contain more pesticides than those of forested areas.

A two-year pesticide study by the Bureau of Sport Fisheries and Wildlife, recently released by Senator Gaylord Nelson of Wisconsin, reveals that Lake Michigan is not alone with its contents of DDT. The bureau study found DDT in 584 of 590 samples of fish taken from 45 rivers and lakes across the United States. DDT ranged up to 45.7 ppm in whole fish, a count more than twice as high as that found in Lake Michigan.

The study found that in 12 of the 44 lakes and rivers DDT in some or all of the fish samples reached levels higher than the five parts per million guideline limit of the FDA. Highest DDT counts were found in white perch taken from the Delaware River in the heavily populated northeastern United States.

Nelson reported that rivers and lakes where DDT counts reached levels in fish higher than the 5 ppm level include the Hudson River in New York, the Delaware River, the Cooper River in South Carolina, the St. Lucie Canal and Apalachicola River in Florida, the Tombigbee River in Alabama, the Rio Grande River, Lake Ontario, Lake Huron, Illinois River in Illinois, Arkansas, White, and Red rivers in Minnesota, San Joaquin River in California and Rogue River in Oregon. Species frequently used for sampling were carp, buffalo, black bass, channel catfish, sunfish, yellow perch and trout.

In Massachusetts, however, the Division of Fisheries and Game in 1967 monitored pesticide residues in nine species of fish in its major rivers and tributaries and found DDT levels ranging from .17 to 11.64 ppm. Within the next few years, data will become available from other states, including California, which manufactures, sells and uses more DDT than any other state. Coastal areas, with their production of shellfish, must still be heard from.

You may wonder: Why all this concern about the amount of DDT we get into our systems? Already the average American has 12 to 16 ppm of DDT in his body. This information was obtained from a study of cadavers and also from chunks of human fat taken in surgery. Perhaps a little more won't hurt. After all, there is no conclusive evidence, on the long-term effects of DDT on people.

Yet, the boys in the Food and Drug Administration are disturbed. They are charged by law to protect the public against food adulteration and contamination. DDT which may build up in a man without harm for 25 years, could exceed man's tolerance the very next year. Who knows? That is why Victor J. Yannacone of Patchogue, New York, representing the Environmental Defense Fund at the Wisconsin hearing on DDT asked: "Is man an unwilling guinea pig for an uncontrolled experiment with DDT?"

It is impossible to give an answer all done up neatly and tied with a red, white and blue ribbon. A group of professors at Stanford University, all members of the Department of Biological Sciences, said: "The evidence is overwhelming that persistent pesticide susbtances threaten the ecological systems upon which human life depends. Recent studies suggest that chlorinated hydrocarbons which are now being stored in human tissues may have direct harmful effects on man himself."

This may paint a gloomy picture; yet I do not believe I am an alarmist when I suggest that despite all its past achievements as an inexpensive miracle chemical which has done wonders for public health and for farmers, DDT now hangs over not only Lake Michigan and its fish, but also over the whole race of man like a sword of Damocles. This conclusion is not mine alone. The state of Michigan put its concern into action this year when it outlawed the sale of DDT except for a few special uses. Arizona has banned DDT spraying. Stricter controls are under consideration in Massachusetts, Wisconsin and New York.

Time magazine reported last July that Europeans have taken even more decisive action. Sweden ordered a two-year ban on DDT as well as related pesticides: lindane, aldrin and dieldrin when DDT was found in herring there. The Netherlands and Denmark have decided to stop using DDT. West Germany limits spraying so severely that only 192 tons of DDT were used there last year. France and Britain also are watching pesticides closely and the Soviet Union is much concerned.

A host of unanswered questions remain. The most immediate one is: What will happen to the coho salmon this year? Undoubtedly, thousands of fishermen will pay no heed to DDT in salmon. This was evidenced during the past summer when anglers fished Lake Michigan like never before. All they asked was:

"Where are the fish?" But will they be as eager to catch cohos in the fall when DDT levels will be at their peak?

More disturbing is the question of what to do with the tons of surplus cohos that went into commercial outlets last year. This has Michigan's Department of Natural Resources in a quandary.

It is unlikely that the FDA will change its tolerance level for DDT in fish for human consumption. What then will happen to the giant surplus of uncaught cohos which will surge upstream? They cannot be left to pollute the streams with their dying and dead carcasses.

Will a way be found to fillet the fish economically and in such a way that the product will pass FDA limits for DDT? Will it be possible to extract oil from salmon at a profit? Already coho eggs are used and sold for fish bait and bring about 50 cents a pound wholesale. Will a market be developed for cohos destined for nonhuman consumption? Will scientists discover a way to neutralize the effects of DDT?

If there is no commercial outlet for surplus fish, will licensed anglers be allowed to take them willy-nilly in the streams, perhaps developing a kind of pitchfork fishery, a far cry from sport fishing? Will the Department of Natural Resources net these fish at the weirs and make them available to anglers, perhaps at nominal cost? But could the Michigan Department of Health permit this, since it already bans commercial sale, DDT tolerances being what they are?

A second series of questions concerns the vested-interest aspects of the coho miracle. How about Michigan's lakeshore communities which have expanded facilities in anticipation of more and more coho anglers. Will there be a drop in the sale of boats, tackle, lodging and lunches? What about manufacturers who launched hundreds of products tied to the coho boom?

The third consideration stretches far into the future. What will DDT do to the fish population? At present, fish seem to be getting along all right. Despite DDT, they are growing and multiplying. But is the death of young cohos in Michigan's hatcheries a prophecy of things to come? Will fish be able to reproduce as DDT keeps concentrating in their eggs?

To carry the case just a bit further: Will there be increasing numbers of fishermen who fear DDT enough to stop eating fish until they are safe? And if these fears are general enough, will they put a brake on fishing for food and encourage fishing for fun—much as sailfish are caught more for fun than for food? If this idea spreads, will it usher in a new chapter for fishing in America when fishing for fun will become the rule rather than the exception? Should this happen, will we enter a new era when piscatorial prowess will attain new meaning and the ideal of sport-only fishing will attract a new and even more devoted coterie of anglers? Only time will tell.

SENATE—*Friday, November 14, 1969*

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

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

O Lord of all history and of this single day, we pray not that Thou shouldst reveal Thyself by outward signs of mighty works, but in the quiet solitude of our inmost heart; not by wind and fire, but by the still small voice.

Set before us, O Lord, the vision of one who found joy in doing the will of Him that sent Him, and in finishing His work. When many are coming and going, and there is little quiet, give us grace to remember Him who knew neither impatience of spirit nor confusion in His work, but in the midst of all His labors, kept a tranquil heart at peace with itself. Give us steady spirits and brave hearts that we may play our part in bringing to all mankind the new world of liberty and justice for all.

In Thy holy name, we pray. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate.

The legislative clerk read the following letter:

U. S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., November 14, 1969.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to legislative session briefly, for the purpose of conducting morning business.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, November 13, 1969, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

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

PEACE DEMONSTRATIONS

Mr. MANSFIELD. Mr. President, when I came to work at 5:30 this morning, the city of Washington was still dark. In the course of my trip to the office, I saw a great number of persons, carrying candles, crossing the Memorial Bridge from Arlington Cemetery, which contains the Tomb of the Unknown Soldier, whose identity is known only to God. I saw the candlelight procession—this "march against death"—continuing along Pennsylvania Avenue and to the foot of this Capitol.

I was tremendously impressed with the dignity, the decorum, and the order shown by these people, mostly young, but including some middle-aged individuals and couples with their very young children.

I also was impressed with the attitude of the police in the Nation's Capital and their cooperation and understanding of this peaceful demonstration being undertaken.

I happened to look at the headline of a news commentary in the Washington Star of last night, which read: "Democracy by Demonstration a Risky Business."

Mr. President, democracy is a risky business, and that is one of its strengths. It is not a case of everyone being a "yes-man" or a "no-man." It is an ideal founded in the Constitution of the United States, under which people are guaranteed certain inalienable rights. Some of those rights are set out in the first amendment to the Constitution, which is in itself a part of the Bill of Rights. The first amendment reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

What I have seen of this moratorium so far has, in my opinion, been within the best limits of the Constitution. I applaud the order, the dignity, and the decorum being shown by the marchers, both young and old, of all colors and all creeds. I applaud the police for their attentiveness to their duties and their understanding of how demonstrations should be handled. I applaud the marshals whom the demonstrators themselves have brought with them and who are responsible for seeing that the law is observed and that the demonstration is kept orderly.

I do not want to see a confrontation in this Capital or in any other place in this Nation. I do not want to see our people divided any further than they are. I want to see attempts made to keep our voices low, to bring us together, to bring among us a degree of unity. I want to see attempts in these directions rather than those—based on emotion, primarily—that seek the divisiveness which is well on the way to tearing this country apart at this time.

These people are our fellow citizens. They are our children, our neighbors, and our friends; and as I have indicated, what they are doing comes within the provisions of the Constitution.

My only sorrow is that many of these people—those who are so young—do not have the right to vote at the age of 18, and in that way help to create a policy in which they could be participants. But now they do not help to make policy. They can only protest. When their turn comes and they are called to serve their country, they do so, by and large, but they are carrying out a policy over which they have no control at all.

What I say about demonstrators applies to those who feel exactly opposite to them, because there is never one side to any question. There are always two sides, and sometimes more. Those who are antidemonstration, those who want to conduct rallies and marches in opposition to what the mobilization seeks to undertake, have just as much right to do so under the Constitution of the United States, and they are protected just as much by the first amendment to the Constitution.

I am making these remarks this morning, first, because I was tremendously impressed, in the darkness of this morning, to see what was happening and how well it was being done; and, second, as the leader of the majority party in the U.S. Senate, I feel it incumbent upon me to make these remarks to urge that respect, tolerance, and understanding be shown on all sides, so that these demonstrations, pro or con, these demonstrations which our citizens are entitled to make, will be considered in the right light and will not lead to confrontation.

I believe implicitly in the first amendment to the Constitution. When I was elected to this office I held up my hand and I swore to defend and uphold the Constitution without any mental reservation or any other reservation whatever, and when I took that oath and said "I do," I meant it. Moreover, my responsibility is not only to represent the people of Montana as a Senator from the State, but to represent the people of the United States as a Senator of the United States.

So I would hope that the tone which has been set by these people of all ages, all colors, and all creeds would be the mark of determination for the rest of this moratorium, not only here, but throughout the country; and I would hope that there would be no violence, no license, no assaults on property, and no assaults on people—from any source—because I do not believe in tactics of that sort; nor are they guaranteed under the Constitution. They are illegal, they are outside the law, and anyone who conducts himself in a manner which violates the law should be made liable to the law. I would hope that if by any chance a demonstrator or a few demonstrators try to create situations which endanger the dignity, decorum, and order of what has occurred up to this date, those who do try to break the law would be separated and placed apart, and the thoughts and prayers and hopes which are in the minds and hearts of these people who are conducting themselves so well so far would be kept uppermost in our thinking as well.

I do not know whether most of these people are the silent minority or the silent majority; that is immaterial; they are all Americans.

Because of these factors, not too well expressed, I had hoped that the leadership on both sides would make its feelings felt and that it might help maintain the orderliness which so far has marked the demonstrations, and perhaps help prevent any disorderliness which might be attributable to a few but, may well be placed on the shoulders of the many.

Mr. SCOTT. Mr. President, I sometimes wonder how we are going to keep the two-party system going when the distinguished majority leader continues to say things with which I am so heartily in agreement. This is another instance of the patriotism and the sincerity and the very genuine concern for the rights of the individual as well as the rights of society which the distinguished majority leader has expressed.

"Congress shall make no law." The Founding Fathers could not have been any plainer than that. They must have had some foresight, from the way we behave around here sometime. They thundered it: "Congress shall make no law" and, by God, they meant it when they added the Bill of Rights and that sacred first amendment. We cannot and we should not. The effort of the generations to understand each other is unending.

Mr. President, yesterday I spoke at the National Press Club and I ask unanimous consent that the remarks which I made at that time be printed at the conclusion of my statement.

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

(See exhibit 1.)

Mr. SCOTT. Mr. President, it was an attempt to understand the present younger generation, as we hope and pray they will try to understand us. It has been said that he who is not a Socialist at 20 has no heart; and that he who is a Socialist at 40 has no head. I do not know; we are very fond of quoting it.

But this group of young people have behaved themselves in this candlelight march. To me that is news. I do not

suppose it will be news to the networks, for I do not suppose the networks will care that it was a well-behaved gathering. Oh, no. With that red-eyed monster they lug around on the trucks they will look for some evidence of misbehavior, of violence, and if it happens, they will send it to Cairo, to Cincinnati, and they will send it around the world as evidence of the misbehavior of the young in the Capital of the United States.

I wish the networks would make a distinction between news and editorializing. I wish they would do what the press does, or what we hope the press does, except when they disagree with us, and that is, to run the news straight and editorialize on another page. Then one knows whether something is to be believed, and he can exercise judgment. I think the same is true here.

I hope there is no violence, and I have made clear that if there is, the law should be invoked and the proceedings should go forward to preserve the rights of those who are not violent, to preserve society's stake in these matters. But the right of protest, the right of dissent, is as sacred a right as we have in this country. We wrote it in granite and illuminated it in gold. We swore to it and by it.

So it is in a mood of congratulation that I cite the fact that nothing has happened. All of us know the story of Sherlock Holmes' dog in the night. He said, "The thing about the mystery was the dog." His fidus achates watched and said, "But the dog did not bark." Holmes said, "That is precisely the point. The dog did not bark." And he solved the mystery.

When the dog does not bark I suppose there is no news. If the dog barks, one has sound effects and if the dog bites, one is all over the 6 o'clock news and the 11 o'clock news.

I think the majority leader's plea is one in which I can wholeheartedly join. Let us welcome those who assemble peacefully and petition for redress of grievances. Let us be prepared to restrain disorder and violence but let us make a distinction between the two. Let us point out how the vast majority of these people are expressing the deepest concern of their lives so far, a desire to end a dreadfully unpopular war and end it as soon as possible. They are right and they have a right to say it. Some have feathers on their faces and some have dirt on their bare ankle and feet. Some may look to us "squares" a little scrubby and some may look odd ball to us, as we no doubt do to them.

But the time will come when they will emerge—dreadful fate—into members of the local PTA, the chamber of commerce, the local orthodox labor unions or religious groups and they will deplore, too, when their time comes.

