

But in recent years, the environmental crisis has aroused in us what Albert Schweitzer called "reverence for life." And it is in the spirit of reverence for life that I speak on behalf of three measures concerning animal protection: Senate Joint Resolution 84, S. 1315, and S. 1116.

Senate Joint Resolution 84 establishes a Tule Elk National Wildlife Refuge. I am delighted to have joined Senator CRANSTON of California and Senator NELSON of Wisconsin in introducing this resolution. Moreover, we have acted in close cooperation with Representative DINGELL, of Michigan, who introduced the same measure in the House.

The tule elk, which once flourished in the grasslands of the Sacramento and San Joaquin Valleys of California, are near extinction. Only about 290 survive—far fewer than the 2,000 conservationists believe necessary to insure survival of the species.

In their struggle to survive, the tule elk have been hunted by fur trappers, slaughtered by meat producers, pushed from their grazing lands by settlers and developers, and forced by ranchers to compete with livestock for food. In 1885, their numbers fell as low as 28. The elk survive today, not in their native territory, but in areas where they were transplanted in previous efforts to save them. Their future still remains in question.

Senate Joint Resolution 84 authorizes the Secretary of the Interior to increase the size of the tule elk herd to at least 2,000 members by acquiring lands for refuge, relocating elk when necessary, and cooperating with the State of California in managing the herd.

The second measure, S. 1315, protects ocean mammals. I joined Senator HARRIS of Oklahoma in introducing this bill to limit the unnecessary killing of whales, seals, otters, sea lions, porpoises, and polar bears.

S. 1315 prevents U.S. citizens and ships from taking ocean mammals and prohibits the importation of ocean mammals or their parts into the United States. It provides that international negotiations be undertaken toward banning the decimation of ocean mammals. And it establishes a Commission to assist the Aleuts of the Pribilof Islands in developing an economy to take the place of the slaughter of seals.

As the most affluent Nation, consuming the largest portion of products made from ocean mammals, we should be the first Nation to curb the abuses of affluence. There was a time when products of ocean mammals were necessary for day to day living in some parts of our country. But today, no product of these animals is essential to human welfare or survival. Indeed, we are becoming increasingly aware that human survival itself is partially dependent on the survival of these mammals in sufficient numbers to maintain ecological balance. Therefore, it is time to halt the brutal slaughter of ocean mammals, whose products may be afforded only by the affluent, but whose preservation can benefit all mankind.

The third measure is S. 1116. I joined Senator JACKSON of Washington in introducing this bill which would end the kill-

ing of wild horses and burros on public lands.

Once there were more than 2 million wild horses and burros roaming the West. Today there are less than 17,000. Once these animals played a major role in the exploration and settlement of the West. Today they are being used for target practice, hunted for dog food, and harassed by sadistic profiteers.

This bill requires the establishment and maintenance of at least 12 refuges by the Secretary of the Interior. It requires the Secretary to cooperate with local governments and landowners to protect the animals, and it stipulates penalties for violation.

Surely the thundering hooves of wild horses are the drumbeat of the Western American spirit. But without immediate Federal action, their power and grace, their majestic beauty will be lost forever—in only 10 years.

That would be an irreconcilable tragedy. Our children would inherit a West without wild horses. And that would be no West at all.

Mr. President, wild horses and burros, ocean mammals, and tule elk are three groups of animals with much in common. They are warmblooded animals that have been coldbloodedly killed by man, often imprudently for profit or perverse pleasure. They are intelligent animals that have been slain relentlessly by man, so long ignorant that their existence contributes to his own. And they are noble animals whose continued slaughter can only annihilate our aspirations to nobility.

Surely our growing reverence for these free and wild creatures reflects our finest human impulses. And it is time to turn these impulses into legislation that will enrich our own experience and provide a natural inheritance of which our children can be proud. That is why I support these three measures.

UTILIZATION OF FORT DETRICK

Mr. JAVITS. Mr. President, we are all deeply concerned about the urgent need to establish legislative initiatives to expand the national effort to conquer cancer.

I introduced with Senator KENNEDY, chairman of the Health Subcommittee of the Committee on Labor and Public Welfare Committee, of which I am ranking minority member, S. 34, the Conquest of Cancer Act which has the bipartisan support of more than 50 Senators.

President Nixon's deep commitment to expand the national effort to conquer cancer is well known to all Americans. The President launched a successful campaign for an extra \$100 million for cancer research, and the President's legislative program to conquer cancer, S. 1828, has been introduced by Senator DOMINICK.

If we are to achieve the goals recognized by S. 34 and S. 1828, we will need facilities capable of producing large amounts of biological raw materials for various ongoing cancer research programs. Another major requirement for launching the drive against cancer is specially equipped laboratories, capable

of protecting personnel against extreme biological hazards, and experts who are trained in the handling of dangerous material.

The utilization of the facilities at Fort Detrick now facing a decision to supply such needs and help to achieve the desired results, has been proposed by Senators MATHIAS and BEALL. I ask unanimous consent that an editorial in the recent issue of the *Frederick Post* entitled "Detrick Deadline Nears" be printed in the *RECORD*.

