

## THE DUTY TO BARGAIN

The second bill is more extensive. As previously indicated, it deals with what is known as the statutory duty to bargain. Under the law as it now stands, an employer commits an unfair labor practice if he refuses to confer in good faith with their employees' representatives in respect to wages, hours, and other terms and conditions of employment or the negotiation of an agreement. This is as it should be. Collective bargaining is intended to provide a framework wherein labor and management can meet and negotiate on matters of fundamental importance to both parties. If the process operates successfully, it leads to the formalization of a contract which specifies the terms and duration of the agreements reached by the parties.

The reasonable expectation of contracting parties is that their contract is comprehensive and complete. It is expected to settle matters between them to the extent of the life of the contract. But the NLRB has gone far beyond the express authority granted it by Congress in search of new bargaining requirements which substantially expand the obligations imposed on the parties and undermine the assumed finality of agreed-to contract terms. This amendment would answer a number of NLRB decisions which quite improperly and erroneously extended the Board's activities into Congress' realm of formulating public policy.

## MANAGEMENT PREROGATIVES

To illustrate, the Board expanded the concept of section 9(a)'s "other conditions of employment" to include such basic management prerogatives as deciding to change methods of operation in the interest of greater efficiency or even to close down a department or an entire plant. Decisions in the sole province of management were never intended to be the subject of compulsory bargaining with employees. It is entirely appropriate, however, that there be a requirement for informative discussions between management and a union about the impact of such a decision on the employees in a bargaining unit, and this amendment so provides.

## CONCESSIONS

When Congress passed the Taft-Hartley Act in 1947, it emphasized that the duty to bargain does not compel either party to agree to a proposal advanced by the other, nor does it require either party to make a concession in bargaining. Although the Supreme Court has recently indicated its disapproval of at least a portion of the practice, the NLRB has developed a pattern of decisions which finds an employer guilty of an unfair labor practice if he sticks to his own proposals and rejects a union's demands. This position is not only contrary to the statute; it goes against the grain of logic and reason.

Suppose an employer puts his best possible offer on the table at the beginning of negotiations. Suppose he decides he does not want to play games, does not want to spend a lot of time jockeying back and forth, and wants to bring negotiations to a head promptly, so he can get on with the operation of his business. Under the NLRB's holdings an em-

ployer cannot follow such a course. The Board has found this practice to constitute "an adamant refusal and an uncompromising attitude". This decision may represent what the NLRB thinks should be done, but it surely does not conform to what Congress intended and wrote in the law. The amendment here proposed would declare once again that bargaining in good faith does not compel one party to abandon its own views; it does not require a party to make concessions. Good faith bargaining does require parties to consider each other's positions and offers. Each has to discuss the proposals presented to it, but neither is compelled to agree with the other. This position seems fair and consistent with the concept of bargaining as a two-way process.

## INFORMATION

In another set of recent decisions the NLRB, with an assist from the Supreme court, has imposed an almost open-ended obligation on employers to give unions any information they ask during negotiations on new contracts and on grievances arising during the course of collective bargaining agreements. The Board has held that a union's requests for information arising during the bargaining process are not bargainable matters, but for all practical purposes constitute compulsory demands when the board decides on a hit-or-miss basis that the requested information would be useful to the union. The resulting situation is that no employer knows exactly where he stands when confronted with requests for information. For example, in one case an employer was found guilty of violating the act when he would not furnish a union with the names of employees who worked during a strike. In another case it was held to be an unfair labor practice not to divulge the company's profits and the salaries paid its management people. In still another case it was held to be an unfair labor practice not to furnish the sales prices of the company's products. In several other cases employers were found guilty of violating the act for refusing to give unions the home addresses of employees—an interesting circumstance in these days when many are anxious about infringements on the individual's right to privacy.

It seems reasonable to me that in a bargaining situation each side ought to be permitted to ask for whatever information it thinks would be useful. Having asked for it, however, the procurement of the information ought to be the result of successful bargaining. Not the product of inconsistent orders by the NLRB. The bill I propose would make clear that each party has the right to bargain about information it wants from the other, but neither has an absolute right to obtain it.

## CONTINUOUS DUTY

In still another venture into policymaking, the NLRB recently revived the discredited practice of considering the duty of bargain to be continuous. This policy dates back to the days of the Wagner Act when the NLRB conceived the notion that the duty to bargain did not raise merely when a new contract was negotiated but lingered even after the employer and the union had agreed

to a contract for a fixed period. By its enactment of the Taft-Hartley Law in 1947 Congress explicitly rejected this theory, but Congress' directive was disregarded by the NLRB. For the Board to say that the duty to bargain has a continuous duration is to force an employer to bargain during the life of a contract whenever a union raises issues which are not expressly covered in the contract itself. It is hard to conceive of a practice more disruptive of labor-management harmony or better designed to undermine the stability of collective bargaining contracts. The bill I propose provides that neither party to a collective bargaining contract can be forced to bargain about a change in or an addition to a contract that would become effective prior to the time permitted by the terms of the contract itself. In essence it would say that parties can bargain on new issues if they choose, but the NLRB cannot force them to do so.

## DURATION OF CONTRACT TERMS

This bill also deals with the two other novel ULRB views of compulsory bargaining. In the Board's opinion some contract provisions—and we will not be sure just what these provisions may be until the Board further develops this theory—must be continued in effect even after the contract expires. The bill I introduce today restates the rather basic notion of contract law that when a contract expires all rights and obligations arising thereunder cease to exist.

## NONEMPLOYEES

Finally, this bill rejects the Board's developing motion that employees, under the law's mandate to bargain with representatives of their employees, should also be forced to bargain about individuals who are no longer employees within the meaning of the act.

## CONCLUSION

Mr. President, the duty to bargain is a solemn obligation imposed by law upon employers and unions alike. It ought to be applied by the NLRB in an even-handed, impartial manner. Because it has not been so applied, the amendments presented here today merit the earliest possible consideration by the Senate.

I ask unanimous consent that the text of each of these bills be printed in the Record at this point.

There being no objection, the bills were ordered to be printed in the Record, as follows:

## S. 2168

A bill to amend the National Labor Relations Act with respect to the right of employees to exercise freedom of choice in matters of collective bargaining and union representation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the National Labor Relations Act (29 U.S.C. 151) is amended to read as follows:

## "FINDINGS AND POLICIES

"SECTION 1. The denial of or interference with the right of employees to organize, to form, join or assist labor organizations, to bargain collectively, and to engage in other concerted activities or interference with or denial of their right to refrain from any or all of such activities leads to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce

by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"Inequality of bargaining power between labor organizations and employers substantially burdens the process of collective bargaining and affects the flow of commerce.

"Experience has proved that protection by law of the right of employees to determine whether they wish to organize and bargain collectively encourages practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities that impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by protecting the right of employees to exercise by workers of full freedom of choice in determining whether they wish to designate collective bargaining representatives and, when such representatives have been designated, by encouraging the settlement of industrial disputes through free collective bargaining for the purpose of negotiating the terms and conditions of their employment."

## S. 2169

A bill to amend the National Labor Relations Act with respect to the duty to bargain, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) is amended to read as follows:

"Section 8(d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, or any question concerning the furnishing of necessary and relevant information, if any, requested by the other party in connection with the negotiation of an agreement or any issue arising under such agreement, and the execution of a written contract incorporating any agreement reached if requested by either party: Provided, That (1) the failure or refusal of either party to agree to a proposal, or to the making, changing or withdrawing of a lawful proposal, or to make a concession shall not constitute, or be evidence, direct or indirect, of a breach of the obligation imposed under this section; nor shall the Board in any order direct either party to make any concession or agree to any proposal or to make any payment of money except to employees who are reinstated in back pay as provided in section 10(c)(1); (2) this section shall not require any employer to bargain collectively with respect to any person not

currently employed or to be employed, or with respect to any decision, not prohibited by other provisions of this Act, to discontinue, contract out, sell, or otherwise change, modify, or dispose of his business, plant, equipment or operations, or any part thereof, except that, on request, the employer (unless the collective bargaining agreement specifies the duties of the parties in such circumstances) without having to defer the decision or any action pursuant thereto, shall meet and bargain with the representatives of any affected employees concerning the effect, if any, of any such action upon such employees; and (3) where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later; Upon termination of a collective bargaining contract in accordance with the requirements of paragraphs (1), (2), (3) and (4), either party shall have the right, upon notification to the other party, to cancel or discontinue any or all of the benefits, privileges, or terms or conditions of employment established under the contract previously in effect. The duties imposed upon employers, employees and labor organizations by paragraphs (2), (3) and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to a collective bargaining contract for a fixed period to discuss or agree to any modification of wages, hours, and working conditions during the term of such contract, if such modification is to become effective before the subject matter thereof can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer."