But let them have a little joy, a little exultation, a little excitement, and an opportunity to get up and say that which burdens their hearts.

Let them be heard when they say, "This is a bad war and it should stop."

In due time, they, too, will grow old. They, too, will begin to realize that there are no simple answers to complex problems.

But, let them, meanwhile, do their thing.

EXHIBIT 1

SPEECH BY U.S. SENATOR HUGH SCOTT, REPUBLICAN OF PENNSYLVANIA, SENATE MINORITY LEADER, BEFORE THE NATIONAL PRESS CLUB, NOVEMBER 13, 1969

Again we seem at the threshold of a massive misunderstanding.

Armies of the night, who tear and scratch at the solid walls of power, gather.

Firm on the ramparts, the entrenched, secure behind shields of aloofness, stand fast.

Somewhere, the soul of America. The silent. The doubtful. The young and old. Most Americans watch, with the hope we will be brought together. Somehow.

It is time to talk of how to come together, not apart. I refer particularly to the disenchanted young.

Their concern is our making. They are our children. They will be seen, and they will be heard. They tell us, in the only way they have found effective, loudly.

Millions speak disparagingly about the "system."

The young demonstrate more and more their rising doubts that betterment, real betterment, is in the air. Discontent spans the generations, but a more basic disenchantment, with government, and with their elders, is increasingly apparent in the voteless (and the newly voting) young.

The neglect or indifference of past generations is showing up now. The unjust and inequitable draft system continues. The unworkable and degrading welfare system continues. Anguishing social problems receive less than adequate attention. The pollution of our environment thickens.

There are vast problems. Confrontation among the generations delays and confuses the search for the right answers.

Government must respect the discontented young. Their own respect for government is at stake.

The outpouring of youth deserves further examination. We cannot disregard it. We cannot even insulate the uncertain majority of young from the more active, some unwilling even to work within our political system.

It is time to stop being defensive. Government should not cater to every whim and desire of the impatient young. Violence or the threat of violence cannot be tolerated. Yet we need not be aloof. We can listen. We can show a greater sensitivity and awareness.

Failing to achieve what we so often promised, we are being closely watched. Young hopes do not spring eternal. They shrivel and sink into apathy or sullen disengagement.

Or they explode and seek change without law.

Apathy, disillusion, and explosion are all dangerous to a free society. Neither creates the climate for lasting changes, desperately needed.

We must give them good and evident reason to believe that things can change, through government, without violence. We must show them that government can be responsive.

I am convinced government must deal intelligently with this revolution of rising aspirations or find itself risking undesirable alternatives. The younger generation is trying to tell us something. They are not blind. They are more than a few. If rebuffed out of hand, many, many more will act rashly, out of a sense of frustration.

We should seek to find a common ground—a middle way—to bring vast and stable change without polarization.

Without extremes.

The goal here should be to win the confidence of those increasingly doubtful of the good in government. That confidence can be achieved by restoring faith in our institutions. Let us change the things which need change. Let us not force the numberless uncommitted to choose sides against us. There are good reasons to have them working with us.

The young care. They are supersensitive to what is wrong. They hold out refreshing idealism to a cynical world. They offer spirit. Their ideas, their energy are desperately needed.

Their deep concerns can pave the way for a positive thrust for change.

They call our attention to some basic hypocrisies. They rightfully question some of our values. They dare to tell us our system often doesn't work very well. The draft system is a mess and they know it. They don't necessarily agree that a home in the suburbs and two cars are the goal to shoot for in life. They see our rotting central cities and our welfare system. They sense an attitude of "we know best" yet what they see makes them distrust us.

The young demonstrate some deep understandings about what is wrong. Lacking blind faith, they *know* government is much at fault.

Government is being served notice. Its methods are being questioned. Its credibility is strained.

Our young see government as a cold, faceless, heartless creature whose many tentacles are hardened against change.

If the normal process of studies and commissions, of messages and legislation, and appropriations, do not bring about change, what will? they ask.

Our young do not have all the answers, nor understand all the problems, nor see all the implications. But neither do we. We lack answers—many. We lack understanding—much. Often we have not seen the implications of our actions.

The generations need to show more awareness for each other's hang-ups. There has been a tendency to reduce all issues, even other people, to two dimensions. The under 30s lack appreciation of the complexities faced, and somehow met, albeit imperfectly, by their elders. This serves to increase polarization, widen the gap, and make understanding more difficult.

The solution could include better listening, more compassion, and a willingness to respond, to show a sensitivity and awareness to the problems of the other side. Let government inject some youthful idealism. Let us not resign government to the apathetic, the cynical or the coldly pragmatic.

Let us listen to young voices of idealism, of hope for better ways. Let us have a synergistic system to harness the potential of variety. The staid corridors of bureaucracy could use their bright minds, bright posters, and bright spirits.

Let us also demand more. Let us ask the young to be willing to take time and examine further what is wrong, and how to change it Let us ask them to help us change things by reason's step as much as by emotion's leap.

Let us assist them to become involved in the complexities of power and responsibility. By realistic knowledge of, and committed involvement within the governmental process, they can produce vast changes for the good.

This plea of mine, then, is for an increase in sensitivity, in appreciation, in compassion.

Today's divisions, though less violent, are not unlike the popular thrust of Europeans around 1848 when the unconsulted multitudes found their voice.

In those days, during the demonstrations against the English Corn Laws, a group called Chartiests spoke through their hymns in the Evangelical churches.

It is time to let the people speak, they said:

"God save the people;
Thine they are,
Thy children as thy angels fair . . .
Let them pass, like leaves away,
Their heritage a sunless day . . .
The people, Lord, the people,
Not thrones and crowns, but men!"

ORDER FOR ADJOURNMENT TO MONDAY, NOVEMBER 17, 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 12 o'clock noon on Monday next.

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

(Subsequently the above order was modified to provide for the Senate to adjourn to 10:30 a.m. on Monday.)

EXECUTIVE COMMUNICATIONS, ETC.

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

PROPOSED AMENDMENT TO THE BUDGET, 1970 (S. Doc. No. 91-42)

A communication from the President of the United States, transmitting an amendment to budget for the fiscal year 1970, in the amount of $270,000,000 for the Department of Agriculture, for the food stamp program (with an accompanying paper); to the Committee on Appropriations, and ordered to be printed.

PROPOSED AMENDMENTS TO THE BUDGET, 1970 (S. Doc. No. 91-41)

A communication from the President of the United States, transmitting amendments to the budget for the fiscal year 1970, in the amount of $23.2 million in budget authority, and $26.9 million in a proposal not increasing budget authority (with an accompanying paper); to the Committee on Appropriations, and ordered to be printed.

REPORT OF THE NATIONAL ESTUARINE POLLUTION STUDY AND PROPOSED LEGISLATION TO AMEND THE FEDERAL WATER POLLUTION CONTROL ACT

A letter from the Secretary of the Interior, transmitting a report of the National Estuarine Pollution Study; also a draft of proposed legislation to amend the Federal Water Pollution Control Act to provide for the establishment of a national policy and comprehensive national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's estuarine and coastal zone (with an accompanying report and paper); to the Committee on Public Works.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. STENNIS, from the Committee on Armed Services, without amendment:

H.R. 14001. An act to amend the Military Selective Service Act of 1967 to authorize modifications of the system of selecting persons for induction into the Armed Forces under this act (Rept. No. 91-531).

EXECUTIVE REPORT OF A COMMITTEE

As in executive session, the following favorable report of a nomination was submitted:

By Mr. STENNIS, from the Committee on Armed Services:

Maj. Gen. Royal B. Allison, Regular Air Force, to be assigned to positions of importance and responsibility designated by the President, in the grade of lieutenant general while so serving.

BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. ELLENDER:

S. 3140. A bill for the relief of Berta Palacios; to the Committee on the Judiciary.

By Mr. MAGNUSON (for himself, Mr. JACKSON, and Mr. HOLLINGS):

S. 3141. A bill to provide that the Oceanographer of the Navy shall have the rank of vice admiral; to the Committee on Armed Services.

(The remarks of Mr. MAGNUSON when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. MAGNUSON (by request):

S. 3142. A bill to authorize and foster joint rates for international transportation of property, to facilitate the transportation of such property, and for other purposes; to the Committee on Commerce.

(The remarks of Mr. MAGNUSON when he introduced the bill appear later in the RECORD under the appropriate heading.)

S. 3143. A bill to amend the act known as the Death on the High Seas Act; to the Committee on Commerce.

(The remarks of Mr. MAGNUSON when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. PELL:

S. 3144. A bill to authorize the Interstate Commerce Commission to prescribe minimum standards for railroad passenger service, and for other purposes; to the Committee on Commerce.

(The remarks of Mr. PELL when he introduced the bill appear later in the RECORD under the appropriate heading.)

S. 3141—INTRODUCTION OF A BILL TO PROVIDE THAT THE OCEANOGRAPHER OF THE NAVY SHALL HAVE THE RANK OF VICE ADMIRAL

Mr. MAGNUSON. Mr. President, I introduce for appropriate reference, a bill to provide that the Oceanographer of the Navy shall have the rank of vice admiral.

Enactment of this bill will carry out a recommendation made in December of last year by the Oceanographic Advisory Committee, comprised of outstanding marine scientists and engineers of industries and universities, and including several distinguished retired naval officers.

A recommendation of the Advisory Committee read:

As a consequence of the vastly increased responsibilities of the Oceanographer in recent years and the importance of the Navy's Oceanographic efforts to the national interest, the Committee recommends that the billet of the Oceanographer of the Navy be filled by a Vice Admiral.

Responsibilities of the Oceanographer of the Navy were "vastly increased," as the committee stated, on August 19, 1966, not long after Congress enacted the Marine Resources and Engineering Development Act with its broad declaration of national policy and objectives.

They were enlarged in an instruction—5430.79—by the then Secretary of the Navy Paul H. Nitze.

Secretary Nitze's instruction is so explicit that it merits quoting in full, as follows:

This instruction defines the Naval Oceanographic Program, establishes an Office of the Oceanographer of the Navy, and prescribes the mission of the Oceanographer of the Navy.

The Naval Oceanographic Program encompasses that body of science, technology, engineering, operations, and the personnel and facilities associated with each, which is essential primarily to explore and to lay the basis for exploitation of the ocean and its boundaries for Naval applications to enhance security and support other national objectives.

The mission of the Oceanographer of the Navy is to act as the Naval Oceanographic Program Director for the Chief of Naval Operations, under the policy direction of the Secretary of the Navy, through the Assistant Secretary of the Navy (Research and Development), and to exercise centralized authority, direction and control, including control of resources, in order to insure an integrated and effective Naval Oceanographic program.

In carrying out his assigned responsibilities the Oceanographer of the Navy is authorized to issue directives, management plans, requirements, tasks, instructions, and to allocate resources for the Secretary of the Navy and Chief of Naval Operations.

The Chief of Naval Research is assigned additional responsibility as Assistant Oceanographer of the Navy for Ocean Science.

The Chief of Naval Material, with approval of the CNO, has assigned the Deputy Chief of Naval Material (Development) additional responsibility as Assistant Oceanographer of the Navy for Ocean Engineering and Development.

With the approval of the CNO, the Oceanographer of the Navy will designate an Assistant Oceanographer of the Navy for Oceanographic Operations. Pending this designation, the relationships of the Oceanographer of the Navy and the U.S. Naval Oceanographic Office remain as at present."

The Oceanographer of the Navy shall budget, justify, and administer all funds allocated to the Naval Oceanographic Program as required for the implementation of the program; shall insure that adequate funds are budgeted by activities of the Navy Department for support of the program; and shall develop and maintain a comprehensive budget documented for presentation to higher executive authorities and Congressional Committees.

All national facilities, centers, and missions of the National Oceanographic Program assigned to the Department of the Navy will be managed and administered by the Oceanographer of the Navy.

The Office of the Oceanographer of the Navy is hereby established directly under the Chief of Naval Operations.

The Oceanographer of the Navy, under the Chief of Naval Operations, shall command the Office of the Oceanographer of the Navy.

The Chief of Naval Operations shall issue the necessary directives to implement the provisions of this Instruction.

As Assistant Secretary of the Navy for Research and Development, Robert A. Frosch stated at the time this instruction was issued:

Its unequivocal language leaves no doubt that the Navy views its work in oceanography as a major portion of its effort to maintain the defense of the nation at sea, and that it is organizing its resources to make a major contribution to the national effort.

Since that time the responsibilities of the Oceanographer of the Navy have been further enlarged. A National Oceanographic Instrumentation Center was established on February 13 under the administrative auspices of the Oceanographer of the Navy.

With the National Bureau of Standards an active partner, new sophisticated and complex oceanographic instruments have been and are being developed which will add tremendously to man's knowledge of the ocean, its chemistry and dynamics and the speed of sound under varying sea conditions and at varying depths.

The National Oceanographic Office and the National Aeronautics and Space Administration for several years have worked together on an amazing spacecraft oceanography progam utilizing both satellites and aircraft which, utilizing infrared and other sensors, has produced valuable information including sea surface temperatures.

In addition to the three divisions of the Office of the Oceanographer of the Navy that were originally created in 1966—science, engineering, and operations—Rear Admiral Waters has initiated a fourth division of environmental prediction services.

This division collects and transmits data for forecasting sea, swell, surf, ice, sonar conditions, and any related environmental information. Antisubmarine Warfare Environmental Prediction Services—ASWEPS—and the Navy's optimum ship routing program, of great value to ocean commerce generally, are included in this division, which is headed by the commander of the Naval Weather Service, as an assistant oceanographer of the Navy.

The Oceanographer of the Navy, in addition, supervises all of the Navy's numerous and varied oceanographic efforts from the planning phases to final execution. This includes the work of 27 field activities and more than 30 survey and research ships, along with many other platforms such as aircraft, helicopters, floating ice islands, buoys, fixed towers, submarines, deep submersibles, and manned undersea habitats.

This vast responsibility, Mr. President, is of such critical importance and magnitude, that in my opinion the Oceanographer of the Navy well merits the rank of vice admiral.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3141) to provide that the Oceanographer of the Navy shall have the rank of vice admiral, introduced by Mr. MAGNUSON (for himself, Mr. JACKSON, and Mr. HOLLINGS), was received, read twice by its title, and referred to the Committee on Armed Services.

S. 3142—INTRODUCTION OF TRADE SIMPLIFICATION ACT

Mr. MAGNUSON. Mr. President, I introduce for appropriate reference, at the request of the Secretary of Transportation, a bill to authorize and foster joint rates for international transportation of property, to facilitate the transportation of such property, and for other purposes.

