tax moneys to support schools which are set up primarily for the purpose of teaching religion.

This is a serious question. Every American has a right, under the first amend-

ment, not to be taxed for the violation of that amendment.

So, Mr. President, it is incumbent upon all Americans—particularly upon Members of Congress—who believe it to be unconstitutional as well as sinful and tyrannical to compel a man to make contribution of money for the propagation of opinions which he disbelieves to be steadfast in their obedience to the first amendment, and they must persevere in the fight to preserve religous liberty in America. Religious liberty is the most precious of our freedoms. It is necessary for us to preserve our liberties. If we are to be loyal to our country and if we are to obey its Constitution, we cannot do otherwise.

I should like to close with this quotation from the French-Swiss moralist, Jean Jacques Rousseau:

Free people, remember this maxim: We may acquire liberty, but it is never recovered if it is once lost.

I yield the floor.

Mr. PELL. Mr. President, the suggestion has been made that this bill, S. 1557, unconstitutionally makes funds available to schools run by certain religious groups.

I do not believe that this bill contains such an unconstitutional provision.

Under present law, schoolchildren in nonpublic schools can participate in the following programs:

First. Title I of the Elementary and Secondary Education Act—programs for the disadvantaged.

Second. Title II of the Elementary and Secondary Education Act—library resources and textbooks.

Third. Title III of the Elementary and Secondary Education Act—supplementary centers and services.

Fourth. Title VII of the Elementary and Secondary Education Act—bilingual education.

Participation in programs under the proposed bill is limited to participation in programs designed to eliminate minority group isolation and would not flow to nonpublic schools themselves. In fact, nonpublic school participation is strictly limited to those minority group children who attend nonpublic schools. It permits those children to participate in local projects operated by the public schools.

Since the funds in question in this bill follow and aid the schoolchildren attending nonpublic schools, rather than the school, I do not see a constitutional problem.

VIETNAM VETERANS AGAINST THE WAR

Mr. PELL. Mr. President, the distinguished Senator from Arkansas (Mr. FULBRIGHT) is absent today by necessity. He has prepared, however, a statement concerning the testimony of Mr. John F. Kerry before the Committee on Foreign Relations, which Senator FULBRIGHT so ably chairs. I ask unanimous consent that this statement, together with its attachments, be printed at this point in the RECORD.

I am very glad to be doing this, as I know and admire John Kerry and consider immensely eloquent his testimony concerning our ill-advised Indochina war.

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

STATEMENT BY MR. FULBRIGHT

Mr. President, yesterday Mr. John F. Kerry, representing the Vietnam Veterans Against the War, made a very eloquent statement before the Senate Committee on Foreign Relations. In due course the full hearing will be printed and available to the Senate and the public. In the meantime, however, I ask unanimous consent that Mr. Kerry's opening statement be printed in the RECORD.

In addition, Mr. President, I ask unanimous consent that the profile of Mr. Kerry which appeared in this morning's New York Times also be included in the RECORD.

STATEMENT OF MR. JOHN KERRY, REPRESENTING THE VIETNAM VETERANS AGAINST THE WAR

Mr. KERRY. Thank you very much, Senator Fulbright, Senator Javits, Senator Symington, Senator Pell. I would like to say for the record, and also for the men behind me who are also wearing the uniform and their medals, that my sitting here is really symbolic. I am not here as John Kerry. I am here as one member of the group of 1,000, which is a small representation of a very much larger group of veterans in this country, and were it possible for all of them to sit at this table they would be here and have the same kind of testimony.

I would simply like to speak in very general terms. I apologize if my statement is general because I received notification yesterday you would hear me and I am afraid that because of the court injunction I was up most of the night and haven't had a great deal of time to prepare for this hearing.

I would like to talk on behalf of all those veterans and say that several months ago in Detroit we had an investigation at which over 150 honorably discharged, and many very highly decorated, veterans testified to war crimes committed in Southeast Asia. These were not isolated incidents but crimes committed on a day to day basis with the full awareness of officers at all levels of command.

It is impossible to describe to you exactly what did happen in Detroit—the emotions in the room and the feelings of the men who were reliving their experiences in Vietnam. They relived the absolute horror of what this country, in a sense, made them do.