## By Mr. TOWER:

S. 2170. A bill to amend the provisions of the Consolidated Farmers Home Administration Act of 1961 relating to loans in emergency areas in order to authorize loans to residents of such areas for the purpose of attending an institution of

higher education. Referred to the Committee on Agriculture and Forestry.

## ASSISTANCE FOR STUDENTS IN DISASTER AREAS

Mr. TOWER. Mr. President, I introduce today legislation designed to assist our agriculturally oriented young people. In reviewing legislation, both past and present, which provides Federal assistance to farmers and ranchers as a result of a natural disaster, I found evident a total lack of concern for those students caught in the backwash of the financial burdens of their parents. This vast number of young students suddenly find themselves seeking employment in lieu of college admittance as a result of economic shortcomings compounded by such disasters.

The tremendous technical advancements during the past decade in agriculture, and general farming in particular, are a result of educated young people returning to the farm. The formal education combined with youthful practical experience is a significant avenue to profitable farming and ranching. For this reason it is imperative that the farm and ranch family have available a loan program during times of natural disaster.

This legislation would authorize the Secretary of Agriculture to utilize the facilities of the Farmers Home Administration in managing the college loan assistance program. Applicants would be considered by the Farmers Home Administration Committee, composed of local farmers and ranchers, on a basis of need. The applicant's permanent residence must be in a county which has been declared a disaster as the result of natural causes. The program will be limited to communities of 10,000 or less population, but will not apply to students of farm or ranch families alone. It is possible that we may need to expand this program into other areas, and I will particularly invite testimony on this subject during hearings. My interest is to provide assistance to those individuals who suffer a loss either directly or indirectly as the result of a natural disaster. In rural communities virtually every business is affected by carrying a large number of accounts and by a loss in business volume.

It is my opinion that any student living in a rural community should have the opportunity of continuing his or her education. It is evident that these young people have been ignored in the past while major efforts have been geared to their parent's plight. It is my sincere desire that young men and women be allowed to further their formal education during periods of depressed economy in rural areas, an economy based on a perishable commodity with no guarantee of return for investment. In light of the fact that vast portions of Texas, New Mexico, and Oklahoma are experiencing a severe drought coupled with the probability of another corn blight in the midwest, I urge immediate passage of this bill. It is imperative that the students be allowed time to apply for assistance prior to entering college this fall.

## By Mr. HATFIELD:

S. 2171. A bill to improve the military justice system by establishing military judicial circuits, and for other purposes;

S. 2172. A bill to amend chapter 47 of title 10, United States Code, to provide that judges of the Courts of Military Review shall be appointed by the President, to confer authority on the Court of Military Appeals to issue orders and writs necessary to protect the rights of military personnel, and for other purposes;

S. 2173. A bill to amend chapter 47 of title 10, United States Code, so as to eliminate summary courts-martial from the military justice system;

S. 2174. A bill to confer jurisdiction on U.S. district courts to grant relief in certain cases involving military personnel where the relief available to such personnel under military law or regulation is inadequate for the protection of the constitutional rights of such personnel, and for other purposes;

S. 2175. A bill to amend section 803 of title 10, United States Code, relating to jurisdiction for the trial of military personnel;

S. 2176. A bill to amend chapter 47 of title 10, United States Code, so as to prescribe certain requirements with respect to the physical arrangements of furniture and other facilities of rooms in which courts-martial trials are conducted, and for other purposes;

S. 2177. A bill to amend section 825—article 25—of title 10, United States Code, relating to eligibility standards for service on courts-martial and the method of selecting military personnel for such service;

S. 2178. A bill to amend section 810 of title 10, United States Code, relating to the confinement of military personnel prior to trial by courts-martial;

S. 2179. A bill to amend chapter 47 of title 10, United States Code, to require that all requests to compel witnesses to appear and testify and to compel the production of other evidence before courts-martial trials be submitted to a military judge for approval, and to provide for the inadmissibility of certain evidence at courts-martial trials;

S. 2180. A bill to amend chapter 47 of title 10, United States Code, to authorize the military judge of any court-martial to suspend the sentence adjudged against an accused tried by such court-martial;

S. 2181. A bill to amend section 857 of title 10, United States Code, to require that pretrial confinement of members of the Armed Forces be deducted from the term of any sentence to confinement adjudged by a court-martial;

S. 2182. A bill to amend chapter 59 of title 10, United States Code, to prohibit the administrative discharge of enlisted members of the Armed Forces under conditions other than honorable; and

S. 2183. A bill to amend chapter 47 of title 10, United States Code, to limit the jurisdiction of courts-martial, to eliminate the death penalty, to define certain additional offenses under such chapter, and for other purposes. Referred to the Committee on Armed Services.

#### INTRODUCTION OF BILLS RELATING TO MILITARY JUSTICE

Mr. HATFIELD. Mr. President, recent events have focused public attention on military justice: The mutiny courts-martial at the Presidio in San Francisco,

the court-martial of Captain Levy, the Pueblo incident, alleged violations of law with regard to the PX system in Southeast Asia, and most notably the courts-martial surrounding the alleged crimes at My Lai. I think, however, Mr. President, that it is most important to look at these events within the context of history so that we can better understand them and also gain further insight into our military justice system.

Over the two centuries since our country's founding, the formal codes of behavior which have governed our Armed Forces have undergone many significant changes. First adopted in 1775, the articles of war were a direct adaptation of the British articles of war which had evolved from the 17th century codes set down by Gustavus Adolphus. In each case these rules and regulations were separate from the civil codes, the theory being that it was the military commander's prerogative to maintain discipline through practical punishment in order to deal effectively with the demands of military life.

There were two separate justice systems, one for the Army, the articles of war, and one for the Navy, the articles of the government of the Navy. The three-level hierarchy, of the military courts—summary, special, and general courts-martial—has remained essentially the same for the last 200 years and has generally reflected the philosophy that the military commander should have control over the discipline of his men and should be the final judge as to how to best uphold the proper behavior of his troops. Until 1920 minor changes occurred in the two court systems of the Army and Navy, those revisions taking place in 1806, 1874, and 1916. Essentially, the proceedings were nonjudicial in character. The commanding officer acted as the convening authority, appointed all members of the court-martial and reviewed the decision and sentence. The accused had no right to counsel, although an officer was generally assigned as defense counsel if the accused so requested.

Since World War I, the evolution of the military codes of justice has been marked by increasing influence of civilian common law, this process usually being referred to as "civilianization." It has been the case in our history that major wars in which we have participated have focused public attention on our military justice system. This was the case after World War I—1920—World War II—1950—and Korea and Vietnam—1968. And, it occurred due to the large number of men called into military service and the public outcry regarding reports of unduly harsh sentences and arbitrary and unfair proceedings. Gen. Samuel T. Ansell, the major proponent of reform immediately following World War I, in his 1919 testimony presented numerous examples of injustices which had occurred during his tour of duty with the office of the Judge Advocate General, for instance: a 20-year sentence for being 3 months absent without leave—AWOL—40 years at hard labor for 20 days AWOL; and the conviction and immediate execution of 13 men accused of mutiny at Fort Sam Houston, Tex., without their records be-

ing reviewed, nor without any of them having the opportunity to seek clemency.

In spite of revisions subsequent to our World War I experience, public furor again occurred in response to allegedly harsh sentences during World War II.