This bill would declare it to be the policy of the United States to facilitate the movement of freight in international commerce and for this purpose to foster the use of joint rates by carriers by land, water, and air in the international transportation of property between places in the United States and places in foreign countries. All Federal departments and agencies concerned would be directed to cooperate to the fullest extent in carrying out this policy.

The bill proposes to permit common carriers engaged in the domestic, international, and foreign segments of international transportation to enter into agreements to establish joint rates, issue single bills of lading for through movements, and interchange or pool equipment and facilities. Such agreements would be subject to the approval of each regulatory agency having jurisdiction over a common carrier entering into the agreement. The bill would extend each agency's jurisdiction and authority to cover joint rate agreements in international transportation, making only the incidental changes in the existing authorities of the regulatory agencies to accomplish that purpose.

The purpose of the bill—the removal of unnecessary impediments to international transportation—is meritorious. The committee will welcome the comments and suggestions of the public, shippers, and carriers on the provisions of this proposed legislation.

I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a copy of the bill, the Secretary of Transportation's letter submitting this legislation, and a section-by-section analysis.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill, letter, and analysis will be printed in the RECORD.

The bill (S. 3142) to authorize and foster joint rates for international transportation of property, to facilitate the transportation of such property, and for other purposes, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3142

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Trade Simplification Act of 1969".

DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the policy of the United States to facilitate the movement of freight in international commerce and for this purpose to foster the use of joint rates by carriers by land, water, and air in the international transportation of property between places in the United States and places in foreign countries. All Federal departments and agencies concerned are directed to cooperate to the fullest extent in carrying out this policy.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Agency" means the Civil Aeronautics Board the Federal Maritime Commission, or the Interstate Commerce Commission.

(2) "Carrier" means a common carrier subject to the jurisdiction of an agency, or a transporter of property by land, water, or air for hire between points both of which are outside the United States.

(3) "Common carrier subject to the jurisdiction of an agency" means:

(a) An air carrier as defined in Sec. 101 (3) of the Federal Aviation Act of 1958 except an air carrier not directly engaged in the operation of aircraft (other than companies engaged in the air express business);

(b) A "foreign air carrier" as defined in Sec. 101(19) of the Federal Aviation Act of 1958 except a foreign air carrier not directly engaged in the operation of aircraft;

(c) A common carrier by water, other than a non-vessel operating common carrier by water, subject to the jurisdiction of the Shipping Act, 1916;

(d) A common carrier subject to Parts I, II or III of the Interstate Commerce Act.

(4) "International transportation" means the transportation of property by land, water, or air carrier or by any combination thereof between places in the United States, on the one hand, and places in a foreign country, on the other.

(5) "Joint rate" means a rate jointly offered for a through service between a place in the United States, on the one hand, and a place in a foreign country on the other, and expressed as a single, comprehensive rate, by two or more carriers, at least one of which shall be a common carrier subject to the jurisdiction of an agency, provided, however, that an ocean rate and a charge for pickup or delivery service in the port area of origin or delivery cannot be combined to form a joint rate.

(6) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

ESTABLISHMENT OF JOINT RATES; INTERCHANGE AND POOLING ARRANGEMENTS

SEC. 4. (a) A common carrier subject to the jurisdiction of an agency may agree to establish joint rates for international transportation which shall become effective upon compliance with section 5 of this Act. Subject to section 8 of this Act, the division of revenues, the apportionment of liability, and the pooling or interchange of equipment, or other operating matters may be agreed upon by carriers. The establishment of joint rates authorized by this Act shall be voluntary and they may be cancelled by a participating carrier upon thirty days' notice without being subject to suspension, investigation or approval by the agency having jurisdiction of the carrier or carriers effecting cancellation.

TARIFFS

SEC. 5. Joint rates established under this Act shall be set forth in a tariff, filed, posted, and published concurrently by every participating common carrier subject to the jurisdiction of an agency with the agency having jurisdiction over the carrier. No tariffs or joint rates filed or established under this Act shall be of any lawful force and effect unless such rates or tariffs as the case may be are in effect with all agencies involved, and the use of any tariff or rate not so in effect shall be unlawful. The tariff, copies of which shall be available for public inspection, shall set forth all rates and charges under joint rates authorized by section 4, and all classifications, rules, regulations, practices, and services in connection therewith. Each agency may require the common carriers subject to its jurisdiction to set forth in a tariff or file with it for informational purposes the division of revenue accruing to each such carrier participating in any joint rate arrangement authorized by section 4. The names of the several carriers which are parties to any joint tariff established under this Act shall be specified therein, and each common carrier party thereto,

subject to the jurisdiction of an agency, other than the one filing the same, shall file with each agency having jurisdiction over any one of such carriers, such evidence of concurrence therein or acceptance thereof as may be required or approved under such rules and regulations as may be established under section 7 of this Act, and where such evidence of concurrence is filed, it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties. Copies of such tariffs shall be made available by the carriers to any person and a reasonable charge may be made therefor. Except as permitted under the rules and regulations promulgated under section 7 of this Act, no new joint rate shall be established nor shall any change be made in any tariff setting forth a joint rate on less than thirty days' notice.

ADHERENCE TO TARIFF

SEC. 6. International transportation under joint rates shall be performed strictly in accordance with the tariff, and no common carrier subject to the jurisdiction of an agency shall demand or collect any greater, less, or different compensation for international transportation than that specified in the tariff in which it participates. A carrier violating this section shall be subject to a civil penalty, to be imposed by the agency having jurisdiction over it, not to exceed $5,000 for each such violation, which may, in the discretion of such agency, be remitted or mitigated by it. Every shipment in violation of this section shall constitute a separate offense. Nothing in this Act shall be construed as relieving any carrier or other person of any punishment, liability or sanction which may be imposed otherwise than under this Act.

FORMS OF TARIFFS

SEC. 7. The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission, shall, after consultation with the Secretary of Transportation, jointly promulgate a single set of rules and regulations as to the form and manner of filing, posting, and publishing of tariffs setting forth joint rates established under this Act, and the conditions, if any, under which new rates may be established and changes in tariffs may be made or existing rates cancelled on less than thirty days' notice. Any agency having jurisdiction of a carrier participating in a jont rate may reject a tariff which does not comply with the rules and regulations. The rules and regulations shall encourage to the maximum extent possible the use of simplified forms of tariffs, simplified classifications, and coordinated commodity descriptions.

JURISDICTION AND AUTHORITY OF AGENCIES

SEC. 8. Except as otherwise provided in this Act, each agency may exercise for the purpose of this Act the jurisdiction and authority which it possesses under existing law, including the jurisdiction and authority each agency has to suspend, investigate, approve, or disapprove rates and practices. The jurisdiction and authority each agency has to approve agreements between or among carriers subject to its jurisdiction and to exempt such agreements from operation of the "antitrust laws" or to disapprove such agreements between or among carriers subject to its jurisdiction is hereby extended to agreements relating to joint rates and practices or the interchange or pooling of equipment and facilities between such a carrier or carriers and a carrier or carriers of different modes not subject to its jurisdiction. Parties to such agreements shall be relieved from the operation of the antitrust laws with respect to the making and carrying out of such agreements in conformity with the terms and conditions prescribed by the appropriate agency as set forth in laws pertaining to the respective modes of transportation. Any agreement entered into pursuant to this Act shall provide that any carrier participating shall be permitted to enter into similar arrangements with other carriers. Divisions of joint rates and practices in connection with joint rates, are regarded for purposes of this Act as rates and practices of carriers and, as such, are subject to all applicable statutory provisions governing the lawfulness of rates and practices. An order of an agency directed to or arising out of a carrier's participation in joint rates is subject to judicial review and enforcement as provided under existing law with regard to other orders of that agency. The agencies may hold joint hearings pursuant to rule or order on any matter within this Act.

THROUGH BILL OF LADING

SEC. 9. A carrier participating in a joint rate may issue a through bill of lading assuming responsibility from place of origin to place of destination. The through bill of lading may be in the form desired by participating carriers, if otherwise lawful, and may include or be designed to be accompanied by waybills or transportation documents prescribed or recommended by international agreement, by law or regulation of governments, or by international organizations.

DAMAGES; OVERCHARGES AND UNDERCHARGES; VENUE

SEC. 10. For the purpose of determining (1) the rights and obligations of the shipper and the carrier in the event of loss or damage to goods or undercharges or overcharges, and (2) jurisdiction over actions brought in connection therewith, shipments under tariffs established pursuant to this Act shall be treated as if they were shipments moving under separate tariffs established pursuant to the Interstate Commerce Act, the Shipping Act, 1916, or the Federal Aviation Act of 1958.

INTERNATIONAL COOPERATION; REPORTS

SEC. 11. The Secretary of Transportation, in consultation with each agency and the Secretary of State, shall encourage and foster the adoption of procedures and documents facilitating prompt and efficient international transportation of goods within and without the United States. From time to time, the Secretary of Transportation shall report to the Congress on use of joint rates under this Act, on obstacles to employment of such rates, and on facilitation of international movements.

EFFECT ON EXISTING LAW

SEC. 12. This Act shall be deemed to be supplementary to the jurisdiction and authority which each agency possesses under existing law and nothing in this Act shall be construed to repeal, or change any provision of the Interstate Commerce Act, the Federal Aviation Act of 1958, or the Shipping Act, 1916, or any other provision of law except to the extent that the provisions of such Acts or other laws or rules and regulations issued thereunder that are clearly inconsistent with this Act: *Provided, however,* That in construing such Acts or other provisions of law each agency shall exercise its jurisdiction and authority under existing law so as to implement the policy set forth in section 2 of this Act.

AMENDMENTS

SEC. 13. (a) Section 1003 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1483), is amended by adding the following subsection at the end thereof:

"(f) This section does not apply to joint rates for international transportation of property; however, joint rates for international transportation of property established and filed under this section before the effective date of this amendment are not affected."

EFFECTIVE DATE

SEC. 14. This Act shall be effective ninety days after the date of enactment. Not later than the effective date, the agencies shall publish rules for the filing of tariffs.

The letter and analysis, presented by Mr. MAGNUSON, are as follows:

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 16, 1969.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft of a proposed bill "To authorize and foster joint rates for international transportation of property, to facilitate the transportation of such property, and for other purposes," together with a section-by-section analysis.

The proposed bill would permit common carriers engaged in the domestic, international, and foreign segments of international transportation to enter into agreements to establish joint rates, issue single bills of lading for through movements, and interchange or pool equipment and facilities. Such agreements would be subject to the approval of each regulatory agency having jurisdiction over a common carrier entering into the agreement. The bill would extend each agency's jurisdiction and authority to cover joint rate agreements in international transportation, making only the incidental changes in the existing authorities of the regulatory agencies to accomplish that purpose.

A somewhat similar bill was transmitted to your predecessor by this Department on March 11, 1968. The Senate version of that bill was introduced on March 28, 1968, as S. 3235 and hearings were held before the Commerce Committee on June 17 and 19, 1968. It was introduced in the House of Representatives on March 18, 1968, as H.R. 16023, and referred to the Committee on Interstate and Foreign Commerce but no hearings were held.

The proposed bill transmitted herewith contains a number of changes from the original version, most of which are of a technical nature. The bill now excludes freight forwarders since it is not the practice of the Interstate Commerce Commission to permit forwarders to publish joint rates with underlying common carriers. Section 3 limits participation in the activities authorized by the bill to direct or underlying common carriers, i.e., those who own and operate transport equipment and who are subject to economic regulation by the regulatory agencies. Section 8 of the bill has been modified to extend the antitrust immunity which may be conferred upon the subject common carriers.

This proposed legislation is necessary if modern container technology is to provide through systems of international, intermodal transportation. Carriers capable and desirous or jointly providing through intermodal service are presently restricted in reaching agreements on international joint rates and arranging for the interchange of equipment, through documentation and uniform liability for loss and damage. Shippers, carriers and regulatory agencies have expressed views which support the need for new legislation in this area.

The proposed bill contains a provision which retains for each of the regulatory agencies involved—the Interstate Commerce Commission, the Federal Maritime Commission, and the Civil Aeronautics Board—the jurisdiction and authority it has under existing law with respect to the rates and practices of carriers subject to it, and grants to each such agency jurisdiction over that part of the joint rate relating to a carrier ordinarily subject to its jurisdiction. Recently, the Interstate Commerce Commission has indicated that it believes it already has—without benefit of this legislation—jurisdiction to accept for filing joint international

single-factor rates. It is arguable that such jurisdiction exists in the ICC. Assuming arguendo that it does, however, this legislation could be considered unnecessary only on the narrow issue of where a joint international single-factor rate might be filed. In other significant ways, this legislation is intended to accomplish far more than could be accomplished by the order of any single agency, since it provides for matters such as:

1. A single set of uniform tariff rules for all carriers governing the form and filing of joint rates.

2. The filing of joint rates governing transportation from inland points in the United States to inland points abroad.

3. Intermodal rates between air carriers and carriers of all other modes.

4. Arrangement for the interchange of transport equipment (containers, trailers, etc.) between carriers of different modes.

5. A means for ocean carriers and groups of carriers to obtain antitrust exemption for dealings with inland carriers.

6. Divisions of carrier revenues, as required by regulatory agencies.

7. The use of a through bill of lading for the entire length of an international joint rate movement.

The proposed legislation has been designed to achieve these objectives without changing the authority of any carriers or altering the historic jurisdiction of the regulatory agencies. It neither creates nor certifies any new type of carrier. It provides for existing carriers to file through rates with their appropriate regulatory agency. If a tariff has to be filed with more than one regulatory body, the identical paper would be filed with each, under uniform tariff filing rules. All agreements entered into by carriers would be subject to approval by each agency in the same manner as they would under existing law.

In summary, the bill's purpose is to create a framework which allows the abilities and facilities of existing carriers to be utilized to the fullest extent in providing modern, through transportation. The approach of the bill is permissive, not mandatory. With the known needs of shippers for through service and the known desire of carriers to join together to provide such service, only the legal barriers stand in the way. Once these are dismantled, swift, simple and economical international through service should become a reality.

The Bureau of the Budget has advised, from the standpoint of the President's program, there would be no objection to enactment of the proposed bill.

Sincerely,

JOHN A. VOLPE.