They told stories that at times they had personally raped, cut off ears, cut of heads, taped wires from portable telephones to human genitals and turned up the power, cut off limbs, blown up bodies, randomly shot at civilians, razed villages in fashion reminiscent of Genghis Khan, shot cattle and dogs for fun, poisoned food stocks, and generally ravaged the countryside of South Vietnam in addition to the normal ravage of war and the normal and very particular ravaging which is done by the applied bombing power of this country.

We call this investigation the Winter Soldier Investigation. The term Winter Soldier is a play on words of Thomas Paine's in 1776 when he spoke of the Sunshine Patriot and summer time soldiers who deserted at Valley Forge because the going was rough.

We who have come here to Washington have come here because we feel we have to be winter soldiers now. We could come back to this country, we could be quiet, we could hold our silence, we could not tell what went on in Vietnam, but we feel because of what threatens this country, not the reds, but the crimes which we are commiting that threaten it, that we have to speak out.

I would like to talk to you a little bit about what the result is of the feelings these men carry with them after coming back from Vietnam. The country doesn't know it yet but it has created a monster, a monster in the form of millions of men who have been taught to deal and to trade in violence and who are given the chance to die for the biggest nothing in history; men who have returned with a sense of anger and a sense of betrayal which no one has yet grasped.

As a veteran and one who feels this anger I would like to talk about it. We are angry because we feel we have been used in the worst fashion by the administration of this country.

In 1970 at West Point Vice President Agnew said "some glamorize the criminal misfits of society while our best men die in Asian rice paddies to preserve the freedom which most of those misfits abuse," and this was used as a rallying point for our effort in Vietnam.

But for us, as boys in Asia whom the country was supposed to support, his statement is a terrible distortion from which we can only draw a very deep sense of revulsion, and hence the anger of some of the men who are here in Washington today. It is a distortion because we in no way consider ourselves the best men of this country; because those he calls misfits were standing up for us in a way that nobody else in this country dared to; because so many who have died would have returned to this country to join the misfits in their efforts to ask for an immediate withdrawal from South Vietnam; because so many of those best men have returned as quadruplegics and amputees—and they lie forgotten in Veterans Administration Hospitals in this country which fly the flag which so many have chosen as their own personal symbol—and we cannot consider ourselves America's best men when we are ashamed of and hated for what we were called on to do in Southeast Asia.

In our opinion, and from our experience there is nothing in South Vietnam which could happen that realistically threatens the United States of America. And to attempt to justify the loss of one American life in Vietnam, Cambodia or Laos by linking such loss to the preservation of freedom, which those misfits supposedly abuse, is to us the height of criminal hypocrisy, and it is that kind of hypocrisy which we feel has torn this country apart.

We are probably much more angry than that, but I don't want to go into the foreign policy aspects because I am outclassed here. I know that all of you talk about every possible alternative to getting out of Vietnam. We understand that. We know you have considered the seriousness of the aspects to the utmost level and I am not going to try to dwell on that. But I want to relate to you the feeling that many of the men who have returned to this country express because we are probably angriest about all that we were told about Vietnam and about the mystical war against communism.

We found that not only was it a civil war, an effort by a people who had for years been seeking their liberation from any colonial influence whatsoever, but also we found that the Vietnamese whom we had enthusiastically molded after our own image were hard put to take up the fight against the threat we were supposedly saving them from.

We found most people didn't even know the difference between communism and democracy. They only wanted to work in rice paddies without helicopters strafing them and bombs with napalm burning their villages and tearing their country apart. They wanted everything to do with the war, particularly with this foreign presence of the United States of America, to leave them alone in peace, and they practiced the art of survival by siding with whichever military force was present at a particular time, be it Viet Cong, North Vietnamese or American.

We found also that all too often American

men were dying in those rice paddies for want of support from their allies. We saw first hand how monies from American taxes were used for a corrupt dictatorial regime. We saw that many people in this country had a one-sided idea of who was kept free by our flag, and blacks provided the highest percentage of casualties. We saw Vietnam ravaged equally by American bombs and search and destroy missions, as well as by Viet Cong terrorism, and yet we listened while this country tried to blame all of tne havoc on the Viet Cong.

We rationalized destroying villages in order to save them. We saw America lose her sense of morality as she accepted very cooly a My Lai and refused to give up the image of American soldiers who hand out chocolate bars and chewing gum.