The revision of the articles of war in 1950 saw all of the armed services brought under one system of law, the Uniform Code of Military Justice—UCMJ. Enlisted men were allowed to serve on courts-martial, the accused was allowed the right to legally qualified military or civilian counsel, and the U.S. Court of Military Appeals was established, its jurisdiction extending to the review of all sentences of less than honorable discharge or confinement of more than 1 year. The commander, however, still determined whether or not to prosecute, appointed the investigating officer, the members of the court, the counsel for the defense and prosecution, the law officer, and the court personnel. He also retained the power to review the conviction and sentences.

The latest revision of the UCMJ, having taken place in 1968, made changes in four areas. First, a military judge with new powers and duties, similar to those of a civilian judge, independent of the commander convening authority replaced the law officer. Various changes in the post-trial proceedings were made, including a provision for deferring a convicted man's beginning to serve his sentence until his case had been completely reviewed, and the authorizing of the Judge Advocate General to modify or vacate a sentence on various grounds. The Military Justice Act of 1968, in an effort to further limit command influence in courts-martial—a long-standing criticism—provided that general lectures or information courses on military justice could not be used to influence a court-martial nor could the commander consider an individual's performance in a court-martial when the commander was preparing an efficiency, effectiveness or fitness report on that individual.

The 1968 act also implemented certain changes with respect to defense counsel. It extended, with certain qualifications, to the accused in a special court-martial the right to be represented by defense counsel who was a lawyer and provided certain criteria which had to be met when a primitive discharge was adjudged. All of these modifications were designed to bring a greater degree of impartiality and provide more structural safeguards to protect the rights of the accused within the military, these reforms being adaptations of certain common law techniques and procedures.

Paralleling the civilianization of our military justice system have been similar developments in other countries. Great Britain, Canada, France, New Zealand, Australia and, most particularly, West Germany, have experienced greater civilianizing influences in many instances than we have in the United States and appear to have met with general success with no adverse effects on discipline. Great Britain, Canada, Australia, and New Zealand, for instance, have civilian tribunals reviewing military trials. In Great Britain the military Judge Advocate General is a civilian officer under

the Lord Chancellor, and in West Germany military personnel are subject to civilian courts for all specifically non-military crimes.

Functionally and organizationally, the Armed Forces is analogous to a paramilitary group—such as a police or fire department. Its judicial system has been traditionally viewed like a State's, for example, independent of the Federal judiciary. According to article II, section 2, of the Constitution, the President is the Commander in Chief of the Armed Forces. The Congress, as stated in article I, section 8, of the Constitution, has the responsibility to determine the rules and regulations for military personnel. It is by virtue of the demands of fighting under combat and the training necessary to acquire proficiency for such a contingency that puts special requirements on certain military personnel.

In this regard, the maintenance of discipline is of paramount importance in accomplishing a combat mission; these men have to work efficiently and effectively as a team. It is this fact that separates military from most civilian groups. Beyond the rules and regulations governing the area of specific crimes of a particularly military nature, such as a.w.o.l. and desertion, are crimes generally punishable in any civilian court, such as murder, theft, and forgery. Yet, the distinction between these two types of crimes has not been made within our judicial systems, nor is the analogy between the military judicial system and a State's judicial system proper.

The Armed Forces is an agency of the Federal Government, directly responsible to the President and Congress. It also comprises a great portion of our population, spends about 66 cents of each tax dollar, and does business with domestic and foreign companies, individuals, and governments. In other words, it has a great impact within our country, as well as around the world, and is a direct arm of the Government: A State does not have a commensurable impact, nor is it a Federal agency. Consequently, except in cases which are military by nature, or crimes of a civilian or military nature committed in a foreign country by military personnel, military courts should not have jurisdiction; Federal courts should. Furthermore, there is no reason why the individual's rights should not have the safeguards within the military structure that are present in our civilian sector.

There are three criteria which are helpful in determining the appropriate judicial jurisdiction for a crime committed within the territorial limits of the United States. First, is the act solely a function of military necessity. That is, does the particular act assume a criminal nature because it is committed within the military environment. AWOL and desertion, for instance, are two such crimes. If a civilian employee leaves his job for a short time or leaves without returning, in both cases not notifying and asking permission of his boss, the consequences are not of the same magnitude as they are in the military.

The second criteria relates to cases involving the physical security of all or a

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portion of our society. If an act committed in the United States in a direct manner threatens the physical security of our country the jurisdiction for the crime would fall within the purview of the Federal court system. Mutiny and aiding the enemy are certainly acts which transcend the question of maintaining proper discipline and have direct consequences of more than an internal military nature.

The third criteria is the complement of the first, namely, is an act of such a nature that it would be viewed as criminal irrespective of one's role in society. Murder and robbery are two such crimes and, consequently, would be within the jurisdiction of the Federal courts when the crime was committed by military personnel within the territory of the United States.

There is a definite positive correlation between the degree of civilization and the decreased problems of maintaining discipline. Not only do we have the experience of foreign countries to look to, but our experience reflects this as well. A good indicator is the frequency of AWOL and desertion cases. Court-martial cases in every branch of the armed services show a significant decline in those two areas over the past 18 years. In 1952, 1 year after article 15—non-judicial punishment—was instituted, there were 28,827 convictions in the Air Force for AWOL—article 86—and 881 in 1968. For the same time period the Air Force had 320 desertion convictions—article 85—in 1952, and 16 in 1968. In the Army there were 4,107 AWOL general court-martial convictions in 1955, and 1,521 in 1969; for desertion convictions the Army in 1955 there were 1,943, and in 1969 there were 197. In the Navy, in 1960, there were 3,213 convictions for AWOL and 2,901 in 1969; in 1953 the Navy had 1,191 desertion convictions, and 263 in 1969. When these figures are compared to manpower levels over the past 20 years, it is significant to note that not only does the rate of convictions generally decrease numerically, they decrease proportionately, as well. And, even more significantly, this is in spite of increased hostility, particularly among our youth—those most likely to be joining the Armed Forces—to our policy in Southeast Asia and to the draft.

Consequently, I am introducing today 19 bills which I believe will implement the necessary changes to effect a more equitable and effective justice system for military personnel. These revisions should fully eliminate command influence from courts-martial, structurally and procedurally adapt certain civilian techniques to the military judicial system, specifically delineate civilian and military crimes, and insure the maximum individual liberty to military personnel with military effectiveness.

The bills include:

A worldwide judicial system under a unified command;

Random selection of members for courts-martial juries;

Prevention of the possibility of double jeopardy between military and State jurisdictions;

Requiring the Court of Military Ap-

peals to review all cases which include sentences of a bad conduct discharge or confinement for 1 year or more;

Requiring requests to compel witnesses to testify and to compel production of other evidence to be submitted to the military judge for approval before the court-martial;

Prescribing the physical setup in the courts-martial to be similar to that of Federal district courts;

Eliminating the summary court-martial;

Eliminating the death penalty;

Eliminating the General Article, article 134, and listing the crimes previously in the article as specific crimes;

Providing for trial by Federal courts all crimes that are not specifically military in nature for military personnel in the United States;

Ratings of court personnel would be made by the chief judge;

Members of the Armed Forces who have had experience in military law and have reached the rank of Lieutenant colonel or commander would be eligible to serve on the Court of Military Review;

The military judge would have the power to suspend sentence;

Time spent in confinement before trial would be subtracted from any sentence imposed on the accused;

The Court of Military Appeals and the Courts of Military Review would have law clerks from the junior JAG Corps;

The Court of Military Appeals and the Courts of Military Review would have the power to issue orders and writs necessary to protect the rights of military personnel;

Providing for 3-year terms for members of the Courts of Military Review; and

Limiting the President's authority to suspend or modify punishment to any particular geographical area or with respect to any particular offense.

Mr. President, one additional comment I think is necessary. Civilianization is not a panacea for the military justice system. The military has been and remains in many areas ahead of the civil judicial system in our society. These aspects of the Uniform Code should not be jeopardized. Furthermore, the proposals I am introducing today are offered in a constructive spirit, not one reflecting a loss of faith in our military institutions. Any institution is a reflection of the individuals comprising it, and the problems experienced within our Armed Forces are manifestations of difficulties throughout our country.