SECTION-BY-SECTION ANALYSIS OF THE BILL TO AUTHORIZE AND FOSTER JOINT RATES FOR INTERNATIONAL TRANSPORTATION OF PROPERTY, TO FACILITATE THE TRANSPORTATION OF SUCH PROPERTY, AND FOR OTHER PURPOSES

Section 1. *Short name.*—This section provides that the Act may be cited as the "Trade Simplification Act of 1969."

Section 2. *Declaration of policy.*—This section declares it to be the policy of the United States to facilitate the movement of freight in international commerce and to foster the use of joint rates by land, water, and air carriers in international transportation of property between the United States and foreign countries. All Federal departments and agencies are directed to cooperate in carrying out this policy.

Section 3. *Definitions.*—This section defines the important terms used in the bill. The kinds of "carrier" which will participate in the transportation envisioned by this bill are (1) common carriers subject to the jurisdiction of the Civil Aeronautics Board, Federal Maritime Commission, or the Interstate Commerce Commission and (2) for-hire transporters of property by land, water, or air between points both of which are outside the United States. By including both domestic and foreign carriers, it will be possible to have a joint rate for a through movement between an interior point in the United States and an interior point in a foreign country.

"Common carrier subject to the jurisdiction of an agency" means "an air carrier defined in section 101(3) of the Federal Aviation Act of 1958 except an air carrier not engaged in the operation of aircraft;" a foreign air carrier "as defined in section 101(19) of the Federal Aviation Act of 1958 except a foreign air carrier not directly engaged in the operation of aircraft;" a common carrier by water "other than a non-vessel operating common carrier by water, subject to the jurisdiction of the Shipping Act, 1916;" and a common carrier "subject to Parts I, II and III of the Interstate Commerce Act."

"Joint rate" is defined as "a rate jointly offered for a through service between a place in the United States, on the one hand, and a place in a foreign country on the other, and expressed as a single, comprehensive rate, by two or more carriers, at least one of which shall be a common carrier subject to the jurisdiction of an agency.

"International transportation" is defined as "transportation of property by land, water, or air carrier or by any combination thereof between places in the United States, (including Puerto Rico, the District of Columbia and territories and possessions), and places in a foreign country."

Section 4. *Establishment of joint rates.*—This section authorizes carriers to enter voluntarily into agreements to establish joint rates and to provide in such agreements for the division of revenues, the apportionment of liability, and the pooling or interchange of equipment, and other operating matters. The authorization does not include pooling of traffic, services or earnings. All agreements are subject to review and approval by the regulatory agencies having jurisdiction over the carriers.

Section 5. *Tariffs.*—This section requires that joint rate tariffs be filed, posted, and published, with each agency having jurisdiction over a participating carrier. To be in effect as a lawful joint rate, the required tariffs must be in effect with each agency involved. Further, each agency may require the common carriers subject to its jurisdiction to set forth in a tariff or to file for informational purposes the division of revenue accruing to each participating carrier. Since a number of carriers subject to one agency may participate in a joint rate, this section provides that each may concur in the filing before that agency, rather than be required to file the same tariff individually. The section does not, however, require a participating carrier to file anything with any agency other than the one having jurisdiction over it. Unless a different period is provided pursuant to regulations, no joint rate tariff may become effective or be changed on less than thirty days notice.

Section 6. *Adherence to tariff.*—This section requires strict adherence to the terms of a tariff and imposes a civil penalty of up to $5,000 for every shipment which violates the duty not to charge a greater, lesser, or different compensation than set forth in the tariff. Further, it makes clear that nothing in the Act shall be construed as relieving any carrier or other person of any punishment, liability or sanction which may be imposed otherwise than under the Act.

Section 7. *Forms of tariffs.*—This section directs the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission, after consultation with the Department of Transportation, jointly to promulgate rules for the form and manner of filing tariffs, and other related matters. The rules shall encourage maximum use of simplified tariff forms and classifications, and coordinated commodity descriptions.

Section 8. *Jurisdiction and authority of agencies.*—This section retains for each agency the jurisdiction and authority it has under existing law with respect to the rates and practices of carriers subject to it. While no agency is given jurisdiction over the entire joint rate, each is given jurisdiction over that part of the joint rate relating to a carrier ordinarily subject to its jurisdiction, and over that carrier's practices in connection with the joint rate. It is specifically provided that divisions of joint rates and practices related thereto are to be treated as rates and practices, for the purposes of the Act, and the relevant agency would apply to them the statutory provisions governing lawfulness of rates and practices. The agency may exercise this jurisdiction in the same manner and to the same extent as it exercises its existing jurisdiction over the rates and practices of the carrier. The several agencies would be authorized to conduct joint hearings on any matter covered by the Act.

Each agency is authorized to treat a joint rate agreement as it would agreements entered into by competing carriers, all of whom were under its jurisdiction. This provision is intended to immunize joint rate agreements through the process of each regulatory agency acting upon such agreements according to its own statutory authority (section 412 of the Federal Aviation Act (49 U.S.C. 1382), section 5a of the Interstate Commerce Act (49 U.S.C. 5b), and section 15 of the Shipping Act, 1916 (46 U.S.C. 814) and extending such immunity from the antitrust laws as follows from approval under those statutory provisions. While no agency would have jurisdiction over the entire agreement, each would have authority to approve or disapprove participation in the agreement by a carrier subject to its jurisdiction. Agreements would be permitted between a single carrier in one mode and a single carrier in another mode or between a group of carriers in one mode and a single carrier or group of carriers in another mode. The agencies would be expected to cooperate in issuing any necessary, uniform regulations establishing procedures or requirements to be observed in entering into agreements, consistent with the policy expressed in section 2 of the bill.

Section 9. *Through bill of lading.*—This section authorizes any carrier participating in a joint rate to issue through bills of lading assuming responsibility from origin to destination. It is intended that the provisions of the Pomerene Bills of Lading Act (49 U.S.C. 81 et seq.), which deals with negotiability, legal sufficiency, and other matters, will apply to bills issued under the authority of this section in the same manner as it does to any other bill of lading.

Section 10. *Damages; overcharges, and undercharges; venue.*—This section provides that the appropriate existing law will be applicable to claims for loss or damage to goods shipped or for undercharges or overcharges which arise during movements under a tariff authorized by the Act. Similarly, jurisdiction of the various courts to entertain suits arising in connection with such movements will also be determined under existing law. The intent of the section is to permit a shipper or carrier to assert with respect to a claim concerning a movement under a joint rate the same rights and remedies which would have been available if the shipment had moved under separate tariffs established by existing laws.

Section 11. *International cooperation; reports.*—This section directs the Secretary of Transportation, in consultation with the interested agencies and the Secretary of State, to facilitate international transportation of goods, and to report to the Congress from time to time on the use of joint rates and the facilitation of international movements.

Section 12. *Effect on existing law.*—This section states that this Act is intended to supplement the jurisdiction and authority each agency has. Where provisions of the Interstate Commerce Act, the Federal Aviation Act or the Shipping Act, 1916, are clearly inconsistent with this Act they will be deemed to be changed by this Act. The agencies are directed to exercise their existing authority so as to implement the policy expressed in this Act.

Section 13. *Amendments.*—This section amends section 1003 of the Federal Aviation Act of 1958 by limiting establishment of through service and joint rates between air carriers and carriers subject to the Interstate Commerce Commission to interstate transportation of property.

Section 14. *Effective date.*—Makes the Act effective ninety days after enactment to permit the regulatory agencies to promulgate necessary implementing rules and regulations. The agencies are required to publish regulations for the filing of tariffs by the effective date.

S. 3143—INTRODUCTION OF A BILL AMENDING THE DEATH ON THE HIGH SEAS ACT

Mr. MAGNUSON. Mr. President, by request of the American Trial Lawyers Association, I introduce for appropriate reference a bill to amend the Death on the High Seas Act (46 U.S.S. 761 et seq.). The purpose of the bill is to remedy certain anomalies that exist in the laws relating to the injury and death of crewmen and others in State navigable waters and on fixed structures on the high seas.

For members of a ship's crew and for many maritime workers, the maritime law provides a remedy for full damages for injuries caused by negligence or unseaworthiness. Maritime doctrines such as the rule of comparative negligence also apply and this is true whether the injury occurs on the high seas or in State navigable waters. However, if death results from an injury occurring in State navigable waters the situation is quite different. First, there is no recovery at all for the death of a crewman caused by unseaworthiness alone. Second, the families of other maritime workers must contend with the restrictions and uncertainties of State wrongful death statutes in determining whether there is recovery for unseaworthiness, whether the rule of comparative negligence applies, and the time limit for bringing the action. In short, many of the rights that an injured party has where an injury is sustained on State navigable waters are denied to the family of the man who suffers death rather than injury.

The bill would also extend to persons dying on fixed structures on navigable waters and the high seas. In addition, the bill would more closely conform such matters as the right to trial by jury and the period of limitations to those now provided for injuries by the Jones Act.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3143) to amend the act known as the Death on the High Seas Act, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, and referred to the Committee on Commerce.

S. 3144—INTRODUCTION OF BILL ON MINIMUM STANDARDS OF RAIL PASSENGER SERVICE

Mr. PELL. Mr. President, in the past month I have twice discussed the intercity rail passenger crisis. At this time, I would like to elaborate on the fourth element of my shortrun plan to resolve the passenger rail crisis; that is, the provision of authority to the Interstate Commerce Commission to require minimal standards of passenger service.

The Interstate Commission stated in its July report to the Congress:

> The past year has only substantiated our opinion that significant segments of the remaining intercity service, except for rail service in high density population corridors, such as the Northeast Corridor, will not survive the next few years without a major change in Federal and carrier policies.

In 1958 there were 1,400 intercity trains in operation and in 1968 there were 590 trains in operation. There were only 496 trains remaining in operation as of July 1969, when the Interstate Commerce Commission made their last report, and according to the latest information I have, 16 trains have since been discontinued leaving a total of a mere 480 intercity passenger trains in operation in a country of 200 million people. I ask that the list of those latest discontinuances be included in the RECORD at this point.

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

Carrier	Point served	Number of trains	Date service discontinued
Docket No:			
25580 Milwaukee	Chicago and Minneapolis	2	July 31, 1969
25585 Penn-Central	Albany and Boston	2	Aug. 7, 1969
25596 B. & O. RR	Cumberland, Md., and Parkersburg, W. Va.	2	Aug. 15, 1969
25676 Seaboard Coast Line	Richmond and Atlanta	2	Oct. 8, 1969
25704 Union Pacific	Omaha and Louisiana	2	Oct. 24, 1969
25711 Illinois Central	St. Louis and Carbondale, Ill.	2	Oct. 28, 1969
25716 Kansas City Southern	Kansas City and New Orleans	2	Oct. 20, 1969
25282 Missouri	St. Louis and Kansas City	2	Oct. 17, 1969
Intercity passenger trains still in existence		480	

Mr. PELL. Mr. President, what are the reasons for these discontinuances? Obviously, as the report of the Interstate Commerce Commission has stated, the main problem is economics.

If the eight major railroads studied did not operate their intercity passenger trains, they would have avoided $1.83 in expenses for every $1 in revenue that would have been received. While I believe the costliness of passenger service is a significant factor not to be discounted, I do not believe the cost factor explains completely the reasons for the decline of the intercity passenger train. The quality of service provided by the railroads also must be examined.

Recent cases before the Interstate Commerce Commission have presented evidence that the major railroads have exaggerated the costliness of passenger service by a systematic downgrading of the quality of service afforded the rail passenger.

For example, the Commission stated in its rejection of the Southern Pacific's petition to discontinue the "Sunset Limited" between Los Angeles and New Orleans:

> The record is convincing that the Southern Pacific has deliberately set out to discourage existing, as well as new, patronage of the Sunset by reducing what was once a convenient and comfortable railroad passenger service to a slow, unreliable, uncomfortable train without sleeping facilities with only rudimentary dining facilities; a train on which a seat cannot be reserved, arrival and departure times cannot be easily ascertained by telephone, or by printed schedules because they are often unobtainable and a train for which adequate station waiting room is frequently lacking.

Unfortunately, the Sunset Limited is not an unusual example. It represents the classical situation facing potential rail passengers. The "Afternoon Hiawatha" between Milwaukee and the Twin Cities now takes an hour longer than it did in 1953. The "Twentieth Century" between Chicago and New York has been replaced by a train adding 2 hours and 15 minutes to the trip. The prime reason for this slowdown in passenger trains was recently cited in the St. Louis-Kansas City discontinuance case with the Interstate Commerce Commission stating that:

> The practice of giving schedule priority to freight business to the detriment of passengers is intolerable and should be forthwith discontinued.

Although the Interstate Commerce Commission has admitted that much of the decline in passenger service is attributable to the poor service provided by the railroads, it has denied that its regulatory authority includes the powers necessary to require the railroads to provide minimal standards of service. Consequently, the Interstate Commerce Commission asked that Congress pass legislation assigning to the Commission jurisdiction over the quality and adequacy of railroad passenger service.

While I would support the bill previously introduced at the request of the Interstate Commerce Commission to provide such an authority, I do not believe that bill would furnish the Interstate Commerce Commission with the adequate regulatory tools needed to improve the standards of passenger service. Consequently, I am today introducing a minimum standards bill which would not only provide the Interstate Commerce Commission with jurisdiction over standards of passenger service but would also require passenger operations to be conducted in a unified, coordinated, and efficient manner.

The bill I introduced today is a companion measure to H.R. 13832 introduced by Representative BROCK ADAMS with 95

other cosponsors. I ask that my bill be printed at this point in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3144) to authorize the Interstate Commerce Commission to prescribe minimum standards for railroad passenger service, and for other purposes, introduced by Mr. PELL, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3144

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first sentence of paragraph (4) of section 1 of the Interstate Commerce Act is amended by striking out "furnish transportation" and inserting in lieu thereof "furnish adequate transportation for both property and passengers."

(b) The second sentence of such paragraph (4) is amended by inserting ", including through car service," immediately after "provide reasonable facilities for operating such routes".

SEC. 2. Paragraph (10) of section 1 of such Act is amended by inserting "and passengers" immediately after "transportation of property".

SEC. 3. (a) Paragraph (4) of section 3 of such Act is amended by striking out "equal facilities for the interchange of traffic" and inserting in lieu thereof "equal facilities, including through car service, for the interchange of traffic".

(b) Paragraph (5) of such section 3 is amended—

(1) by striking out "terminal facilities" each place it appears and inserting in lieu thereof "trackage or terminal facilities" in each such place; and

(2) by striking out ", including main-line track or tracks for a reasonable distance outside of such terminal".