We learned the meaning of free fire zones, shooting anything that moves, and we watched while America placed a cheapness on the lives of orientals.

We watched the United States falsification of body counts, in fact the glorification of body counts. We listened while month after month we were told the back of the enemy was about to break. We fought using weapons against "oriental human beings." We fought using weapons against those people which I do not believe this country would dream of using were we fighting in the European theater. We watched while men charged up hills because a general said that hill has to be taken, and after losing one platoon or two platoons they marched away to leave the hill for re-occupation by the North Vietnamese. We watched pride allow the most unimportant battles to be blown into extravaganzas, because we couldn't lose, and we couldn't retreat, and because it didn't matter how many American bodies were lost to prove that point, and so there were Hamburger Hills and Khe Sahns and Hill 81s and Fire Base 6s, and so many others.

Now we are told that the men who fought there must watch quietly while American lives are lost so that we can exercise the incredible arrogance of Vietnamizing the Vietnamese.

Each day to facilitate the process by which the United States washes her hands of Vietnam someone has to give up his life so that the United States doesn't have to admit something that the entire world already knows, so that we can't say that we have made a mistake. Someone has to die so that President Nixon won't be, and these are his words, "the first President to lose a war."

We are asking Americans to think about that because how do you ask a man to be the last man to die in Vietnam? How do you ask a man to be the last man to die for a mistake? But we are trying to do that, and we are doing it with thousands of rationalizations, and if you read carefully the President's last speech to the people of this country, you can see that he says, and says clearly, "but the issue, gentlemen, the issue, is communism, and the question is whether or not we will leave that country to the communists or whether or not we will try to give it hope to be a free people." But the point is they are not a free people now under us. They are not a free people, and we cannot fight communism all over the world. I think we should have learned that lesson by now.

But the problem of veterans goes beyond this personal problem, because you think about a poster in this country with a picture of Uncle Sam and the picture says "I want you." And a young man comes out of high school and says, "that is fine, I am going to serve my country," and he goes to Vietnam and he shoots and he kills and he does his job. Or maybe he doesn't kill. Maybe he just goes and he comes back, and when he gets back to this country he finds that he isn't really wanted, because the largest corps of unemployed in the country—it varies depending on who you get it from, the Veterans Administration says 15 percent and various other sources 22 percent—but the largest corps of unemployed in this country are veterans of this war, and of those veterans 33 percent of the unemployed are black. That means one out of every ten of the nation's unemployed is a veteran of Vietnam.

The hospitals across the country won't, or can't meet their demands. It is not a question of not trying; they haven't got the appropriations. A man recently died after he had a tracheotomy in California, not because of the operation but because there weren't enough personnel to clean the mucus out of his tube and he suffocated to death.

Another young man just died in a New York VA Hospital the other day. A friend of mine was lying in a bed two beds away and tried to help him but he couldn't. He rang a bell and there was nobody there to service that man and so he died of convulsions.

I understand 57 percent of all those entering the VA hospitals talk about suicide. Some 27 percent have tried, and they try because they come back to this country and they have to face what they did in Vietnam, and then they come back and find the indifference of a country that doesn't really care.

Suddenly we are faced with a very sickening situation in this country, because there is no moral indignation and, if there is, it comes from people who are almost exhausted by their past indignations, and I know that many of them are sitting in front of me. The country seems to have lain down and shrugged off something as serious as Laos, just as we calmly shrugged off the loss of 700,000 lives in Pakistan, the so-called greatest disaster of all times.

But we are here as veterans to say we think we are in the midst of the greatest disaster of all times now because they are still dying over there—not just Americans, but Vietnamese—and we are rationalizing leaving that country so that those people can go on killing each other for years to come.

Americans seem to have accepted the idea that the war is winding down, at least for Americans, and they have also allowed the bodies which were once used by a President for statistics to prove that we were winning that war, to be used as evidence against a man who followed orders and who interpreted those orders no differently than hundreds of other men in Vietnam.

We veterans can only look with amazement on the fact that this country has been unable to see there is absolutely no difference between ground troops and a helicopter crew, and yet people have accepted a differentiation fed them by the administration.

No ground troops are in Laos so it is all right to kill Laotians by remote control. But believe me the helicopter crews fill the same body bags and they wreak the same kind of damage on the Vietnamese and Laotian countryside as anybody else, and the President is talking about allowing that to go on for many years to come. One can only ask if we will really be satisfied only when the troops march into Hanoi.