To attain the standards of justice throughout every sector of our society, which have made this country what it is today, would be a greatly beneficial step toward constructive change and peace. And our Armed Forces are an integral part of this effort. Our ideal of equal justice for all and our reliance on individual liberty form the strength of our country and should be reinforced in every possible instance. These values and the practical consequences of them assume a particularly critical and imposing magnitude when assessing the role of our military. The legislation I have proposed today would help bring the military closer to



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the mainstream of American life and values.

It would strengthen the role of the individual within the Armed Forces both as a citizen of the United States and as one who bears a great responsibility for our physical security. Besides increasing internal discipline within the military, the proposed legislation would have the overall effect of bringing a greater sense of dignity to military service and reassure those who fear a growing military elitism within our country. Bringing our standards of justice within the military system up to, and in some cases surpassing, the standards of our civil codes would greatly enhance the role of the military within our society and of our society within the world.

Mr. President, I ask unanimous consent that the bills be received at the table and referred to the appropriate committee.

Mr. President, I ask unanimous consent that the bills be printed in the RECORD.

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

## S. 2171

A bill to improve the military justice system by establishing military judicial circuits, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 47 of title 10, United States Code, is amended as follows:

(1) Subchapter I is amended by adding at the end thereof the following new sections:

"§ 806a. Art. 6a. Armed forces judicial circuits

"(a) The United States and all areas outside thereof shall be divided in judicial circuits. Such circuits shall be known as armed forces judicial circuits (hereinafter in this chapter referred to as 'judicial circuits') and each such circuit shall be under the command of an armed forces judicial circuit officer (hereinafter in this chapter referred to as a 'judicial circuit officer').

"(b) The Judge Advocates General of the military departments are responsible for providing the personnel necessary to staff each judicial circuit. The number of personnel furnished by each Judge Advocate General to any judicial circuit shall be in direct ratio to the personnel strength in such circuit of the military department of which such Judge Advocate General is a member.

"(c) The officer assigned as the judicial circuit officer of any judicial circuit shall be selected in accordance with regulations issued by the Secretary of Defense but shall, whenever feasible, be an officer from the staff of the Judge Advocate General of the military department having the greatest personnel strength within such judicial circuit. All personnel assigned to a judicial circuit shall be under the command of the judicial circuit officer for that circuit; and the judicial circuit officer for any judicial circuit shall be under the command of the Judge Advocate General of the military department of which such judicial officer is a member.

"(d) The judicial circuit officer for each judicial circuit shall be responsible for the preparation of efficiency ratings for personnel under his command.

"§ 806b. Art. 6b. Division of armed forces judicial circuits

"(a) Each judicial circuit shall be divided into four sections as follows:

"(1) a field judiciary section;

"(2) a trial counsel section;

"(3) a defense counsel section; and

"(4) a trial review section.

Each section of a judicial circuit shall function as a separate office but the officer in command of each such section shall be under the command of the judicial circuit officer of that judicial circuit.

"(b) Under such regulations as the Secretary of Defense may prescribe, the commander of the field judiciary section of any judicial circuit shall, in appropriate cases, detail a military judge for the court-martial trial of any accused to be held within such judicial circuit and shall detail or employ qualified court reporters to record the proceedings and testimony taken before any court-martial, military commission, or court of inquiry held within such judicial circuit. Under like regulations such commander may detail or employ interpreters to interpret for any such court or commission. The commander of the field judiciary section shall be responsible for making all arrangements necessary regarding the time and place for any court-martial trial to be conducted within the judicial circuit in which he is assigned and shall be responsible for notifying the accused, trial and defense counsel, the commanding officer of the accused, and other persons directly concerned with the trial.

"(c) The trial counsel section of any judicial circuit shall detail trial counsel and assistant trial counsel (when appropriate) for the court-martial trial of any accused to be held within such judicial circuit.

"(d) The defense counsel section of any judicial circuit shall detail defense counsel and assistant defense counsel (when appropriate) for the court-martial trial of any accused to be held within such judicial circuit.

"(e) The trial review section of any judicial circuit shall review all court-martial cases held within such judicial circuit."

(2) The table of sections at the beginning of subchapter I is amended by adding at the end thereof the following:

"806a. 6a. Armed forces judicial circuits.  
"806b. 6b. Division of armed forces judicial circuits."

(3) Subsection (a) of section 826 (article 26(a)) is amended to read as follows:

"(e) Military judges shall be assigned to judicial circuits by the Judge Advocate General of the military department of which such military judge is a member. When a military judge is assigned to a judicial circuit he shall serve in the field judiciary section of that judicial circuit. A military judge shall preside over each open session of the court-martial to which he has been detailed."

(4) Subsection (c) of section 826 (article 26(c)) is amended to read as follows:

"(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail by the commander of the field judiciary section of the judicial circuit to which such military judge is assigned to duty. No person shall prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge other than a Judge Advocate. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee."

(5) The first sentence of subsection (a) of section 827 (article 27(a)) is amended to read as follows: "The commander of the

trial counsel section and the commander of the defense counsel section of the judicial circuit concerned shall detail trial counsel and defense counsel, respectively, and such assistants as the commander of each such section considers appropriate."

(6) Section 827 (article 27) is further amended by adding at the end thereof a new subsection as follows:

"(d) Defense counsel detailed to represent any accused may be a member of an armed force other than the armed force of which the accused is a member unless the accused requests that defense counsel detailed to represent him be a member of the same armed force as the accused."

(7) Section 828 (article 28) is repealed and the table of sections at the beginning of subchapter V is amended by striking out "828. 28. Detail or employment of reporters and interpreters."

(8) Section 832(a) (article 32(a)) is amended by adding at the end thereof the following: "The appropriate judicial circuit officer shall, upon written request from the convening authority, detail an investigating officer to investigate the charges. Any person detailed to investigate charges against any accused shall be so detailed by reason of his impartiality, experience, education, and temperament, and shall not be under the command of the forwarding officer."

(9) The second sentence of subsection (b) of section 832 (article 32(b)) is amended to read as follows: "Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the commander of the defense counsel section of the appropriate judicial circuit."

(10) The last sentence of section 832(b) (article 32(b)) is amended to read as follows: "Upon completion of the investigation, the investigating officer shall submit a report of his investigation to the appropriate judicial circuit officer for review. The judicial circuit officer may disagree with any recommendation made by the investigating officer with respect to the trial of any charge, but if the judicial circuit officer disagrees with the recommendations of the investigating officer that any charges not be referred to a general court-martial for trial, the judicial circuit officer shall make a written report on each issue of fact and law raised by the investigating officer and indicate his reasons for determining there is legally sufficient evidence for referring such charges to a general court-martial for trial."

(11) Section 834(a) (article 34(a)) is amended by adding at the end thereof the following: "If the investigating officer or the appropriate judicial circuit officer recommends against a trial of any charge by general court-martial, the convening authority shall, if he disagrees with such recommendation, promptly submit the charge to the Judge Advocate General of the armed force of which the convening authority is a member for review by such Judge Advocate General. The Judge Advocate General shall review the charge and determine whether it should or should not be tried by general court-martial. He shall, as soon as practicable after receiving the charge for review, notify the convening authority of his decision and his decision thereon shall be final."

(12) Subsection (b) of section 838 (article 38(b)) is amended by adding at the end thereof a new sentence as follows: "The commander of the defense counsel section of the appropriate judicial circuit is authorized, whenever he deems such action appropriate in the court-martial case of any accused, to detail to such case as defense counsel a judge advocate from the appellate defense counsel section of the Office of the Judge Advocate General of the military department of which such commander is a mem-

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ber; and such counsel shall be permitted to represent the accused through appellate review of the case."

(13) Section 854 (article 54) is amended by adding at the end thereof a new subsection as follows:

"(d) The commander of the field judiciary section of the judicial circuit concerned shall require that a verbatim record of the general or special court-martial trial of any accused be made if the accused requests that such a record be made and the commander determines that lengthy or complicated testimony is expected at the trial."

(14) Section 860 (article 60) is amended to read as follows:

"After a trial by court-martial the record shall be forwarded to the appropriate judicial circuit for review and action thereon by the review section of such circuit."