SEC. 4. The first proviso contained in paragraph (1) of section 5 of such Act is amended by striking out "the Commission shall by order approve and authorize, as assented to by all the carriers involved, such pooling or division" and inserting in lieu thereof "the Commission shall by order approve, authorize, or require such pooling or division".

SEC. 5. The third sentence of paragraph (1) of section 12 of such Act is amended—

(1) by inserting ", including all obligations and duties imposed upon carriers under this part" immediately after "execute and enforce the provisions of this part"; and

(2) by inserting ", including all obligations and duties imposed upon carriers under this part," immediately after "enforcement of the provisions of this part".

Mr. PELL. Mr. President, section 1 (a) of my bill makes clear that the obligation to furnish transportation upon reasonable request, set out in section 1 (4) of the Interstate Commerce Act, is applicable to passenger as well as freight transportation, and that such transportation must be "adequate."

Section 1(b) of my bill specifies that the obligation to provide reasonable facilities for the operation of through routes, as set out in section 1(4) of the Interstate Commerce Act, includes the obligation of providing through car service. By the exercise of this power, the Commission could compel two railroads, whose trains originated, terminated, or intersected at a common point to schedule those trains so as to provide a convenient connection or through cars in a unified through service.

Section 2 of my bill would bring to passenger transportation the benefits of the "car service" powers of the ICC which govern the supply and distribution of rolling stock, and which for many years have proved invaluable to the efficient movement of freight. Those powers would allow for the establishment of a national passenger car pool.

Section 3(a) is basically a technical conforming amendment.

Section 3(b) expands the provisions of section 3(5) of the Interstate Commerce Act to cover trackage as well as terminal facilities. The broadening of this section would enable the Commission to order one railroad, not now operating passenger trains, to allow the use of its tracks by the passenger trains of another line for all or part of their runs.

Section 4 of my bill amends the "pooling" provision, section 5(1) of the Interstate Commerce Act, and gives the Commission the power to require a pooling arrangement without the agreement of the involved railroads. This power would be useful in a situation where two railroads operated passenger trains between two points on parallel routes, and where one train would be sufficient. This pooling arrangement might also be an appropriate method of requiring the railroad which is allowed to discontinue its train to share in the financial burden, if any, that another railroad would incur in continuing passenger service over the route of the discontinued train.

Section 5 of my bill amends the enforcement provisions of section 12(1) of the Interstate Commerce Act and it makes absolutely clear that the obligations and duties for minimal standards of service are directly enforceable by the Commission.

Mr. President, I believe it is essential that if this Congress acts on no other rail bill that it act on the legislation I introduce today. With the exception of one or two railroad companies, the railroad companies of this country are trying to relieve themselves of their responsibilities for rail passenger service as quickly as they possibly can. Their discouragement of passenger service is forcing the premature economic death of service that the American public demands now and will increasingly demand in the future as the country becomes urbanized.

The latent demand for adequate passenger service in our Nation's urban corridors is reflected in the success of the Metroliner which by itself has reversed the downward trend in rail passenger service between New York and Boston.

I believe the bill I propose is the minimal requirement for maintaining rail service at a level least likely to hinder the ability of our country to meet future transportation needs.

Mr. President, I would also note that the passage of minimum standards legislation, as I have suggested, is a necessary concomitant to any form of Federal aid to intercity rail service. While I would prefer Federal aid for intercity rail passenger service to be funneled through nonprofit public or private corporations, I could only support the provision of limited direct assistance to the railroads if the Interstate Commission had jurisdiction over their standards of passenger service.

I do not offer my bill as the panacea for the rail problem. I only offer my bill as a reasonable first step toward the solution of our national rail passenger crisis.

I hope that its passage will bring about the improvements in passenger rail service necessary to make rail passenger service once again an appealing mode of transportation for the intercity traveler.

ADDITIONAL COSPONSOR OF A BILL

S. 2846

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Michigan (Mr. HART), I ask unanimous consent that at the next printing his name be added as a cosponsor of the bill (S. 2846), the Development Disability Services and Facilities Construction Act of 1969.

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

SENATE RESOLUTION 281—RESOLUTION SUBMITTED AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF THE SENATE REPORT ON H.R. 13270, THE TAX REFORM ACT OF 1969

Mr. LONG submitted the following resolution (S. Res. 281), which was referred to the Committee on Rules and Administration:

S. RES. 281

Resolved, that there be printed for the use of the Committee on Finance one thousand five hundred additional copies of its report on H.R. 13270, The Tax Reform Act of 1969.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Stanley B. Miller, of Indiana, to be U.S. attorney for the southern district of Indiana for the term of 4 years, vice K. Edwin Applegate.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Friday, November 21, 1969, any representations or objections they may wish to present concerning the above nomination, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF HEARING ON URBAN MASS TRANSPORTATION LEGISLATION

Mr. SPARKMAN. Mr. President, I should like to announce that the Subcommittee on Housing and Urban Affairs

of the Committee on Banking and Currency will hold a 1-day hearing on November 18, 1969, on urban mass transportation legislation.

The hearing will be held in room 5302, New Senate Office Building, and will begin at 10 a.m.

NOTICE OF HEARINGS ON S. 2203—CONSUMER AGRICULTURAL FOOD PROTECTION ACT

Mr. ELLENDER. Mr. President, at a meeting of the Committee on Agriculture and Forestry this morning, we decided to hold hearings on S. 2203, sponsored by the Senator from California (Mr. MURPHY), on the Consumer Agricultural Food Protection Act.

Hearings will be started on January 15, 1970.

SENATOR MANSFIELD IS INTERVIEWED ON THE "TODAY" SHOW

Mr. MANSFIELD. Mr. President, on November 4, last week, I had occasion to be interviewed on the "Today" show of the National Broadcasting Co. network. The interview dealt mainly with Vietnam and our participation in the war there.

I ask unanimous consent to have the transcript of the interview printed in the RECORD.

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

SENATOR MANSFIELD INTERVIEWED

HUGH DOWNS. Man in the Congress, in the field of foreign affairs. He's the Democratic Majority Leader. He's Chairman of the Far Eastern Subcommittee of the Senate Foreign Relations Committee. He made a report to the President recently at Mr. Nixon's request on a tour of six Asian countries.

And while he's not been a severe critic of Vietnam policy, he has urged a faster rate of troop withdrawal. And he's here in Washington now with Today Washington Editor, Bill Monroe and myself, to talk about the President's speech last night.

You've made no public comments about this up to this moment have you, Senator Mansfield?

Senator MANSFIELD. No, I have not.

DOWNS. We—let's start by asking you, has the President's speech, in your mind, unified the nation behind his policy, or has it—has it—will it result in more and more frequent moratoria and dissenting action?

MANSFIELD. That's a question that only time will answer. And the answer, I imagine, will be forthcoming very shortly, when the reaction to the President's speech is made known.

May I say, that I would have to agree with the Vice President of South Vietnam, Nguyen Cao Ky, who stated yesterday that there would be nothing new in the President's remarks. Who also went a bit further than the President did by stating that it was his belief that 180,000 American troops would be withdrawn from South Vietnam next year and replaced by South Vietnamese. So maybe we're getting more out of the South Vietnamese Vice President's remarks than we could get out of the President's speech.

BILL MONROE. Senator, sounds as if you were disappointed in the President's speech.

MANSFIELD. Well, it was a determined speech. I had hoped that he would offer the people more hope. He laid out a—his program as he saw it. There are, of course, certain elements within it which have to be read between the lines because he undoubtedly does have a plan.

I daresay he does anticipate there will be further withdrawals but he does not feel that he could make an announcement to that effect at this time, although nothing stopped Vice President Ky from so stating.

MONROE. Would you have liked to see President Nixon say a few things he didn't say that would have involved additional commitments of peace or faster troop withdrawl?

MANSFIELD. Oh, yes. And I have made my views known on that for months—really years. But he has the final responsibility. As Harry Truman says, the buck stops at the President's desk. He has the ultimate responsibility. We have our responsibilities. We may differ but I certainly hope that he will do all that he can, and I'm sure that he will, to bring this tragedy which is Vietnam to a close so that we can withdraw from that area lock, stock and barrel once a settlement has been achieved. But there are many obstacles in the meantime.

DOWNS. That words defeat and humiliation came up in the speech. Why do you think it would be in the mind of the President that it could be construed as defeat if it became national policy to withdraw, even unilaterally? Would the world consider this defeat?

MANSFIELD. Well, let me put it this way: I would say that a policy of withdrawal has been put into effect and except for the most extraordinary circumstances, in my opinion, it will be irreversible.

We're faced up with a situation which could be described as a win, lose or draw situation. He has indicated that we are not out to win militarily. He has indicated he is willing to settle for a draw. But Hanoi does not seem to be willing to talk along that line. And he has ruled out defeat.

I don't know what you would call a withdrawal even on the basis of what we're doing, in that category.

Of course, the alternative is that we withdraw as the Vietnamese take over more of the war. But it does appear to me that the best we can expect to get out of Vietnam—the very, very best—would be a stalemate, a draw—not even as good as what we've achieved in Korea, where 16 years after that war ended—that war has not ended. As a matter of fact, there's been no peace, only an uneasy truce.

DOWNS. Senator Mansfield, one of the things implicit in the President's speech last evening was an identification—this is not new—an identification of the South Vietnamese people with the government of South Vietnam. This is one of the elements that the dissenting view constantly questions—the fact that only around ten percent of the people actively support that government.

Did you feel that there was a stress of that? Was that something he felt was the general thinking of the American people that those two were to——

MANSFIELD. I couldn't answer that question specifically, except in this way. It's the only government that we have to hang on to at the present time. When I say we, I mean the President of the United States, the Chief Executive of this nation.

But I do not believe that the Thieu-Ky government is a popular government. I think it's army-based, army controlled, army supported.

I recall the elections two years ago last September, in which the neutralists and the Viet Cong were excluded. I do not think it represents the people of South Vietnam. And I would like to see elections held in South Vietnam among all groups, the Cao Dai and the Huahou (?) the Buddhists, the Catholics, the anamists (?) the Montagnards, the Viet Cong, the NLF, all of them. So that they could decide among themselves what kind of government they want, because, after all, they are all South Vietnamese. And the South Vietnamese themselves are going to have to decide their own destiny, their own future, their own form of government. And as far as I'm concerned, I think they should have been conducting their own war all along before this. We have spent too much money—which is really immaterial, though important. We have lost 46,000 lives. We've had 260,000 wounded. We've spent over a hundred million dollars and——

DOWNS. Billions.

MANSFIELD. Billion dollars. And there's no end in sight. There's no light at the end of the tunnel. The only hope is that we do have—thanks to President Nixon's initiative, this withdrawal of 60,000 troops, which I would hope would be speeded up considerably. But there again, I have to bow to his judgement because, I repeat, his is the ultimate responsibility.

MONROE. Senator, do you feel we should come to the point where we put the South Vietnamese Government on a genuine sink or swim basis, where they will be required politically and militarily, either to gain their country or lose it?

MANSFIELD. I do.

MONROE. Do you think we're doing that?

MANSFIELD. No, I do not. I think we're playing along. We're trying to get the South Vietnamese Government to do what we think is best. It's a long, slow, arduous process. I can understand the difficulties which the President has to contend with. He's doing the best he can.

But as I say, I wish it could be done speedier.

DOWNS. If the President's views represent a majority view in the United States now, do you think it will, even a few months from now—do you think it will continue to be the—the thought of middle America, or the bulk of Americans?

MANSFIELD. Well, there's a great malaise among the American people—all groups, all classes, all colors, creeds, and backgrounds. Everything is tied to Vietnam. Our domestic difficulties at home are made more difficult because of Vietnam.

We can't face up to the problems that confront us in this nation, which are the most important, in my opinion, because of Vietnam. We've lost prestige and standing among the nations of the world because of Vietnam.

Vietnam is a cancer. It's a tragedy. It's eating out the heart of America. It's doing us no good. And the sooner we can come to a responsible solution which the President is trying to achieve, the better off we'll all be.

It is a mistake of the worst sort, because Vietnam and South East Asia have never been vital to the security of the United States.

MONROE. Did you feel there was any element of partisanship, politically, in the President's speech last night? Or do you feel he approached the whole thing on a completely bipartisan basis—or non-partisan basis?

MANSFIELD. I think he approached it on a non-partisan basis. He was—he tried to lay out the case to the American people. He took them into his confidence as much as he could in view of the difficulties which confront him. He made a good case for what he had to say, but I don't think it was hopeful. And the American people are looking for hope. And if we're going to get out of this mess it's going to take some courage. A great deal of courage.

Perhaps the President has thought of all these things. I'm sure he has. And maybe in reverse, he's showing a kind of courage and a determination which he expressed in his speech to the people last night.

This was a speech to the American people, not to the world, nor to the Vietnamese.

* * * * *

HUGH DOWNS. Senator, old cliche attitudes, Senator Mansfield, seem to lock us into a view of what "face" would be lost or saved

throughout Asia by our actions in Vietnam or our leaving.

Somebody pointed out that one poll in Japan indicated sixty-eight percent of the people thought we shouldn't be there anyway and that we'd gain face by withdrawing from Vietnam.

Senator MIKE MANSFIELD. Oh, I think we will. I think we place too much emphasis on face, or prestige.

I was very pleased with Nixon's Doctrine for the Pacific, really for the world, which he enunciated at Guam last July in which he said that in the future we would consider ourselves in that area a Pacific power primarily with peripheral interests only on the Asian mainland, and that these Asian nations themselves will have to carry the brunt of the burden of achieving or maintaining their own independence; and, as far as we were concerned, except in the case of a nuclear confrontation, we would not involve manpower in any degree.

So I think he's brought about a decidedly good change in the policy for the Pacific. I'm for it one hundred percent. The other nations in that area agree to it more or less.

And I can see no reason why we should place such emphasis on "face" or prestige, because, after all, I would want to place more emphasis on people, on these young men who have given their lives, who have been wounded; on the people of this nation who have made such great sacrifices.

I think that that is what's most important; not prestige, not face, because, after all, that's ephemeral.

BILL MONROE. Senator Mansfield, President Johnson, of course, was escalating the war. He put a stop to the escalation at the end of this term.

President Nixon is deescalating the war. But aside from these differences of approach—in terms of what they're trying to do in Vietnam, do you feel that their policies are similar? Is there any difference between the goals the two men seem to be looking for in Vietnam?