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

[From the *Frederick (Md.) Post*,
May 18, 1971]

DETTRICK DEADLINE NEARS

We heartily subscribe to the sentiments of Senator Charles McC. Mathias in his recent illuminating statement on the floor of the upper chamber of Congress that it is time that Congress and the Nixon Administration decided to fish or cut bait on the future of Fort Detrick.

As the deadline for the start of the next fiscal year on July 1 approaches despite all of the efforts of Senator Mathias, Senator J. Glenn Beall Jr. and Congressman Goodloe E. Byron, the future of a large part of the multimillion dollar research facilities in Frederick are still obscured in mystery.

Mathias urges passage of Senate Bill 34 which would create a National Cancer Authority to search for a cure for the dread disease and aid President Nixon in attaining one of his "six great goals."

The bill is of special interest to Senators Mathias and Beall, both of whom want President Nixon to include Fort Detrick in his overall plans.

Both Senator Mathias and Senator Beall requested in a letter sent to the President in February that he consider the use of Fort Detrick as research headquarters and Senator Mathias made the same request in his speech on the Senate floor last week.

Mathias said, there has as yet been no response from either President Nixon or Secretary of Health, Education, and Welfare Elliot Richardson.

Nothing is so important to the economy of Frederick County as a firm determination of the fate of Fort Detrick.

And certainly the 18 months anxious waiting following the announcement of President Nixon that the U.S. would halt the production of offensive biological weapons to which the efforts of Fort Detrick's highly skilled scientific team was dedicated has been a sad illustration of bureaucratic fumbling and futility.

In taking the Senate floor to laud President Nixon's pledge that his administration is dedicated to an all-out effort to find a cure for cancer, Senator Mathias well pointed out that the highly sophisticated laboratories at Fort Detrick are ideally available as the locus of such a national crusade.

Quoting President Nixon's statement that he "feels it is important that this campaign to find a cure for cancer be identified as one of our highest priorities and that its potential for relieving human suffering not be compromised by the familiar dangers of bureaucracy and red tape," Frederick County's senior senator expressed to his colleagues in sober but pointed language the growing fear that in actuality this is just what may occur.

"I should like to call to the attention of the Senate," he said, "that there is an institution operated by the United States Army called Fort Detrick."

"The people of America have invested one quarter of a billion dollars in real estate and scientific equipment at its laboratories for the purpose of developing the awesome science of biological warfare."

"In November of 1969, President Nixon on the advice of the National Security Council renounced offensive biological warfare.

"And in the succeeding 18 months except for some defensive studies, the sophisticated laboratories with \$185 million dollars worth of equipment and the highly talented scientific team which operates them has been without a mission."

Senator Mathias said that he has been reliably informed that of this \$185 million dollars worth of equipment already owned by the government that at least \$100 million dollars worth of it could be easily converted immediately to start this cancer research program.

"For some reason," he told the Senate, "which I think the President has well identified as bureaucracy and red tape no definitive decision has been made in the past 18 months as to the eventual fate of Fort Detrick, its costly equipment, and its superbly talented scientific team.

Frederick's senator added that he is gravely concerned because when the halt in the production of biological weapons was first announced that he interceded with the Department of the Army to keep the scientific team intact pending a decision by the government on the eventual use of the facilities at Fort Detrick.

"Unfortunately," he added, "although a simple telephone call" would have immediately mobilized this 100 million dollars worth of equipment and its talented operatives nothing has occurred.

The result, as he well pointed out, is that for 18 months the Department of the Army has allowed this gigantic facility and its personnel to "drift along without a definitive mission."

As Senator Mathias points out this constitutes a reflection upon the efficiency of the United States Government.

Putting the case more bluntly, it represents a terrible waste of millions of dollars in salaries to highly paid biologists and other scientific supporting personnel who have been allowed to drift along on a stand-by basis without any definitive program upon which they could be usefully employed.

The result has also been, in part, a shattering of morale, a let-down of efficiency, a gnawing fear of unemployment on the part of several hundred employees, and a dark cloud over the economy of Frederick County.

While we realize that in these days of multi-billion dollar budgets and deficit financing that there is a tendency in Washington to belittle such small items as have been wasted at Fort Detrick we agree with Senator Mathias that the situation does not reflect credit upon the Nixon administration, the Department of the Army, or any other of the involved agencies.

Senator Mathias points out that the payroll at Fort Detrick prior to this year had run up to a total of \$10 million dollars annually.

On this basis, he told the Senate, "I should conservatively estimate that the Department of the Army has spent no less than \$15 million dollars of the taxpayers' money in agreeing to my request that they keep intact Fort Detrick's scientific team pending a final decision on the future of the facility.

"And to date this \$15 million dollars in payroll has been wasted because the workers have had no assigned program."

The senator, it seems to us, is on sound ground when he adds that this \$15 million dollars worth of highly skilled scientific effort by skilled scientists could have been employed in the last 18 months in launching the program to conquer cancer which President Nixon has pledged to inaugurate.