We are asking here in Washington for some action; action from the Congress of the United States of America which has the power to raise and maintain armies, and which by the Constitution also has the power to declare war.

We have come here, not to the President, because we believe that this body can be responsive to the will of the people, and we believe that the will of the people says that we should be out of Vietnam now.

We are here in Washington also to say that the problem of this war is not just a question of war and diplomacy. It is part and parcel of everything that we are trying as human beings to communicate to people in this country—the question of racism, which is rampant in the military, and so many other questions such as the use of weapons; the hypocrisy in our taking umbrage in the Geneva Conventions and using that as justification for a continuation of this war when we are more guilty than any other body of violations of those Geneva Conventions; in the use of free fire zones, harassment interdiction fire, search and destroy missions, the bombings, the torture of prisoners, the killing of prisoners, all accepted policy by many units in South Vietnam. That is what we are trying to say. It is part and parcel of everything.

An American Indian friend of mine who lives in the Indian Nation of Alcatraz put it to me very succinctly. He told me how as a boy on an Indian reservation he had watched television and he used to cheer the cowboys when they came in and shot the Indians, and then suddenly one day he stopped in Vietnam and he said "my God, I am doing to these people the very same thing that was done to my people," and he stopped. And that is what we are trying to say, that we think this thing has to end.

We are also here to ask, and we are here to ask vehemently, where are the leaders of our country? Where is the leadership? We are here to ask where are McNamara, Rostow, Bundy, Gilpatric and so many others? Where are they now that we, the men whom they sent off to war, have returned? These are commanders who have deserted their troops, and there is no more serious crime in the law of war. The Army says they never leave their wounded. The Marines say they never leave even their dead. These men have left all the casualties and retreated behind a pious shield of public rectitude. They have left the real stuff of their reputations bleaching behind them in the sun in this country.

Finally, this administration has done us the ultimate dishonor. They have attempted to disown us and the sacrifices we made for this country. In their blindness and fear they have tried to deny that we are veterans or that we served in Nam. We do not need their testimony. Our own scars and stumps of limbs are witness enough for others and for ourselves.

We wish that a merciful God could wipe away our own memories of that service as easily as this administration has wiped away their memories of us. But all that they have done and all that they can do by this denial is to make more clear than ever our own determination to undertake one last mission—to search out and destroy the last vestige of this barbaric war, to pacify our own hearts, to conquer the hate and the fear that have driven this country these last ten years and more, so when 30 years from now our brothers go down the street without a leg, without an arm, or a face, and small boys ask why, we will be able to say "Vietnam" and not mean a desert, not a filthy obscene memory, but mean instead the place where America finally turned and where soldiers like us helped it in the turning.

Thank you.

ANGRY WAR VETERAN

(By John Forbes Kerry)

WASHINGTON, April 22.—Early in 1968, not long after his graduation from the Navy's officer candidate school, Lieut. j.g. John Forbes Kerry visited Vietnam for the first time when his ship stopped over in Danang after a brief tour in the Gulf of Tonkin. "I went ashore and saw the barbed wire, the machine guns and a 'woodpile' of dead Vietcong bodies," Mr. Kerry recalls, "and it hit me all at once. This was my first contact with the land war, and at first it looked like something out of the movies. Then I reacted—I said 'my God, what is going on here—this is really a war.'"

Mr. Kerry is here this week to protest that war as leader of 1,000 or so veterans encamped on the grassy mall near the Capitol.

Last night, he stretched out his lean, 6-foot frame and recounted some of the experiences that turned him against American policy in Southeast Asia.

Mr. Kerry was born in Denver Dec. 11, 1943. He later lived in Washington and in France and Germany.

WAR DOUBTS AT YALE

While still an undergraduate at Yale, Mr. Kerry developed some reservations about American foreign policy. This was reflected in the senior oration he delivered at his graduation in 1966 criticizing aspects of the draft and the war.

At Yale, Mr. Kerry won letters in soccer and lacrosse and belonged to the Skull and Bones Society. His plans to study abroad were quashed by a notice from his draft board that he would probably be called for service.

Neither jail nor self-exile appealed to him, he said, and "although I did have some doubts about the war in terms of policy, at that time I believed very strongly in the code of service to one's country. So," he added, "I enlisted in the Navy."