MANSFIELD. Oh, yes. I think Johnson, in effect, in his speech of renunciation, and subsequent events brought a stop to the escalation of the war.

But President Nixon, since he's been in office, has brought about a deescalation of the war through a reduction in the bombing; through reaching an accommodation with Cambodia—a very important factor; through a withdrawal of American troops; and through a turning over to the Vietnamese some of our air bases, airplanes, naval installations, naval craft and the like.

I think that the policy has been reversed by Nixon. My feeling is that it should be speeded up and done a good deal faster.

MONROE. Isn't the goal the same in connection with self-determination: that we won't get out until we feel that self-determination is assured?

MANSFIELD. That's right. The question is what—what—just what do you mean by self-determination.

Is it going to be the kind that the Thieu-Ky government wants, or we think that they should have? Or is it going to be the kind that the people of South Vietnam—all of them—want?

And I think it should be the latter. It's what the people of South Vietnam want. And Nixon has said that he is in favor of such an election. He has also said that regardless of its coloration that we would accept such a government: coalition or otherwise.

This is not an imposition. This is a choice by free will of all the people of South Vietnam, who are the most important factors in the consideration of the future of that country.

DOWNS. Is there any danger that the hard-liners will consider moving in that direction a defeat, even though it might fulfill the stated policy aim?

MANSFIELD. No, quite the contrary. The President has made his declaration. It has met with unanimous approval as far as I know. And I agree with him one hundred percent.

DOWNS. Thanks again, Senator Mansfield, for being our guest this morning.

STRATEGIC ARMS LIMITATION TALKS

Mr. AIKEN. Mr. President, on Monday the United States and the Soviet Union will open very crucial talks in Helsinki on ways to scale down the strategic arms race. We cannot now tell what the outcome will be, but we are all hopeful that these talks will lead to a slowdown in the buildup of strategic nuclear weapons.

Last night Secretary of State Rogers delivered a talk before the Diplomatic and Consular Officers Retired which I feel sets the tone for the talks in Helsinki. The Secretary, of course, could not and did not detail the specific proposals which would be discussed at this first meeting in Helsinki. But he did broadly outline the desire of the United States to come to an agreement with the U.S.S.R. The Secretary's talk was filled with hope—a hope that sane men from the two most powerful countries on earth can curb what has been an unending competition in the strategic arms race. We have made some progress in limiting nuclear weapons. More needs to be done.

I feel all of us can agree with Secretary Rogers when he says that there is reason for hope because both superpowers are willing at least to discuss ways to limit the growing nuclear arsenal and increasing threat to world peace.

Mr. President, I ask unanimous consent to have printed in the RECORD the full text of the Secretary's remarks.

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

ADDRESS BY THE HONORABLE WILLIAM P. ROGERS, SECRETARY OF STATE

Next Monday in Helsinki the United States and the Soviet Union will open preliminary talks leading to what could be the most critical negotiations on disarmament ever undertaken. The two most powerful nations on earth will be seeking a way to curb what to date has been an unending competition in the strategic arms race.

The Government of the United States will enter these negotiations with serious purpose and with the hope that we can achieve balanced understandings that will benefit the cause of world peace and security. Yet we begin these negotiations knowing that they are likely to be long and complicated and with the full realization that they may not succeed.

While I will not be able to discuss specific proposals tonight, I thought it might be helpful to outline the general approach of our government in these talks.

I

Nearly a quarter of a century ago, when we alone possessed nuclear power, the United States proposed the formation of a United Nations Atomic Development Authority with a world monopoly over all dangerous aspects of nuclear energy. This proposal might well have eliminated for all nations the dangers and burdens of atomic weapons. Unhappily, as we all know, it was rejected.

The implications were obvious. Others intended to develop nuclear weapons on a national basis. The United States then would have to continue its own nuclear program. It would have to look to its own security in a nuclear-armed world. Thus we established a national policy of maintaining nuclear weapon strength adequate to deter nuclear war by any other nation or nations. It was our hope then, as it is now, to make certain that nuclear weapons would never again be used.

The intervening decades have seen enormous resources devoted to the development of nuclear weapons systems. As both sides expanded their force levels an action/reaction pattern was established. This pattern was fed by rapid progress in the technology of nuclear weapons and advanced delivery systems. The mere availability of such sophisticated technology made it difficult for either side by itself to refrain from translating that technology into offensive and defensive strategic armaments.

Meanwhile, strategic planners, operating in an atmosphere of secrecy, were obliged to make conservative assumptions, including calculations on what became known as the "worst case." The people responsible for planning our strategic security had to take account of the worst assumptions about the other's intentions, the maximum plausible estimate of the other's capabilities and performance, and the lowest plausible performance of our own forces. The Soviets no doubt did the same.

Under these circumstances it was difficult during these many years for either side to conclude that it had sufficient levels of destructive power.

II

Yet that point in time has now clearly been reached. As absolute levels of nuclear power and delivery capability increased, a situation developed in which both the United States and the Soviet Union could effectively destroy the society of the other, regardless of which one struck first.

There are helpful mutual restraints in such a situation. Sane national leaders do not initiate strategic nuclear war and thus commit their people to national suicide. Also they must be careful not to precipitate a conflict that could easily escalate into nuclear war. They have to take elaborate precautions against accidental release of a nuclear weapon which might bring on a nuclear holocaust.

In brief the nuclear deterrent, dangerous though it is, has worked.

The present situation—in which both the United States and the Soviet Union could effectively destroy the other regardless of which struck first—radically weakens the rationale for continuing the arms race.

Competitive accumulation of more sophisticated weapons would not add to the basic security of either side. Militarily it probably would produce little or no net advantage. Economically it would divert resources needed elsewhere. Politically it would perpetuate the tensions and fears that are the social fallout of the nuclear arms race.

So a capacity for mutual destruction leads to a mutual interest in putting a stop to the strategic nuclear arms race.

Nonetheless technology advances remorselessly. It offers new opportunities to both sides to add to their offensive and defensive strategic systems. Both sides find it difficult to reject these opportunities in an atmosphere of rivalry and in the absence of a verifiable agreement. It raises temptations to seek strategic advantages. Yet now such advantages cannot be hidden for long, and both sides will certainly take whatever counter-measures are necessary to preserve their retaliatory capability.

This is the situation in which the two sides now find themselves. Where national security interests may have operated in the past to stimulate the strategic arms race, those same national security interests may now operate to stop or slow down the race.

The question to be faced in the strategic arms talks is whether societies with the advanced intellect to develop these awesome weapons of mass destruction have the combined wisdom to control and curtail them.

III

In point of fact, we have already had some successes in preliminary limitations.

We have a treaty banning military activities in Antarctia.

We have a treaty banning the orbiting of weapons of mass destruction in outer space and prohibiting the establishment of military installations on the moon or other celestial bodies.

We have reached agreement with the Soviet Union on the text of a treaty forbidding the emplacement of weapons of mass destruction on the ocean floors, about to be considered at the United Nations General Assembly.

These are agreements not to arm environments previously inaccessible to weapons. Manifestly there are fewer obstacles to such agreements than there are to agreements controlling weapons already deployed or under development.

But even in already "contaminated" environments there have been two important control agreements:

We have negotiated and ratified a Test Ban Treaty prohibiting the testing of nuclear weapons in the atmosphere, under water, and in outer space.

We have negotiated and are prepared at any time to ratify simultaneously with the Soviet Union, a Nuclear Non-Proliferation Treaty.

It should be pointed out, though, that the main objective of a Nuclear Non-Proliferation Treaty is to prevent non-nuclear powers from acquiring atomic weapons. The treaty does not restrain any of the present nuclear powers from further development of their capabilities. The non-nuclear countries therefore tend to look upon the treaty essentially as a self-denying ordinance.

Accordingly, during the negotiations they insisted upon assurances that the nuclear powers would seriously pursue strategic arms negotiations. We concurred and incorporated a paragraph in the treaty which would require us to do so.

I mention this to underscore two points. First, that the disarmament agreements previously concluded have widely been regarded as confidence building, preliminary steps which hopefully might lead to more meaningful agreements on strategic arms. Second, when the United States and the Soviet Union ratify the NPT, they will agree to undertake negotiations in good faith for a cessation of the nuclear arms race.

IV

However, given the complexity of the strategic situation, the vital national interests involved, and the traditional impulses to seek protection in military strength it is easy to be cynical about the prospects for the talks into which we are about to enter.

Nonetheless some basis for hope exists.

First is the fact that the talks are being held at all. The diplomatic exchanges leading up to these talks were responsible in nature. And the talks themselves will require discussion of military matters by both sides in which the veil of secrecy will have to be, if not lifted, at least refashioned. These factors lead us to the hope that the talks are being entered into seriously.

Second is the matter of timing. Previous disparity in nuclear strength has been succeeded by the situation of sufficiency of which I have already spoken. And because this condition will continue for the foreseeable future the time then seems to be propitious for considering how to curb the race in which neither side in all likelihood can gain meaningful advantage.

Third is a mutuality of interest. Under present circumstances an equitable limitation on strategic nuclear weapons would strengthen the national security of both sides. If this is mutually perceived—if both sides conduct these talks in the light of that perception—the talks may accomplish an historic breakthrough in the pattern of confrontation that has characterized the postwar world.

May I pause to point out again that I do not wish to predict that the talks will be easy or that progress is imminent or for that matter likely. Mutuality of interest for states accustomed to rivalry is difficult to perceive. Traditions are powerful. Temptations to seek advantage run strong. Developments in other areas are bound to have an impact on these discussions.

Both parties will approach the talks with great caution and pursue them with immaculate care. The United States and the Soviet Union are entirely capable of protecting ther vital interests and can be counted upon to do so. So there is little chance that either side would accept an outcome that leads to its net national disadvantage. In our case also we would not agree to anything adversely affecting the national interests of our allies, who will continue to be consulted as the talks develop.

On the other hand we must also recognize that a prime technique of international politics—as of other politics—is talk. If these talks are serious they can lead to better understanding on both sides of the rationales behind strategic weapons decisions. This in itself might provide a climate in which to avoid compulsive decisions.

Talks need not necessarily call for an explicit agreement at any particular stage. Whether we can slow down, stop or eventually throw the arms race into reverse, remains to be seen. It also remains to be seen whether this be by a formal treaty or treaties, by a series of agreements, by parallel action, or by a convergence of viewpoints resulting from a better understanding of respective positions.

What counts at this point is that a dialogue is beginning about the management of the strategic relations of the two superpowers on a better, safer, cheaper basis than uncontrolled acquisition of still more weapons.

The United States approaches the talks as an opportunity to rest our security on what I would call a balanced strategy.

In pursuit of this balanced strategy of security we will enter the Helsinki talks with three objectives:

To enhance international security by maintaining a stable U.S.-Soviet strategic relationship through limitations on the deployment of strategic armaments;

To halt the upward spiral of strategic arms and avoid the tensions, uncertainties, and costs of an unrestrained continuation of the strategic arms race;

To reduce the risk of an outbreak of nuclear war through a dialogue about issues arising from the strategic situation.

Some say that there will be risks in such a process. But it is easy to focus too much on the risks that would accompany such a new environment and too little on the risks of the one in which we now live. Certainly, such risks are minimal compared to the benefits for mankind which would flow from success. I am confident that this country will not let down its guard, lose its alertness, or fail to maintain adequate programs to protect against a collapse or evasion of any strategic arms agreement. No delegation to any disarmament negotiation has ever been better prepared or better qualified than the United States delegation. The risks in seeking an agreement seem to be manageable, insurable, and reasonable ones to run. They seem less dangerous than the risks of open-ended arms competition—risks about which we perhaps have become somewhat callous.

V

I have mentioned the rewards of progress in terms of international security, world order, and improved opportunities for replacing a stalemated confrontation with a process of negotiations.

But there are also other stakes in these talks that come closer to home. On both sides of this strategic race there are urgent needs for resources to meet pressing domestic needs. Strategic weapons cannot solve the problems of how we live at home, or how we live in the world in this last third of the Twentieth Century. The Soviet Union, which devotes a much larger proportion of its national resources to armaments than do we, must see this as well.

Who knows the rewards if we succeed in diverting the energy, time and attention—the manpower and brainpower—devoted to ever more sophisticated weapons to other and more worthwhile purposes?

Speaking before the United Nations General Assembly two months ago, President Nixon said that he hoped the strategic arms talks would begin soon because "there is no more important task before us." And he added that we must "make a determined effort not only to limit the build-up of strategic arms, but to reverse it."

Just last week President Podgorny of the Soviet Union said: "A positive outcome of the talks would undoubtedly help improve Soviet-American relations and preserve and strengthen the peace." To that I say "Amen."

He added that: "The Soviet Union is striving to achieve precisely such results." Well, so are we; and in this we have the support of the military services, of the Congress, and of the American people.

To that end this Government approaches the Strategic Arms Limitations Talks in sober and serious determination to do our full part to bring a halt to this unproductive and costly competition in strategic nuclear armaments.

NATION CANNOT AFFORD CIVILIAN-MILITARY RIFT

Mr. EAGLETON. Mr. President, it has become all too fashionable in this country to criticize blindly those with whom we disagree. Overstated rhetoric and oversimplified conclusions serve to polarize our politics and divide our society when polarization and divisiveness are already too prevalent.

The military establishment has been a prime target of this counterproductive criticism.

Some criticize the military because it is fighting the war in Vietnam or has not yet won it, while others complain that its needs devour too much of our national budget.

However, it is well to remember that civilian decisions have shaped our policy in Vietnam and the ground rules under which it is pursued; and Congress in the past abdicated its responsibility to judge military spending.

I do not wish to imply that the military is without fault. Overoptimistic military reports contributed heavily to the disastrous policy in Vietnam and often fearsome threats were found to justify military expenditures which later proved ludicrously wasteful.

But who is at fault is not at issue. What is at issue is that continuing polarization is dangerous. We do not need more intense rhetoric now. Rather we need a return to reasonable discourse and commonsense.

Mr. President, I believe that an editorial published in the Fort Gateway

Guide of Waynesville, Mo., goes a long way toward bringing both reason and commonsense to bear on criticism of the military, I ask unanimous consent that it be printed in the RECORD.

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

NATION CANNOT AFFORD CIVILIAN-MILITARY RIFT

Even the most hawkish supporters of America's involvement in Vietnam seem to have come to the conclusion that the war, as it has been fought, is not worth the candle. Its objectives, important as they were and are, have simply become outweighed by its immense costs in wealth, blood and domestic turmoil.