There is still no definite word that the Nixon Administration, despite the recommendation of nationally recognized scientists in the field of cancer research has any in-

tention of locating the new facility at Fort Detrick.

But if they do not, as Senator Mathias warned his colleagues, it will mean that the United States Government will have to build from scratch a similar installation to Fort Detrick at the cost of countless millions of dollars in some other area.

Now is the time of decision.

The new fiscal year starts on July 1—less than six weeks away.

It is unthinkable that the Department of the Army will continue to pump millions of dollars into a facility with no stated objectives simply to perpetuate further the highly talented staff at the local facility.

If Fort Detrick is to be retained as Frederick County's greatest economic asset, what Nixon labels "bureaucracy and red tape" must be sublimated into dynamic action.

And the decision in the final analysis lies in the hands of President Nixon.

THE CONSTITUTIONAL ROLE OF THE U.S. SUPREME COURT IN OUR GOVERNMENT

Mr. TALMADGE, Mr. President, the distinguished Senator from North Carolina (Mr. ERVIN) delivered a scholarly address to the Walter F. George School of Law at Mercer University, in Macon, Ga., on April 30. His speech was an eloquent and provocative discussion of the constitutional role of the U.S. Supreme Court in our Government. I congratulate my friend and colleague, and I know that his remarks were well received at the Mercer School of Law, that was named for the late Senator from Georgia, Walter F. George.

This speech was originally made by Senator ERVIN in a debate with former Attorney General Ramsey Clark on the query, "Role of the Supreme Court: Policymaker or Adjudicator?" The debate was held under the auspices of the American Enterprise Institute for Public Policy Research, 1200 17th Street NW., Washington, D.C., and the entire debate of which this speech constitutes Senator ERVIN's opening statement only, has been printed by such institute in book form, bearing the title "Role of the Supreme Court: Policymaker or Adjudicator?" The speech was made by Senator ERVIN at the Law Day ceremonies at Mercer University, Macon, Ga., and is inserted in the CONGRESSIONAL RECORD with the consent of the American Enterprise Institute for Public Policy Research, the owner of the copyright on such book.

I ask unanimous consent that the speech be printed in the RECORD.

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

THE ROLE OF THE SUPREME COURT: POLICYMAKER OR ADJUDICATOR?

In discussing the question whether the role of the Supreme Court is that of policymaker or that of adjudicator, I will use the term "founding fathers" to designate the men who drafted and ratified the Constitution.

The Constitution answers this question with unmistakable clarity. There is not a syllable in it which gives the Supreme Court any discretionary power to fashion policies based on such considerations as expediency or prudence to guide the course of action of the government of our country. On the con-

trary, the Constitution provides in plain and positive terms that the role of the Supreme Court is that of an adjudicator, which determines judicially legal controversies between adverse litigants.

In assigning this role to the Supreme Court, the founding fathers were faithful to the dream which inspired them to draft and ratify the Constitution, and to their action in rejecting in the Constitutional Convention repeated proposals that the Supreme Court should act as a council of revision as well as a court and in its capacity as a council of revision possess discretionary power to veto all acts of Congress the Justices deemed unwise, no matter how much those acts harmonized with the Constitution.

These things do not gainsay that some Supreme Court Justices have been unhappy with the role assigned them by the Constitution and have undertaken to usurp and exercise policymaking power. But their usurpations have not altered the rightful role of the Supreme Court. Murder and larceny have been committed in every generation, but that fact has not made murder meritorious or larceny legal.

THE DREAM OF THE FOUNDING FATHERS

The founding fathers had absorbed the lessons taught by the history of the struggle of the people against arbitrary power for the right to be free from tyranny. Hence they comprehended some eternal truths respecting men and government.

They knew that those who are entrusted with powers of government are susceptible to the disease of tyrants, which George Washington rightly diagnosed in his Farewell Address as "the love of power and proneness to abuse it." For this reason, they realized that the powers of public officers should be defined by laws which they as well as the people are obligated to obey.

They also knew the truth subsequently embodied by Daniel Webster in this aphorism:

"Whatever government is not a government of laws is a despotism, let it be called what it may."

For this reason they realized that liberty cannot exist except under a government of laws, i.e., a government in which the conduct of the people is controlled by certain, constant, and uniform laws rather than by the arbitrary, uncertain and inconstant wills of the men who occupy public offices, and in which the laws accord to the people as much freedom as the commonweal permits.

They likewise knew that Thomas Hobbes had proclaimed an unalterable principle when he said:

"Freedom is political power divided into small fragments."

They knew, moreover, the political truth afterwards phrased by Woodrow Wilson in these words:

"Liberty has never come from the government. Liberty has always come from the subjects of it. The history of Liberty is a history of the limitation of governmental power, not the increase of it. When we resist therefore the concentration of power, we are resisting the processes of death, because concentration of power is what always precedes the destruction of human liberties."

For these reasons, they realized that the powers of government should be diffused among different repositories, that "local processes of law are an essential part of any government conducted by the people", and that "no national government . . . can be as closely in touch with those who are governed as can the local authorities in the several states and their subdivisions."

The founding fathers also understood that a nation which disregards the lessons of his-