That first trip to Vietnam piqued his curiosity—"I wanted to go back and see for myself what was going on, but I didn't really want to get involved in the war." So, late in 1968 he volunteered for an assignment on "swift boats"—the short, fast aluminum craft that were then used for patrol duty off the Vietnam coast.

Two weeks before he arrived in Vietnam as a swift boat commander, he said, "they changed the policy on the use of the boats—decided to send them up the rivers to prove to the Vietcong that they didn't own the waters."

The river missions involved shooting at sampans and at huts along the banks and suddenly, Mr. Kerry recalls, "We said, 'hey, wait a minute—we don't know who these people are.' So we started to beach our boats to go ashore and find out what we had been shooting at."

Mr. Kerry, 27 years old, paused a moment, then remembered a time earlier in his life when his father, now a Massachusetts lawyer, was a Foreign Service Officer stationed in Paris.

"My mother was born in France," he said, "and when we lived there, I used to play in the old German bunkers outside my grandmother's house. From listening to her stories, I got a vivid impresion of what it was like to live in an occupied country, and when I went ashore in those villages, I realized that's exactly what I was in—an occupied country."

Because he had been wounded three times (in addition to the three Purple Hearts, he holds the Bronze and Silver Stars), he took advantage of a navy regulation that allowed him to return to duty in the United States.

Mr. Kerry left Vietnam in March, 1969, and took a job as an admiral's aide in New York City. Shortly afterward he married. His wife, Julia, is 26.

During this time, he says, "my opposition to the war was haunting me. The October moratorium came along and I did some work for it. It was just incredible, seeing all those people, and I said to myself, 'that's it.'"

He asked for, and was given, an early release from the Navy so he could run for Congress on an antiwar platform from his home district of Waltham, Mass. His campaign lasted a month, ending when he withdrew in favor of the Rev. Robert F. Drinan, the Jesuit who was elected to Congress last November.

While campaigning for Father Drinan, Mr. Kerry appeared on the Dick Cavett television program and was seen by members of the Vietnam Veterans Against the War, who asked him if he would work for their group. He has been a full-time organizer for them ever since.

During a veteran's meeting in Detroit last winter, Mr. Kerry said he became aware of increasing antiwar sentiment among returning veterans. "I saw guys there who couldn't talk about what they'd done in Vietnam without crying," he said. "That's when I realized that we had to take this thing to the Government."

Operation Dewey Canyon Three, the week-long veterans' protest now underway in the capital, is the result.

Mr. Kerry describes himself as "still a moderate—I'm not a radical in any sense of the word. I guess I'm just an angry young man."

He is not a pacifist—"if I have to pick up arms to defend something that is very real. If the shores of this country were threatened, I'd be the first to defend it."

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. WEICKER). The Chair, on behalf of the Vice President, appoints the Senator from Maryland (Mr. MATHIAS) to the Conference on Problems Relating to Environment, of the Economic Commission for Europe, Prague, Czechoslovakia, May 2 to 15, 1971.

AUTHORIZATION FOR THE SUBCOMMITTEE ON HEALTH AND HOSPITALS TO MEET AT 1 P.M. ON WEDNESDAY, APRIL 28, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Subcommittee on Health and Hospitals of the Committee on Veterans' Affairs be authorized to meet at 1 p.m. on Wednesday, April 28, 1971.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND FOR EXTENSION OF TIME UNDER THE PASTORE RULE ON MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, at the close of the remarks by the distinguished Senator from Wisconsin (Mr. PROXMIRE), there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes; that at the close of the period for the transaction of routine morning business, the unfinished business be laid before the Senate; that at that point, the Pastore rule, paragraph 3 of rule VIII of the Standing Rules of the Senate, be triggered, and that it run for 7 hours or until completion of action on the unfinished business, whichever is the earlier.

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

QUORUM CALL

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

The PRESIDENT OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

VIETNAM WAR DEMONSTRATIONS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to be permitted to submit a statement by the distinguished junior Senator from Indiana (Mr. BAYH) on the Vietnam War demonstrations.