In this sense, at least, there is a kind of unity in America, though the controversy rages over how to cut the costs of the war while not abandoning utterly whatever achievements may still be salvaged from it.

Yet in our universal desire to end the war and our alarm at its divisive and inflationary effects at home, we are in danger of ignoring other, even more pernicious consequences of too precipitate and too complete a reversal of the policies and beliefs which led us into the conflict in the first place.

One of these consequences is a growing antimilitarism, which is shared both by those who view the war as immoral from start to finish and by those who once favored it but now feel that the military has let us down.

A recent news report told of widespread disillusionment among veteran career officers.

"Many of my contemporaries with 15 and 16 years of service are packing it in," an Army lieutenant colonel was quoted as saying, "Pride of profession has kept them going, but that pride is taking a terrible battering these days."

Air Force officer resignations jumped nearly 50 per cent in fiscal 1969 over fiscal 1968. Army resignations were up about 14 per cent. The climb was smaller in the Marine Corps while Navy figures remained the same.

The outlook for attracting new officers is dismal. ROTC recruitment on college campuses is expected to be noticeably affected by antimilitarism this year.

Americans seem to have forgotten, or no longer believe, that in this country the military is controlled by civilians. It was not a general but a civilian president who committed hundreds of thousands of American soldiers to a land war in Asia, against the long-standing warnings of some of our most eminent military men—Generals Gavin, Shoup and Ridgway, for example.

Once in the war, the armed forces fought it as well as they could with the restrictions placed upon them—restrictions that were necessary to prevent the conflict from escalating into World War III but which any armchair strategist can now see doomed it to the indecisive, endless struggle it became.

The military may be accused of deceiving three or four administrations with constant promises of a turning point or the reaching of that elusive light at the end of the tunnel. But the responsibility ultimately rests on those who gave them an impossible job to do.

"It is unjust and unwise to attack the military because they have done their best to execute directions given them by the political leadership," writes Anthony Hartley, editor of Interplay magazine. "Unjust because they are not responsible for initiating policy. Unwise because too constant and extreme an antimilitarist onslaught risks creating in a professional body of officers bitterness leading in the not so long run to the very type of militarism which the critics fear."

The present climate of antimilitarism will have done America a disservice, he adds, if it produces a psychological rift between society and the armed services, which there is so much talk of making entirely voluntary. It will also have done the world a disservice if it creates uncertainty as to the execution of American commitments and ends by leaving a power vacuum in the most crucial areas of international tension.

In a world where peace still depends upon a balance of power, says Hartley, antimilitarist emotion is as bad a guide to policy as militarist emotion.

A thoughtful and dispassionate reassessment of America's capabilities and responsibilities in the light of the Vietnam experience is one thing. A wholesale retreat into the kind of isolationism and antimilitarism that guided our policies between the two World Wars is quite another.

More calamities have been brought down on humanity in the name of peace and righteousness than by all the generals who ever lived.

CHICAGO TRIBUNE POLL BACKS NIXON'S POLICIES

Mr. GRIFFIN. Mr. President, after President Nixon's November 3 address on Vietnam, the Chicago Tribune conducted a poll to enable its readers to register their opinion on this issue.

The newspaper printed a ballot in all its editions from November 6 through November 9, and yesterday the tabulated results were released. The returns confirm what many of us have been saying all along:

A large majority of the people support the President's effort to bring the war in Vietnam to an end.

Of 50,600 ballots received, 30,341, or 60 percent, back the President.

At a time when a large demonstration is taking place in Washington against the President's policies, the Tribune's survey provides additional evidence that the demonstrators do not speak for the majority of Americans.

I ask unanimous consent that the text of a telegram to the President, setting forth the results of the poll, be printed in the RECORD.

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

After your address on Vietnam policy on Nov. 3, the Tribune received scores of telephone calls and letters from readers commenting upon alternative courses to end the war and expressing a desire to register their opinions on this great public issue.

To meet this need a ballot was prepared and published in all editions Nov. 6 through Nov. 9. The deadline for tabulating the ballots was set at noon Nov. 13. Counting of the 50,600 ballots received at that time has been completed and the results are forwarded to you in accordance with the wishes of those who participated in the poll.

Four propositions were offered on the ballot. The propositions and the vote on each were:

Gradual withdrawal of American troops as rapidly as the South Vietnamese can assume responsibility for their defense.

Votes for: 30,341—per cent: 60.

Immediate cease-fire with concessions in Paris acceptable to North Vietnamese negotiators.

Votes for: 864—per cent: 2.

Immediate withdrawal of American troops and aid leaving the solutions of Asian problems to the Asian people.

Votes for: 5,490—per cent: 11.

Resume bombing of North Vietnam and press for a quick military victory.

Votes for: 13,905—per cent: 27.

The Tribune has been pleased to perform this service to its readers. We hope the information will be useful to you and to congressional leaders who also will be receiving a tabulation of the results.

HAROLD F. GRUMHAUS,
President and Publisher.

EVERETT McKINLEY DIRKSEN

Mr. CURTIS. Mr. President, a feeling of inadequacy comes over me when I attempt to eulogize Everett McKinley Dirksen. He was a most unusual man. Senator Dirksen was no political accident. He was a genius in the field of government. He could analyze something in depth and when he rose to speak he had no equals.

Historians will, for many, many years, delve into the record and write concerning the life and works of Senator Dirksen. In these brief remarks I shall not attempt to compete with the historians. I do wish to make some personal observations.

Senator Dirksen was a kind man. He was interested in his colleagues. He was concerned about their families. When misfortune, illness, or sorrow struck, Everett Dirksen was a compassionate friend to all.

Everett Dirksen was fond of little children and young people. Busy as he was, he often found time to encourage a youngster or a young person. His colleagues would often seek him out as a leader to discuss matters with him. I never heard of an instance where he did not see them, take all the time that was necessary, listen to them intently, and do his very best to be helpful. Everett Dirksen will be remembered by countless people as a helpful friend.

The melodious voice of Senator Dirksen brought inspiration to millions of people. His oratory was not mechanical. It was not hollow. His words emanated from a great mind and a big heart. Everett Dirksen loved people.

When I came to Congress following the election of 1938, Everett Dirksen was one of the bright stars in the House of Representatives. All of us were drawn by the magic of his personality. We were fascinated with his grasp of public issues and encouraged by his abiding faith and his devotion to sound principles.

Throughout the history of our Republic some of our greatest men did not serve as President. We could mention Benjamin Franklin, Henry Clay, Douglas MacArthur, Daniel Webster, Robert Taft, and many others. Another name of one of America's all-time greats has now been added to that list. I refer to our friend Everett McKinley Dirksen.

To Mrs. Dirksen, to their daughter, and to the grandchildren, and to all of the loved ones of Senator Dirksen, we extend our deepest sympathy. We urge that they take comfort in the inspiring words of faith so often proclaimed by our departed friend, Senator Dirksen. His was a deep faith, rooted in the Holy Scriptures from which he so frequently quoted. Senator Dirksen's proposal for a prayer amendment to the Constitution was symbolic of his faith and his love for America.

COMMENT ON PRESIDENT NIXON'S VIETNAM SPEECH

Mr. BAKER. Mr. President, President Nixon's recent Vietnam speech has been the subject of considerable editorial comment in newspapers throughout the country. In addition, at least one newspaper, the Knoxville News-Sentinel, conducted a poll of public opinion of the President's speech. The results of the poll indicated that some 80 percent of those questioned are generally in agreement with the President's policy, while 15 percent oppose the policy, and 5 percent are undecided. Some very thoughtful comments are included in an article published in the newspaper a few days following the speech, I ask unanimous consent that that article and also an editorial on the same subject published in the Greenville (Tenn.) Sun, be printed in the RECORD.

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

[From the Knoxville (Tenn.) News-Sentinel, Nov. 6, 1969]

MOST IN KNOX POLL BACK NIXON

Apparently most Knoxvillians feel President Nixon had little new to say in his Vietnam speech Monday night, but support his war policy in general, a News-Sentinel survey revealed.

A team of News-Sentinel reporters talked to scores of people throughout the Knoxville area in a poll taken yesterday.

About 80 per cent of those polled can be grouped in a category generally favoring the President's course in Vietnam. Some 15 per cent oppose his policy and 5 per cent were undecided.

"BEST HE CAN DO"

Here are some of the comments:

Fred V. Brown, clothing store executive: "I think it's about the best he can do. I can't think of any avenue to follow that's better than this one. I think he is determined to get us out as fast as he can in safety."

C. J. Hulen, New Beverly Church Rd., an accountant: "I agree with him. It would be best if everyone supported his policies."

"WAR TEARS US APART"

Rev. Kenneth MacLean, minister, Tennessee Valley Unitarian Church: "The idea of pulling out troops is very good. I am aware of the danger involved in a hasty kind of withdrawal, but there actually isn't a lot of time to end the war. If you pulled out all combat troops now, South Vietnam would be exposed. This war is just tearing our domestic society apart. There's so much damage that's been done already. If this kind of initiative had come earlier, it would have been much better."

Ray Moore, Kingsport, U-T business administration senior: "I don't think Nixon said much had not said before. Basically, I agree with his plan, but I don't think he is specific enough as to when he will pull out troops. His speech wasn't really too enlightening. He didn't give us much new information."

"SHOULD WITHDRAW NOW"

A judge: "When the war was first escalated I was a hawk and felt there was a real need to win the war. Now I am not so sure whether the cause is worth fighting for. However, the President will be able to do nothing without a united front, and he should have one."

A West Knoxville housewife: "He just restated his previous position. I don't think he said anything new. I believe we should withdraw our troops from Vietnam immediately."

Postal employee: "If the war is worth fighting, it is worth winning. Demonstrators in the streets simply prolong the conflict. The President deserves support."

Federal employee: "The war cannot be abandoned. The President deserves support. I am not sure how I will feel once my son becomes draft age."

"SHOULD TRY TO WIN"

A mechanic: "I think he should have said something about winning the war. I think we ought to try to win the war and be more aggressive if we have to."

A U-T student: "I agreed with almost everything he said."

Dana Wolfe, Jr., city police officer: "Amazingly, it was a fair speech. I was especially pleased to hear he had a timetable for troop withdrawal but I was disappointed to hear him whining about how free speech in a free country was a hindrance to his sub rosa negotiations."

Mrs. Mildred Kidd, senior travel counselor, AAA East Tennessee Automobile Club: "To tell the truth, I didn't even hear the speech. I've not read enough to have any opinion either."

Mrs. Polk Chambliss, receptionist at City Hall: "I think he was trying to get the monkey off his back. But I support him because I don't think we can just pull out and walk off."

Mrs. Troy Warwick, 2905 Brentwood Rd., homemaker: "Nixon is doing the best he can. The more support he has, the better he can do. I am always in agreement with whoever the President is."

DANGER OF CHAOS

Clinton Campbell, insurance executive: "I think he's doing a good job. I think that to accelerate the pull-out would lead to chaos. And we'd be as bad off that way as some think we are now. I think he has acted responsibly, and I'm for him."

Rick Chester, Sweetwater, U-T sophomore: "I didn't hear his speech. I was too busy that night. And, I've not really had time enough to sit down and read enough about it to have any opinion."

Richard Brophy, 3009 Shelbourne Rd., insurance salesman: "I am real pleased with the speech for the main reason that he called the hand of the people that are doing more to prolong the war than help it."

A hardware store owner: "I've followed Nixon's policy all along. This isn't something we can get out of easily, I feel he is trying to do the right thing. It would be a catastrophe to pull all the troops out at once. I don't like this war, but we're in it now."

"HE'S TRYING HARD"

A farmer: "Nixon is trying pretty hard. It is difficult to get out all at once. If they give him time and support, he'll get us out of Vietnam. We are giving the other side the advantage by telling everything on TV, radio and in the newspapers. Nixon should keep more things secret."

Downtown businessman: "There was absolutely nothing new in what the President said. He just said 'I'm doing what I can about the war, so get off my back.' I think the war effort is being hurt because there is no united front."

A woman Courthouse employe: "I am pretty much a Nixon follower. I think he said the only thing he could possibly say. I want peace but not by walking away from (the war) and throwing in the towel."

A druggist: "I approve of his policy. I didn't think his speech did much to change the way people think one way or another. His policy is working out in the best way that it can, so far. He was as definite as he could be under the circumstances."

"IN L. B. J.'S BOAT"

A City Hall secretary: "I think the President thinks he's in hot water and he's trying to get out of it. He can't pull all our troops out of there and win this war. And I think we should win it. I think he was sincere in what he said during the campaign, but he's found out he's in the same boat LBJ was in, and he's having to back up."

TVA stenographer: "I thought it was a very good speech. I agree with his plan. However, he didn't say anything he hadn't said before."

U-T staff member: "I was disappointed in the speech. It didn't measure up with what we were led to believe by the prespeech publicity. Basically, I agree with him, though."

A housewife: "I think he ought to be backed up on what he says and does."

BLOCKADE SUGGESTED

Businessman: "There was nothing new to note in the speech. I don't see how the country can go on fighting a war it can't win. Why couldn't North Vietnam be bombed or blockaded or something? Of course, no one knows whether this will bring on a war with Russia or China."

A secretary: "I personally think he's not doing what he said during the campaign that he was going to do about ending the war. I think he's putting us off a little bit. But I think he'll end it eventually—by winning it."

Mrs. Mildred Benson, clerk in City Court office: "I don't know any more now about what is going to happen than I did before the speech."

A secretary: "I didn't know he said anything different from what he has been saying."

[From the Greenville (Tenn.) Sun]

PRESIDENT IS DOING WHAT HE CAN IN DIFFICULT VIETNAM SITUATION

President Nixon's address to the nation Monday night added to the continuing debate over Vietnam an important element that had been missing, namely, an articulate defense of his policy towards the war and his efforts in behalf of peace.

Many Americans had been led into expecting too much from the speech. The impression had gotten around that the President could be expected to announce some dramatic step—a cease fire call, perhaps, or even a firm pullout timetable—that would amount to at least a partial repudiation of U.S. goals in entering the war and pursuing it for the last several years.

So far as we could tell, this impression was pretty much manufactured by leading critics in the Congress. The President himself had revealed nothing about what he was going to say.

What he did say was neither particularly conciliatory nor particularly defiant. It did not promise more than it had a right to, but it was determined, hopeful, and guardedly optimistic. It did not offer an instant solution to the Vietnam tangle, for there was not one to offer.