(15) Section 861 (article 61) and the catchline thereof are amended as read as follows:

"§ 861. Art. 61. Review by the judicial circuit

"The review section of each judicial circuit shall review the record of all court-martial trials conducted within such judicial circuit. If any part of a sentence imposed by a general or special court-martial trial remains after review by the judicial circuit, the record of such trial shall be forwarded by the judicial circuit to the Judge Advocate General of the armed force of which the judicial circuit officer of the judicial circuit concerned is a member."

(16) The table of sections at the beginning of subchapter IX is amended by striking out "861. 61. Same—General court-martial records."

and inserting in lieu thereof

"861. 61. Review by judicial circuit."  
(17) Subsections (a) and (b) of section 862 (article 62) are amended by striking out "convening authority" each time it appears and inserting in lieu thereof "judicial circuit officer of the judicial circuit concerned".

(18) Subsection (a) of section 863 (article 63) is amended by striking out "convening authority" and inserting in lieu thereof "judicial circuit officer of the judicial circuit concerned".

(19) The catchline of section 864 (article 64) is amended to read as follows:

"§ 864. Art. 64. Approval by the judicial circuit officer"

(20) Section 864 (article 64) is amended by striking out "convening authority" and inserting in lieu thereof "judicial circuit officer of the judicial circuit concerned".

(21) The table of sections at the beginning of subchapter IX is amended by striking out "864. 64. Approval by the convening authority."

and inserting in lieu thereof

"864. 64. Approval by the judicial circuit officer."

(22) Section 865 (article 65) and the catchline thereof are amended to read as follows:

"§ 865. Art. 65. Disposition of records after review by the appropriate judicial circuit

"(a) When the judicial circuit officer of the judicial circuit concerned has taken final action in a general or special court-martial case, he shall send the entire record, including his action thereon, to the appropriate Judge Advocate General.

"(b) If the sentence of a special court-martial as approved by the judicial circuit officer includes a bad-conduct discharge, whether or not suspended, or confinement for four months or more, the record shall be sent to the appropriate Judge Advocate General to be reviewed by a court of military review.

"(c) All other special and summary court-martial records shall be reviewed by the re-

view section of the appropriate judicial circuit and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulations."

(23) The table of sections at the beginning of subchapter IX is amended by striking out

"865. 65. Disposition of records after review by the convening authority."

and inserting in lieu thereof

"865. 65. Disposition of records after review by the appropriate judicial circuit."

(24) Subsection (b) of section 866 (article 66(b)) is amended by striking out "one year or more" and inserting in lieu thereof "four months or more".

(25) The first sentence of subsection (c) of section 866 (article 66(c)) is amended by striking out "convening authority" and inserting in lieu thereof "judicial circuit officer".

(26) Subsection (d) of section 867 (article 67(d)) is amended

(A) by striking out "convening authority" in the first sentence and inserting in lieu thereof "judicial circuit officer"; and

(B) by striking out the last sentence and inserting in lieu thereof the following: "The Court of Military Appeals may take action in any case with respect to law or fact."

(27) Section 868 (article 68) is amended to read as follows:

"The Secretary concerned may direct the Judge Advocate General to establish a branch office within any judicial circuit. The branch office shall be under an Assistant Judge Advocate General who may perform for that judicial circuit, under the general supervision of the Judge Advocate General, the duties for that judicial circuit which the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President."

(28) Section 873 (article 73) is amended by striking out "convening authority" in the first sentence and inserting in lieu thereof "judicial circuit officer"

SEC. 2. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

## S. 2172

A bill to amend chapter 47 of title 10, United States Code, to provide that judges of the Courts of Military Review shall be appointed by the President, to confer authority on the Court of Military Appeals to issue orders and writs necessary to protect the rights of military personnel, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (a) of section 866 (article 66(a)) of title 10, United States Code, is amended by striking out the first sentence and inserting in lieu thereof the following: "The President shall establish within each of the armed forces a Court of Military Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. Judges of the Courts of Military Review shall be appointed by the President for terms of three years. The Court of Military Review established for each armed force shall be assigned for administrative purposes only to the office of the Judge Advocate General of that armed force. To be eligible for appointment to the Court of Military Review a person shall be experienced in military justice. No member of the armed forces below the grade of Lieutenant Colonel or Commander shall be eligible for appointment to the Court of Military Review."

(b) Subsection (a) of section 866 (article 66(a)) is further amended by—

(A) striking out "assigned" in the third sentence and inserting in lieu thereof appointed";

(B) striking out the fourth sentence and inserting in lieu thereof the following: "The President shall designate one of the appellate military judges of each Court of Military Review established by the President under this subsection to serve as chief judge of that Court of Military Review."; and

(C) adding at the end of such subsection a new sentence as follows: "The chief judge shall report only to the Judge Advocate General of the armed force concerned."

(c) Subsections (f) and (g) of section 866 (article 66(c)) are amended to read as follows:

"(f) The President shall prescribe rules of procedure for Courts of Military Review established under this section.

"(g) A member of the armed forces serving as a member of the Court of Military Review, other than a chief judge, shall during his term on such court be rated on his performance of duty by the chief judge of such court. Whenever the chief judge of a Court of Military Review is a member of the armed forces, he shall be rated on his performance of duty by the Judge Advocate General of the armed force of which such chief judge is a member. Appellate military judges of the Military Courts of Review may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, for mental or physical disability, or for extreme military exigency, but for no other cause."

(d) Such section 866 (article 66) is further amended by adding at the end thereof a new subsection as follows:

(i) The Judge Advocate General of each armed force shall appoint from the ranks of junior ranking judge advocates such number of officers to serve as law clerks to the Court of Military Review of that armed force as he deems appropriate. An officer assigned to duty as a law clerk under this subsection may not serve in such capacity for any period in excess of two years."

SEC. 2. (a) Section 867 (article 67) of title 10, United States Code is amended by adding at the end thereof the following new subsections:

"(h) The Court of Military Appeals shall have authority to issue any order or writ necessary to protect any right under the Constitution, any law of the United States, or any military regulation of any person subject to the provisions of this chapter.

"(i) The Judge Advocate General of each armed force shall make available to the Court of Military Appeals from the ranks of junior ranking judge advocates such number of officers as the Chief Judge of that court may request to serve as law clerks to the Court of Military Appeals. At no time shall the number of officers assigned to duty as law clerks to such court exceed six. An officer assigned to duty as a law clerk under this subsection may not serve in such capacity for any period in excess of two years."

SEC. 3. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

## S. 2173

A bill to amend chapter 47 of title 10, United States Code, so as to eliminate summary courts-martial from the military justice system

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 47 of title 10, United States Code, is amended as follows:

(1) The first sentence of section 810 (article 10) is amended by striking out "; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement"

(2) Section 816 (article 16) is amended by adding at the end of clause (1) (B) the word "and"; by striking out "and" at the end of clause 2(C) and inserting in lieu thereof a period; and by striking out clause (3).

(3) Section 820 (article 20) is repealed.

(4) Section 824 (article 24) is repealed.

(5) Subsections (b) and (c) of section 843 (article 43) are amended by striking out "summary" and inserting in lieu thereof "special".

(6) Section 865(c) (article 65(c)) is amended by striking out clause (3) and redesignating clauses (4) through (7) as clauses (3) through (6), respectively.

(8) Section 4711 is amended—

(A) by striking out "summary court-martial" in subsection (a) and inserting in lieu thereof "court of inquiry or investigating officer"; and

(B) by striking out "summary court-martial" in subsections (b) and (c) and inserting in lieu thereof "court of inquiry or investigating officer, as the case may be,".

(9) Section 4712 is amended—

(A) by striking out "summary court-martial" in subsection (b) and inserting in lieu thereof "court of inquiry or investigating officer"; and

(B) by striking out "summary court-martial" each time it appears in subsections (c), (d), (e), (f), and (g) and inserting in lieu thereof "court of inquiry or investigating officer, as the case may be,".

(10) Section 9711 is amended—

(A) by striking out "summary court-martial" in subsection (a) and inserting in lieu thereof "court of inquiry or investigating officer"; and

(B) by striking out "summary court-martial" in subsections (b) and (c) and inserting in lieu thereof "court of inquiry or investigating officer, as the case may be,".