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

The statement by Senator BAYH is as follows:

STATEMENT BY SENATOR BIRCH BAYH ON VIETNAM WAR DEMONSTRATIONS

Mr. President: This week bears witness to a massive outpouring of public concern over the continuation of war in Vietnam. In the thousands of dissenting Americans who have come to their capital, there is a deep desire to change the course of national policy. For too long our national leaders have failed to take full account of the depth and breadth of this conviction. Now these citizens have joined to petition their elected representatives to cease the senseless slaying.

As we observe the demonstrations, we should bear in mind the fundamental freedoms insured by our Constitution. The just and legal exercise of those freedoms ennobles the purpose of most Americans who participate in these demonstrations. Though a few individuals may act violently because of deep frustration of destructive intent, such actions must not obscure the underlying and lawful goals of the majority of dissenting citizens. If there is violence, I don't condone it, I condemn it. I believe that the bulk of the people involved in these demonstrations realize that such violence would contradict their purpose—and is counter-productive.

We cannot ignore what the veterans who have come here have to say to us. These men have borne the terrible responsibility of battle and now return only to speak of peace.

The President's desire to ensure the survival of the Thieu-Ky regime, unfortunately, seems to have been a major factor in postponing withdrawal. I do not believe we have any commitment to the Thieu government—or to any particular government in South Vietnam. Nor should we. I believe we have fulfilled whatever commitment we might have had to the people of South Vietnam. We have no commitment to the generals. We have already given them the most precious gift in our possession, 53,000 American lives. We have spent more than $125 billion in Vietnam already and have trained and equipped a one-million-man army.

This moment can mark a turning point in our nation's history; a time when America abandons a bankrupt policy whose only certain achievement would be more precious futures squandered—more young Americans dying and imprisoned in Vietnam. We must respond to the chorus of voices raised in peaceful dissent. We must seize this mandate and fix a date for complete and final withdrawal.

There is no honor to be won and no glory to be gained by continuing. There are only more lives to be lost.

PROGRAM FOR MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, the program for Monday next is as follows:

The Senate will convene at 10 a.m. and immediately following the recognition of the two leaders under the standing order, the distinguished senior Senator from Wisconsin (Mr. PROXMIRE) will be recognized for not to exceed 15 minutes, at the close of which there will be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes; upon the conclusion of which the Chair will lay before the Senate the unfinished business, S. 1557; at that point, the Pastore rule of germaneness, paragraph 3, of rule VIII of the Standing Rules of the Senate, will take effect and, under the previous order, will extend for a period of 7 hours or until completion of action on the unfiinished business, whichever is the earlier.

There will be rollcall votes, and action is expected to be completed on the emergency school aid bill on Monday.

ADJOURNMENT TO MONDAY, APRIL 26, 1971, AT 10 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 a.m. on Monday next.

The motion was agreed to; and (at 4 o'clock and 7 minutes p.m.) the Senate adjourned until Monday, April 26, 1971, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate April 23, 1971:

DEPARTMENT OF TRANSPORTATION

John W. Barnum, of New York, to be General Counsel of the Department of Transportation, vice James A. Washington, Jr.

U.S. ARMY

The following-named officer under the provisions of title X, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Walter James Woolwine, [redacted] U.S. Army.

The following-named officer under the provisions of title X, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. George Philip Seneff, Jr., [redacted] Army of the United States (brigadier general, United States Army).

IN THE MARINE CORPS

The following-named commissioned warrant officers/warrant officers for temporary appointment to the grade of first lieutenant in the Marine Corps, for limited duty, subject to the qualifications therefor as provided by law:

Bobo, Archie G.	Lewis, Babre
Coulter, Patrick C.	Long, Leonard A.
Draper, Steven J.	Mattox, Aove E.
Grant, William M.	McLean, James F.
Haskins, James E.	Medeiros, Kenneth H.
Keller, Robert J.	Thurmond, Joseph
Killebrew, Joe	Turney, Conrad B.
Kittilstved, Ray E.	Woodruff, James E.
Kochuba, Joseph	Vance, Larry F.

The following-named temporary commissioned warrant officers/warrant officers for temporary appointment to the grade of second lieutenant in the Marine Corps, for limited duty, subject to the qualifications therefor as provided by law:

Burnett, Leslie H. Jr.	Garcia, Donald P.
Fotinos, Nickolas G.	Owen, Forrest D.