(11) Section 9712 is amended—

(A) by striking out "summary court-martial" in subsection (b) and inserting in lieu thereof "court of inquiry or investigating officer"; and

(B) by striking out "summary court-martial" each time it appears in subsections (c), (d), (e), (f), and (g) and inserting in lieu thereof "court of inquiry or investigating officer, as the case may be,".

Sec. 2. (a) Section 326 of title 32, United States Code, is amended by striking out "general, special, and summary" and inserting in lieu thereof "general and special".

(b) Section 329 of such title is repealed.

(c) Section 332 of such title is amended by striking out "or a summary court officer".

Sec. 3. The amendments made by this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

#### S. 2174

A bill to confer jurisdiction on United States district courts to grant relief in certain cases involving military personnel where the relief available to such personnel under military law or regulation is inadequate for the protection of the constitutional rights of such personnel, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That subchapter IX of chapter 47 of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 876a. Art. 76a. Special jurisdiction of United States district courts

"Any United States district court shall have jurisdiction to hear and grant appropriate relief in any case in which any person subject to this chapter claims a denial of his constitutional rights where such claim is based upon the action of a court-martial or other military action and such person shows

that the relief available to him under military law or regulation is inadequate to protect the constitutional rights to which he is entitled. Any such court shall also have jurisdiction to hear and grant appropriate relief to any such person where such person shows that relief by the court is necessary to prevent a chilling effect upon the rights of such person, or other persons similarly situated, under the first amendment of the Constitution of the United States."

Sec. 2. Subsection (c) of section 838 (article 38(c)) is amended by inserting "(1)" immediately after "(c)" and by adding at the end thereof a new paragraph as follows:

"(2) The defense counsel is authorized to file an action in any United States district court when he considers such action necessary to protect the constitutional rights of any accused he has been detailed to represent; and the costs of such action shall be paid for by the United States."

Sec. 3. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

#### S. 2175

A bill to amend section 803 of title 10, United States Code, relating to jurisdiction for the trial of military personnel

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 803 (article 3) of title 10, United States Code, is amended by adding at the end thereof a new subsection as follows:

"(d) Where there is a disagreement between civil authorities and the military authorities with respect to which has jurisdiction to try an accused person subject to this chapter for any offense, the accused shall have a right to elect to be tried in a civil court or military court; but the foregoing shall not prevent a subsequent trial of the accused (1) by court-martial if it is judicially determined that the civil authorities did not have proper jurisdiction to try the accused for the offense or, (2) by a civil court if it is judicially determined that the accused was not subject to trial by court-martial for the offense."

Sec. 2. Section 814(a) (article 14(a)) of title 10, United States Code, is amended by striking out "Under" and inserting in lieu thereof "Subject to the provisions of section 803(d) (article 3(d)) and under".

Sec. 3. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

#### S. 2176

A bill to amend chapter 47 of title 10, United States Code, so as to prescribe certain requirements with respect to the physical arrangements of furniture and other facilities of rooms in which courts-martial trials are conducted, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That subchapter XI of chapter 47 of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 941. Art. 941. Physical arrangement of court-martial room; seating arrangement of persons serving on courts-martial; judicial apparel

"(a) The physical arrangement of the furniture and other facilities of any room in which any court-martial trial is conducted shall be as nearly identical to the arrangement of such furniture and facilities in a Federal district court room as practicable.

"(b) There shall be no requirement, for-

mal or informal, for the seating arrangement of persons serving as members of a court-martial to be seated according to rank or grade, except that the president of a general or special court-martial may be required to be seated in the center of the seating arrangement for members of the court or at the end of such seating arrangement which is nearest the military judge, if one has been detailed.

"(c) Military judges shall wear judicial robes while presiding at any general or special court-martial trial."

(48) The table of sections at the beginning of subchapter XI is amended by adding at the end thereof a new item as follows:

"941. 41. Physical arrangement of court-martial room; seating arrangement of persons serving on courts-martial; judicial apparel."

Sec. 2. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

#### S. 2177

A bill to amend section 825 (article 25) of title 10, United States Code, relating to eligibility standards for service on courts-martial and the method of selecting military personnel for such service

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 825 (article 25) of title 10, United States Code, and the catchline thereof are amended to read as follows:

"§ 825. Art. 25. Who may serve on general and special courts-martial; selection for service

"(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

"(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

"(c) (1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally or through counsel has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-half of the total membership of the court.

"(2) In this article, the word 'unit' means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

"(d) Not less than one-half of the total membership of a general or special court-martial shall be composed of members of the same rank and grade as the accused if the accused, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial, or in the absence of such a session, before the court is assembled for his trial, personally or through counsel requests in writing that the court membership be so composed.

"(e) (1) The convening authority shall be responsible under regulations prescribed by the Secretary of Defense and in accordance with this subsection, for selection of persons to serve on general and special courts-martial for the trials of accused persons conducted within the command of such convening authority.

"(2) The name of every officer and warrant officer within the command of the convening authority who is eligible to serve as a member of a general or special court-martial shall be included on a court-martial master roll and the name of every enlisted man within such command who is eligible to serve as a member of a general or special court-martial shall be included on a separate court-martial master roll.

"(3) The selection of officers to serve as members of courts-martial trials shall be made by a random selection method from the court-martial master roll of officers and warrant officers. The names of enlisted personnel shall be selected by a random selection method from the court-martial master roll of names of enlisted members whenever an accused has requested that the court-martial be composed in part of enlisted members. The random selection method shall be used for the selection of members of a court-martial for each separate trial.

"(4) No commissioned officer, warrant officer, or enlisted member shall be exempt from serving as a member of a general or special court-martial unless exempted by Presidential directive. The convening officer may relieve any officer or enlisted member from serving as a member of a court-martial upon presentation of evidence that such service would result in extreme personal hardship or materially interfere with the performance of urgent military duties.

"(5) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

"(6) No member of an armed force shall be eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case."

Sec. 2. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

#### S. 2178

A bill to amend section 810 of title 10, United States Code, relating to the confinement of military personnel prior to trial by courts-martial

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 810 (article 10) of title 10, United States Code, is amended (1) by inserting "(a)" immediately before "Any" in the first sentence thereof, and (2) by adding at the end of such section a new subsection as follows:

"(b) Any person subject to this chapter charged with an offense under this chapter shall, upon his or his counsel's request, be released from confinement pending trial of the charges against him unless substantial and convincing evidence is presented to the appropriate Judge Advocate General, or to a military judge designated by the appropriate Judge Advocate General, that pre-trial confinement is necessary to assure the presence of the accused for trial and the Judge Advocate General or law officer, as the case may be, issues an order authorizing the continued pretrial confinement of the accused."

Sec. 2. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

#### S. 2179

A bill to amend chapter 47 of title 10, United States Code, to require that all requests to compel witnesses to appear and testify and to compel the production of other evidence before courts-martial trials be submitted to a military judge for approval, and to provide for the inadmissibility of certain evidence at courts-martial trials

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 846 (article 46) of title 10, United States Code, is amended by inserting after the first sentence a new sentence as follows: "All requests to compel witnesses to appear and testify and to compel the production of other evidence shall be submitted to the military judge if one has been detailed to the court-martial case or to a military judge designated for such purpose by the appropriate Judge Advocate General if a military judge has not been detailed to the case; and the military judge shall approve or disapprove such requests in accordance with the regulations prescribed by the President."

Sec. 2. (a) The catchline of section 850 (article 50) of title 10, United States Code, is amended by adding at the end thereof the following: "; inadmissibility of certain evidence".

(b) Section 850 (article 50) of such title is further amended by adding at the end thereof a new subsection as follows:

"(d) Any report or other material which cannot be made available for examination by the accused and his defense counsel shall be inadmissible as evidence in a court-martial."

(c) The table of sections at the beginning of subchapter VII of such title is amended by adding "inadmissibility of certain evidence" immediately after "Admissibility of records of courts of inquiry."

Sec. 3. The provisions of this Act shall become effective on the first day of the sixth calendar month following the month in which this Act is enacted.