The following-named staff noncommissioned officers for temporary appointment to the grade of second lieutenant in the Marine Corps, for limited duty, subject to the qualifications therefor as provided by law:

Angier, Rodney E.	Lewis, Billy W.
Balske, Ronald E.	Lincoln, Michael M.
Buckle, Daniel J., Jr.	Magers, Donald P.
Chandler, Richard	Marte, Gary F.
Chapman, Laurel E.	Murray, Charles R., Jr.
Dewey, Robert J.	Parkerson, Lowell B.
Ellis, Russell E.	Pate, Eugene L.
Felder, Gary L.	Peabody, Charles P.
Gainey, Weldon M.	Privett, J. C.
Gale, Joe A.	Reid, Dewitt R.
Grabus, Edward J.	Rusnak, Anthony
Grassilli, Leo J. Jr.	Schroyer, Paul R.
Hale, James H.	Snow, Richard C.
Harris, James R.	Stephenson, Walter C.
Hashimoto, Clifford P.	Stipe, Carl M.
Humann, Leroy D.	Tavares, Edward
Irvine, Joseph W.	Taylor, Gene A.
Jones, Roy E.	Wilding, James L.
Kaaekuahiwi, R. Y.	York, Wallace E.

The following-named U.S. Military Academy graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Hindes, Clyde J.
Robinson, John R.

The following-named Army Reserve Officer Training Corps graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Carnevale, Michael J.
Larkin, James J.

The following-named U.S. Air Force Academy graduate for permanent appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Weber, David B.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 23, 1971:

U.S. AIR FORCE

The following officer to be placed on the retired list, in the grade of lieutenant general, under the provisions of section 8962, title 10, of the United States Code:

Lt. Gen. Joseph H. Moore, [redacted] FR (major general, Regular Air Force), U.S. Air Force.

Maj. Gen. George J. Eade [redacted], Regular Air Force, to be assigned to positions of importance and responsibility designated by the President, in the grade of lieutenant general, under the provisions of section 8066, title 10, of the United States Code.

U.S. ARMY

The following-named officers to be placed on the retired list, in grades indicated, under the provisions of title 10, United States Code, section 3962:

To be general

Gen. Berton Everett Spivy, Jr., [redacted], Army of the United States (major general, U.S. Army).

To be lieutenant general

Lt. Gen. Vernon Price Mock, [redacted], Army of the United States (major general, U.S. Army).

Lt. Gen. Harry Jacob Lemley, Jr., [redacted] Army of the United States (major general, U.S. Army).

Lt. Gen. William Pelham Yarborough, [redacted] Army of the United States (major general, U.S. Army).

Lt. Gen. Beverley Evans Powell, [redacted] Army of the United States (major general, U.S. Army).

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert Clinton Taber, [redacted] Army of the United States (brigadier general, U.S. Army).

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Richard Thomas Cassidy, [redacted] United States Army.

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert Edmondston Coffin, [redacted] Army of the United States (brigadier general, U.S. Army).

U.S. NAVY

Vice Adm. Turner F. Caldwell, Jr., U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

Vice Admiral Isaac C. Kidd, Jr., U.S. Navy, having been designated for commands and other duties of great importance and responsibility determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of admiral while so serving.

U.S. MARINE CORPS

Lt. Gen. Louis B. Robertshaw, U.S. Marine Corps, and Lt. Gen. Frederick E. Leek, U.S. Marine Corps, when retired, to be placed on the retired list in the grade of lieutenant general, in accordance with the provisions of title 10, United States Code, section 5233.

Maj. Gen. Ormond R. Simpson, U.S. Marine Corps, and Maj. Gen. Earl E. Anderson, U.S. Marine Corps, having been designated, in accordance with the provisions of title 10, United States Code, section 5232, for commands and other duties determined by the President to be within the contemplation of said section, for appointment to the grade of lieutenant general while so serving.

U.S. ARMY

The nominations beginning Roger H. Nye, to be colonel, and ending Harvey K. Nakayama, to be 1st lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on Apr. 14, 1971; and

The nominations beginning Roger H. Nye, to be professor of history, U.S. Military Academy, and ending Raymond K. Yuen, to be 2d lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on Apr. 14, 1971.

U.S. NAVY

The nominations beginning David W. Clark, to be ensign, and ending Stuart P. Timm, to be lieutenant (j.g.), which nominations were received by the Senate and appeared in the Congressional Record on Mar. 29, 1971.