#### S. 2180

A bill to amend chapter 47 of title 10, United States Code, to authorize the military judge of any court-martial to suspend the sentence adjudged against an accused tried by such court-martial

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That subchapter VIII of chapter 47 of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 858b. 58b. Sentences: authority of military judge to suspend

"The military judge of any general or special court-martial may suspend the execution of any sentence or any part of any sentence, except a death sentence, adjudged against any accused by any court-martial at which such military judge presided as military judge."

Sec. 2. The table of sections at the beginning of subchapter VIII of chapter 47 of title 10, United States Code, is amended by adding at the end thereof the following:

"858b. 58b. Sentences: authority of military judge to suspend."

#### S. 2181

A bill to amend section 857 of title 10, United States Code, to require that pre-trial confinement of members of the Armed Forces be deducted from the term of any sentence to confinement adjudged by a court-martial

*Be it enacted by the Senate and House of Representatives of the United States of*

*America in Congress assembled*, That section 857(b) (article 57(b)) is amended by adding at the end thereof a new sentence as follows: "Any period during which the accused is held in confinement before or during trial shall be deducted from any period of confinement to which he is sentenced, unless the confinement of the accused during such period was imposed pursuant to the sentence of a previous court-martial trial; but in no case shall any person be credited more than once for the same period of pre-trial confinement."

Sec. 2. The amendment made by the first section of this Act shall be applicable to persons sentenced by courts-martial on and after the date of enactment of this Act.

#### S. 2182

A bill to amend chapter 59 of title 10, United States Code, to prohibit the administrative discharge of enlisted members of the Armed Forces under conditions other than honorable

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That chapter 59 of title 10, United States Code, is amended by inserting immediately after section 1161 a new section as follows:

"§ 1161a. Enlisted members: limitations on administrative discharges

"(a) No enlisted member may be discharged from any armed force under conditions other than honorable except—

"(1) by sentence of a special or general court-martial;

"(2) in commutation of a sentence of a special or general court-martial; or

"(3) in time of war, by order of the Secretary concerned.

"(b) Notwithstanding the provisions of subsection (a), the Secretary concerned may drop from the rolls of any armed force any enlisted member (1) who has been absent without authority for at least thirty days, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final."

Sec. 2. The table of sections at the beginning of chapter 59 of title 10, United States Code, is further amended by adding immediately below

"1161. Commissioned officers: limitations on dismissal."

the following:

"1161a. Enlisted members: limitations on administrative discharges."

#### S. 2183

A bill to amend chapter 47 of title 10, United States Code, to limit the jurisdiction of courts-martial, to eliminate the death penalty, to define certain additional offenses under such chapter, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That chapter 47 of title 10, United States Code, is amended as follows:

(1) The third sentence of section 804(a) (article 4(a)) is amended by striking out "or death".

(2) Section 818 (article 18) is amended by—

(A) striking out "including the penalty of death when specifically authorized by this chapter" in the first sentence; and

(B) by striking out the second sentence.

(3) Section 819 (article 19) is amended by—

(A) striking out the first sentence and inserting in lieu thereof the following: "Sub-



ject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter," and

(B) striking out "death," in the second sentence.

(4) Section 820 (article 20) is amended by—

(A) striking out "noncapital" in the first sentence; and

(B) striking out "death," in the last sentence thereof.

(5) Section 821 (article 21) is amended by—

(A) inserting "(b)" at the beginning of the present text of such section;

(B) inserting a subsection (a) immediately above the present text of such section as follows:

"(a) No person subject to this chapter may be tried by courts-martial for any offense committed within the United States or in any territory or possession of the United States except for an offense described in section 883 (article 83); 884 (article 84); 885 (article 85); 886 (article 86); 887 (article 87); 890 (article 90); 891 (article 91); 892 (article 92); 893 (article 93); 895 (article 95); 896 (article 96); 897 (article 97); 898 (article 98); 907 (article 107); 980 (article 108); 909 (article 109); 912 (article 112); 913 (article 113); 915 (article 115); 916 (article 116), to the extent that a riot or breach of the peace was committed on a military installation; 9166 (article 116b), to the extent that the alleged offense under such section involved a court-martial case; 927a (article 127a), to the extent that the alleged offense under such section involved a court-martial case; or 931 (article 131), to the extent that the alleged offenses under this chapter committed within the United States or in any territory or possession of the United States by any person subject to this chapter shall be tried in the district court of the United States for the district in which the offense was committed or in which the accused is found; and jurisdiction is hereby conferred upon such courts for the trial of such offenses"; and

(C) striking out the catchline and inserting in lieu thereof the following:

"§ 821. Art. 21. Limitation on jurisdiction of courts-martial."

(6) The table of sections at the beginning of subchapter IV is amended by striking out

"821.21. Jurisdiction of courts-martial not exclusive."

and inserting in lieu thereof

"821. 21. Limitation on jurisdiction of courts-martial."

(7) Section 845(b) (article 45(b)) is amended by striking out the first sentence thereof, and by striking out the word "other" in the second sentence thereof.

(8) Section 849 (article 49) is amended by—

(A) striking out "not capital" in subsection (d); and

(B) striking out subsections (e) and (f).

(9) Section 850(b) (article 50(b)) is amended by striking out "capital cases or".

(10) Section 852 (article 52) is amended by—

(A) striking out subsections (a) and (b) and inserting in lieu thereof the following:

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

"(b) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken. All other sentences

shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(11) Section 856 (article 56) is amended to read as follows:

"§ 856. Art. 56. Maximum limits

"The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense. The President shall not have authority to modify or suspend punishment with respect to any particular geographical area or with respect to any particular offense."

(12) Section 866(b) (article 66(b)) is amended by striking out "to death,"

(13) Section 867(b)(1) (article 67(b)(1)) is amended by striking out "or extends to death."

(14) Section 871 (article 71) is amended by—

(A) striking out "extending to death or" in the first sentence of subsection (a);

(B) striking out "except a death sentence" in second sentence of subsection (a); and

(C) striking out "except a death sentence" in the second sentence of subsection (d).

(15) Section 885(c) (article 85(c)) is amended to read as follows:

"(c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct."

(16) Section 890 (article 90) is amended by striking out everything after the semicolon in clause (2) and inserting in lieu thereof the following: "shall be punished as a court-martial may direct."

(17) Section 894(b) (article 94(b)) is amended by striking out "by death or such other punishment."

(18) Section 899 (article 99) is amended by striking out in the material following clause (9) the following: "by death or such other punishment."

(19) Section 900 (article 100) is amended by striking out "by death or such other punishment."

(20) Section 901 (article 101) is amended by striking out "by death or such other punishment."

(21) Section 902 (article 102) is amended by striking out "suffer death or such other punishment" and inserting in lieu thereof "be punished."

(22) Section 904 (article 104) is amended by striking out "suffer death or such other punishment" and inserting in lieu thereof "be punished."

(23) Section 906 (article 106) is amended by striking out "by death" and inserting in lieu thereof "as the court-martial or military commission, as the case may be, may direct."

(24) Section 910(a) (article 110(a)) is amended by striking out "suffer death or such other punishment" and inserting in lieu thereof "be punished."

(25) The text of section 913 (article 113) is amended to read as follows:

"Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished as a court-martial may direct."

(26) Section 918 (article 118) is amended by striking out "suffer death or imprisonment for life as a court-martial may direct" and inserting in lieu thereof "suffer imprisonment for life"

(27) Section 920 (article 120) is amended by striking out "by death or such other punishment."

(28) Subchapter X is amended by inserting after section 909 (article 109) a new section as follows:

"§ 909a. Art. 109a. Receiving stolen goods

"Any person subject to this chapter who with intent to defraud, receives or buys anything of value which shall have been stolen or obtained by robbery, knowing or having

cause to believe the same to have been stolen or so obtained by robbery, shall be punished as a court-martial may direct.

(29) The table of sections at the beginning of subchapter X is amended by inserting

"909a. 109a. Receiving stolen goods."

immediately below

"909. 109. Property other than military property of the United States—  
Waste, spoilage, or destruction."

(30) Subchapter X is amended by inserting after section 912 (article 112) a new section as follows:

"§ 912a. Art. 112a. Manufacture or possession of a narcotic drug

"Any person subject to this chapter who manufactures, possesses, has under his control, sells, prescribes, administers, dispenses, or compounds any narcotic drug, unless authorized by competent authority to do so, shall be punished as a court-martial may direct. As used in this section the term 'narcotic drug' shall have the same meaning ascribed to the term 'narcotic drugs' in the first section of the Uniform Narcotic Drug Act, approved June 30, 1938 (52 Stat. 785; D.C. Code, sec. 33-401)."

(31) The table of sections at the beginning of subchapter X is amended by inserting

"912a. 112a. Manufacture or possession of a narcotic drug."

immediately below

"912. 112. Drunk on duty."

(32) Chapter X is amended by inserting after section 914 (article 114) a new section as follows:

"§ 914a. Art. 114a. Carrying a concealed weapon

"Any person subject to this chapter who carries concealed on or about his person, except in his dwelling house or on other real property possessed by him, a pistol or other deadly or dangerous weapon capable of being concealed, without official authority to carry such weapon concealed, shall be guilty of carrying a concealed weapon and shall be punished as a court-martial may direct."

(33) The table of sections at the beginning of subchapter X is amended by inserting

"914a. 114a. Carrying a concealed weapon."

immediately below

"914. 114. Dueling."

(34) Section 916 (article 116) is amended to read as follows:

"§ 916. Art. 116. Riot or breach of peace  
(a) Any person subject to this chapter who causes or participates in any riot shall be punished as a court-martial may direct.

(b) Any person subject to this chapter, who, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby—

(1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

(2) congregates with others on a public street and refuses to move on when ordered by a proper official;

(3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons;

(4) interferes with any person in any place by jostling against such person or unnecessarily crowding him or by placing a hand in the proximity of such person's pocketbook, or handbag; or

(5) causes a disturbance in any public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying other persons aboard such public conveyance, shall be punished as a court-martial may direct."

(c) Any person subject to this chapter

who congregates or assembles in any street, avenue, alley, road, or highway, or in or around any public building or enclosure, or any park or reservation, or at the entrance of any private building or enclosure, and engages in loud and boisterous talking or other disorderly conduct, or insults or makes rude or obscene gestures or comments to or about persons passing by, or within their hearing, or crowds, obstructs, or incommodes, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or enclosure shall be punished as a court-martial may direct.

"§ 916b. Art. 116b. Obstructing justice

"Any person subject to this chapter who corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer of any court, or any member of a court-martial, including the trial or defense counsel or a military judge, or any witness of a court-martial, in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, shall be punished as a court-martial may direct."

(35) The table of sections at the beginning of subchapter X is amended by inserting

"916b. 116b. Obstructing justice."

immediately below

"916. 116. Riot or breach of peace."

(36) Section 919(b) (article 119(b)) is amended by redesignating clause (2) as clause (3) and by striking out clause (1) and inserting in lieu thereof the following:

"(1) by negligence;

"(2) by culpable negligence; or"

(37) Subchapter X is amended by inserting after section 920 (article 120) the following:

"§ 920a. Art. 120a. Adultery

"Any person subject to this chapter who commits adultery shall be punished as a court-martial may direct. When the act is committed between a married woman and a man who is unmarried both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man only shall be deemed guilty of adultery."

"§ 920b. Art. 120b. Lewd, indecent, or obscene acts

"(a) Any person subject to this chapter who makes any obscene or indecent exposure of his or her person, or makes any lewd, or obscene, or indecent sexual proposal, or commits any other lewd, obscene, or indecent act shall be punished as a court-martial may direct for each and every such offense.

"(b) Any such person who commits an offense described in subsection (a), knowing he is in the presence of a child under the age of sixteen years, shall be punished as a court-martial may direct for each and every such offense."

"(c) Consent by a child to any indecent proposal or act prescribed by subsection (a) shall not be a defense, nor shall lack of knowledge of the child's age be a defense."

(38) The table of sections at the beginning of subchapter X is amended by inserting the following:

"920a. 120a. Adultery.

"920b. 120b. Lewd, indecent, or obscene acts."

immediately after

"920. 120. Rape and carnal knowledge."

(39) Subchapter X is amended by inserting after section 920 (article 120) the following:

"§ 921a. Art. 121a. False pretenses

"Any person subject to this chapter who, by any false pretenses, with intent to defraud, obtains from any other person anything of value, or procures the execution and

delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, or maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and any person subject to this chapter who fraudulently sells, barters, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense, shall be punished as a court-martial may direct."

(40) The table of sections at the beginning of subchapter X is amended by inserting

"921a. 121a. False pretenses."

immediately after

"921. 121. Larceny and wrongful appropriation."

(41) Subchapter X is amended by inserting after section 927 (article 127) a new section as follows:

"927a. Art. 127a. Bribery

"Any person subject to this chapter who—  
(1) promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer or to any member of the Armed Forces, or to any person acting in any official function, or to any member of a court-martial, including trial counsel, defense counsel, or military judge, or any witness of a court-martial, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud; or  
(2) directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatsoever from any person (A) for giving, procuring, or aiding to give or procure any office, place, or promotion, or (B) for the purpose of influencing his decision, action, or verdict on any official question, matter, cause, or proceeding; is guilty of bribery and shall be punished as a court-martial may direct."

(42) The table of sections at the beginning of subchapter X is amended by inserting  
"927a. 127a. Bribery."  
immediately below  
"927. 127. Extortion."

(43) Section 928 (article 128) is amended to read as follows:

"(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm;

(2) assaults another person with intent to kill or to commit rape or sodomy, or to commit robbery, or by mingling poison with food, drink, or medicine with intent to kill;

(3) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct."

(44) Section 931 (article 131) is amended by inserting "(a)" immediately before "Any", and by adding at the end of such section a new subsection as follows:

"(b) Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be punished as a court-martial may direct."

(45) The catch line of section 931 (article 131) is amended to read as follows:

"§ 931. Art. 131. Perjury and subornation of perjury."

(46) The table of sections at the beginning of subchapter X is amended by striking out "931. 131. Perjury."

and inserting in lieu thereof

"931. 131. Perjury and subornation of perjury."

(47) Section 933 (article 133) is amended to read as follows:

"§ 933. Art. 133. Conduct unbecoming an officer and gentleman

"Any commissioned officer, cadet, or midshipman who is guilty of conduct unbecoming an officer and a gentleman shall be subject to punishment under section 815 (article 15) of this title."

(48) Section 934 (article 134) is repealed.

(49) The section analysis at the beginning of subchapter X is amended by striking out "934. 134. General article."

By Mr. BAYH:

S. 2185. A bill to carry out the recommendations of the Presidential Task Force on Women's Rights and Responsibilities, and for other purposes. Referred to the Committee on the Judiciary.

INTRODUCTION OF THE WOMEN'S EQUALITY ACT

Mr. BAYH. Mr. President, for over a hundred years this body has been engaged in an effort to insure true equality of rights for all our citizens. We have made many important strides in the last decade, especially with the passage of several major civil rights acts. But despite all our efforts, many important gaps remain to be filled. To my mind our greatest legislative failure relates to our continued refusal to recognize and take steps to eradicate the pervasive, divisive, and unwarranted discrimination against a majority of our citizens, the women of this country.

Today I am introducing a bill, the Women's Equality Act of 1971, which would narrow the gap between our obligations and our performance by giving to women the benefit of the major civil rights legislation of the last decade, legislation which confers both legal rights and—of equal importance—the means to enforce those rights. This bill, similar to one introduced in the House by Congressman ABNER MIKVA, a long-time foe of discrimination in every form, implements the recommendations of the President's Task Force on Women's Rights and Responsibilities.

SUMMARY OF THE WOMEN'S EQUALITY ACT

The Civil Rights Act of 1964, which forms the basis of our civil rights enforcement activities, is meant to eradicate discrimination in five major areas: public accommodations, public facilities, public education, federally assisted programs, and employment. Of these provisions, only one—the section dealing with equal employment opportunities—outlaws discrimination on the basis of sex. And the agency which enforces that section lacks adequate power to enforce its decisions. The Women's Equality Act would prohibit sex discrimination in each of these areas, and it would strengthen the employment provisions of the act.

A. EMPLOYMENT DISCRIMINATION

This bill would extend the provisions of the Equal Pay Act—which requires