The speech was, however, informative, as a review of the origins of the U.S. involvement in Vietnam and the steps that the Nixon Administration had taken toward peace. It was frank, in its clear statement of the consequences that a quick U.S. pullout would have in South Vietnam and around the world, and in the United States itself. And it was challenging, in its call for Americans to stand firm and together for the sake of long-run peace.

One thing that the address did was ask the previously silent or undecided to take a position. The effect seems likely to be that many of those in the middle on the war issue will make a choice about where they stand. Both sides will probably become more vocal and more determined in the weeks ahead.

In our view, the President has understood the problem correctly, set the right goals for the United States, and found the best method we can think of to work toward those goals. We would ask, in addition, that he remain constantly alert for new opportunities for a just settlement.

Beyond these requirements, however, it is unreasonable to make demands or dictate tactics. We think that President Nixon is doing the best he can to achieve the peace that all Americans want. If there are others who think so as well, this would be an excellent time to let him know.

REELECTION OF PRESIDENT MARCOS, OF THE PHILIPPINES

Mr. MANSFIELD. Mr. President, a newsworthy article entitled "Victorious Filipino," which refers to the reelection of President Ferdinand Edralin Marcos, appears in today's New York Times. This article gives one an idea of who President Marcos is, what he stands for, and what he hopes to accomplish in bringing greater stability to the Philippines, a broader outlook to its foreign policy, and a recognition of the changes which have occurred since independence.

I ask unanimous consent that the article on the most highly decorated Filipino in the Second World War, a man whose record of cooperation and understanding with the United States is well known, a man who now has the unique distinction of being the first President to be elected to a second term in the Philippines, be printed in the RECORD.

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

[From the New York Times, Nov. 14, 1969]

VICTORIOUS FILIPINO: FERDINAND EDRALIN MARCOS

The man who was relected President of the Philippines Tuesday in an apparent landslide is cautious in foreign policy, but he is a puppet for no nation.

The issues on which Ferdinand E. Marcos, a one-time guerrilla fighter against the Japanese, waged his campaign were withdrawal of Philippine troops from Vietnam and the elimination of the United States presence at military bases.

He has initiated trade with the Communist countries on an experimental basis and has said the experiment will continue. In addition the Chinese Communists as well as members of the Soviet bloc have sent cultural representatives to the Philippines recently.

The doctrine Mr. Marcos calls for advocates "free and mature" relations with the United States and closer ties with his country's Asian neighbors, particularly for regional security. Consequently there are good reasons why he no longer wants United States bases for Philippine participation in Vietnam, even by the 1,500 noncombat troops that have been there since 1966.

When Philippine and American officials reenacted the 25th anniversary of the return of General of the Army Douglas MacArthur to the Philippines Oct 21, President Marcos spoke of the cooperation between Filipinos and Americans in the liberation as "one of the most luminous chapters in the history of Philippine-American friendship." But he also called for a kind of relationship characterized not "by reminiscence and sentimentality but by mutual respect and mutual achievement."

A RIGOROUS DAY

At 52 years of age, he demonstrated his abounding energy during a day of campaigning by delivering nine speeches, listening to dozens of others, moving by plane, helicopter, limousine and jeep, inaugurating a school, shaking every hand that reached out to him, opening a supermarket, listening with apparent joy to a middle-aged women's choir, watching aboriginal dances, sitting impassively through a mild earthquake during a speech by a senator and calmly enduring a torrential downpour and a blazing sun.

Above all he listened to local politicians and petitioners.

President Marcos looks a good deal younger than his years—hardly older than his 38-year-old wife, a beauty queen from a notable Filipino family named Romualdez, whom he married in 1954 when he was a congressman. First he made sure that he was half an inch taller than the tall girl, whose first name is Imelda. During the campaign one observer called her the "most effective campaigner in the islands, even better than her orator husband."

They have three children, a boy, Ferdinand Jr., 11, who is called Bong Bong and is the first Filipino to sign up for a commercial flight to the moon, and two girls.

Their father, a debonair, slender but combative man, was usually first in his class and passed his bar examination—while he was in prison—with record marks. He was the most decorated Filipino soldier in World War II, with 22 medals, including the Distinguished Service Cross of the United States. As a regular soldier and then a guerilla leader he was wounded five times.

He was born in Sarrat, in the province of Ilocos Norte, on Luzon Island, on Sept. 11, 1917, the son of a prominent educator and politician. His mother was a teacher, born Josea Edralin, the child of a land-owning family. Ferdinand attended the University of the Philippines before World War II.

After serving as a legislator and senator, he was elected the sixth President of his country in 1965. Now he is the first to be reelected.

WON HIS OWN ACQUITTAL

He first came to public attention in 1939, when he was convicted of shooting and killing a political enemy of his father. After the bar examination, he handled his own appeal, winning an acquittal.

The President might have been a champion golfer if he had had time to work on his game. His health is abounding and he neither smokes nor drinks.

His attitude toward the United States has usually been described as decidedly friendly. Despite his position on participation in the Vietnam war and his desire to clear his country of United States bases, he said in a September interview, "The umbrella of a United States military presence in this part of the world will be necessary for at least the next few years."

But he said that Americans overstressed their country's might, an attitude that clashes with Asian pride and has produced a decline in United States influence.

"It is a mistake," he said, "to categorize United States influence as a success or failure. What seems more to the point is that the United States should adjust to Asian growth."

EVERETT McKINLEY DIRKSEN

Mr. PACKWOOD. Mr. President, the death of Senator Everett McKinley Dirksen signaled the end of a distinguished career in the Congress of the United States. First as a U.S. Representative, and then as a U.S. Senator, Senator Dirksen charted a course of leadership which was admired by many and which will be recorded in history as among the most effective in the 20th century.

In the course of becoming one of the most powerful men in American public life, he learned the joys of victory and the frustrations of defeat. In the process of becoming a knowledgeable spokesman for the cause he espoused, his voice became as American as apple pie. Eloquent, personal, sometimes idealistic in approach, Everett McKinley Dirksen has left a visible imprint on mankind. His presence will be missed. He was a champion in life and remains a champion in death.

THE PESTICIDE PERIL—LXXV

Mr. NELSON. Mr. President, Secretary of Health, Education, and Welfare Robert Finch's announcement this week urging a ban on DDT is the most recent highlight of the lengthy controversy over the use of persistent pesticides.

I strongly endorse Secretary Finch's recommendation to ban DDT and commend him highly on this bold decision. It is my hope that this will be the first dramatic step in removing all slow-degrading pesticides from the market. In addition to its potential danger to human health, DDT has been proven a major source of environmental deterioration on a worldwide basis. Its expendability is clearly demonstrated by the fact that the U.S. Department of Agriculture recommends less persistent pesticides as substitutes for DDT for virtually every agricultural crop in the country.

It should be feasible for Secretary Finch's recommendation to ban DDT to be achieved in a matter of a few months and not delayed for the entire 2-year period he cited on Wednesday. In addition, I trust that special timetables for the phaseout of the other persistent pesticides will be established as soon as possible.

For the November 1 issue of National Journal, published by the Center for Political Research, James Singer has written an excellent summary of the pesticide issue to the date of the October 29 White House order to ban a persistent, widely used weed killer, 2,4,5–T. I ask unanimous consent that that article and editorials published in the New York Times and the Washington Post on Secretary Finch's action be printed in the RECORD.

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

[From the CPR National Journal, Nov. 1, 1969]

CPR REPORT/DDT DEBATE WARMS UP AGAIN: SHOULD THE GOVERNMENT RESTRICT ITS USE?

(By James Singer)

DDT, the anti-malaria hero of World War II and subsequent panacea for pest control, is once more the center of a national controversy.

Since the early 1960s, DDT has stirred argument; today, it stands accused by legislators and scientists of permanently polluting the environment and endangering the health of man.

Chances of major federal action to control the 30 million pounds of DDT used annually by U.S farmers and others, however, have appeared slim. Key Members of Congress, manufacturers, farmers, the Agriculture Department—all support its continued and point to its relatively low toxicity to man.

Yet, conservationists and medical authorities believe that recent events are shifting the controversy from a a conservation issue to a health issue. And if the health issue develops fully, they believe, it could result in a change in U.S. pesticide policy.

Touching off the current debate were two—

unrelated—developments in government. Last spring, the Food and Drug Administration (FDA) seized several interstate shipments of Lake Michigan salmon containing high levels of DDT residue. Last fall and winter, the General Accounting Office (GAO) charged that the Agriculture Department is lax in regulating the use of pesticides.

Since then:

HEW Secretary Robert H. Finch has appointed a new commission to study the health aspects of DDT and other pesticides.

A Senate Commerce subcommittee has begun a series of nationwide hearings on pollution by pesticides, particularly DDT.

The National Academy of Sciences has released a report recommending more careful use of pesticides such as DDT.

A House Government Operations subcommittee has held hearings that pinpointed specific weaknesses in the Agriculture Department's regulation of pesticide safety.

The FDA and the Agriculture and Interior Departments have taken various actions that acknowledge the dangers of DDT.

HEW COMMISSION

In March and April, the FDA seized about 34,000 pounds of frozen Lake Michigan coho salmon with high DDT-residue levels. The coho seizures were unusual in one respect: the FDA had not established a formal DDT-residue level for fish before the seizure. Hence, the shipper—Black Port Packing Co., of Grand Rapids—was without guidelines to indicate how much residue would be allowed for fish in interstate commerce; FDA guidelines for red meat allow 7 ppm (7 parts DDT per million parts fatty tissue). The residues found by the FDA in the coho salmon ran as high as 19 ppm.

REACTION

House Minority Leader Gerald R. Ford, R-Mich., who represents the district that includes Grand Rapids and Black Port Packing Co., protested strongly to HEW Secretary Finch that the FDA should have set tolerance levels before it seized the fish, not after. On April 20, the governors (all Republicans) of five Great Lakes states—Illinois, Indiana, Michigan, Minnesota and Wisconsin—urged Finch not to act hastily in setting maximum limits on pesticide residues in Great Lakes fish.

NEW COMMISSION

The next day, in response to Ford and the governors, Finch appointed a Commission on Pesticides and their Relationship to Environmental Health. Named chairman of the commission was Emil M. Mrak, retiring chancellor of the University of California at Davis.

Mrak had supported the use of pesticides during Senate antipollution hearings in 1963. Also named to the commission, however, were outspoken foes of pollution, including Lamont C. Cole, of Cornell University, and L. Eugene Cronin, of the University of Maryland.

At a press conference announcing the new commission, as one former HEW aide put it: "The reporters were really angry. I don't think they've ever given (Finch) a harder time." Typical of the questions asked the Secretary was this: "I fail to understand why we need still another study when as far back as 1963 a government commission said that DDT should be restricted and we should cut it down; the elimination of . . . pesticides should be the goal."

Finch responded by saying that the data were too uneven to set a national standard, that a lot more needs to be known before a firm policy regarding DDT levels could be set and that, in any case, it would be up to the Agriculture Department to decide whether DDT would be pulled off the market.

"There is no question but that DDT, which has been used in great quantities since the early '40s, persists in the environment," Finch said. "Our present estimates are that—and the FDA said flatly—that each American has an average of 12 ppm DDT in the fatty tissue of (his) body . . . . We don't have direct evidence what the effect of this is. We don't know that it is not harmless. We get to the point where down the road someplace we will have to be performing autopsies of bodies to be . . . able to make that kind of flat statement." Interim standard: On April 22—the day after the press conference—Finch's FDA Commissioner, Dr. Herbert L. Ley Jr., announced that residues in fish shipped in interstate commerce would be limited to 5 ppm under an interim guideline. The 5-ppm limit, Ley said, could be changed later as a result of further study.

ACADEMY REPORT

Another response to the seizures of the Lake Michigan salmon came from the Senate Commerce Energy, Natural Resources and Environment Subcommittee, which opened pesticide hearings May 19. During the hearings, two important announcements were made:

Ned D. Bayley, Science and Education Director of the Agriculture Department, disclosed that in 1967 the department had requested the National Academy of Sciences-National Research Council to make an intensive study of the impact of pesticides on the environment.

Leslie L. Glasgow, Assistant Interior Secretary for Fish and Wildlife, said that it was time to replace DDT with less hazardous pesticides. By his statement, Glasgow broke the Interior Department's long-standing public silence on the issue.

Report's findings: The study of pesticides by the National Academy of Science was released June 4. The report, addressed to Agriculture Secretary Clifford M. Hardin, concluded:

Persistent pesticide residues threaten the existence of some wildlife species.

Present levels of pesticide residues in man's food are not known to be a health hazard.

Long-term environmental effects of persistent pesticides are unknown, but uncontrolled usage should be discouraged.

Hardin termed the report "reasonable and balanced" and indicated that the Agriculture Department would make a full evaluation of it. On July 9, the department announced that its use of DDT and eight other persistent pesticides in departmental pest-control programs was being suspended pending a review of the programs. On Aug. 14, the department announced that it was resuming some of its control programs, but was substituting less persistent pesticides for those previously used.

DDT AND HEALTH

Whether DDT is harmful to man is still open to some debate. As Secretary Finch noted, practically every U.S. citizen has accumulated, in his body fat, residual DDT at about 12 parts DDT per million parts fat, but what this may mean in long-term effects is difficult to document. A number of medical authorities and scientists, including Dr. Roger O. Egeberg, Assistant HEW Secretary for Health, have expressed concern about the possible effects of such accumulations. Egeberg told a television audience July 17 that DDT is "harmful in the same way as radioactive substances."

Agreement: Other recent expressions of concern:

Dr. Richard M. Welch, a pharmacologist with the drug firm of Burroughs Wellcome & Co., told the Wisconsin Department of Natural Resources in December 1968 that sex hormones in rats are affected by enzymes activated by DDT, and the same hormones are found in man, whose residual of DDT is "within a range" to produce the same effect. "If one can extrapolate data from animals to man, then one would say that the changes in these enzymes probably do occur in man," Welch said.

In May 1969, S. Goran Lofroth, a University of Stockholm scientist, also testifying before the Wisconsin department, reported that babies who are breast fed sometimes get twice as much DDT in their systems as the maximum level recommended as safe for humans by the World Health Organization.

In *The Pesticide Problem*, a book published by Johns Hopkins University in 1967, Chicago pharmacologist Kennethe P. DuBois warned that pesticides interfere with drug metabolism and that because of this, they can have a marked effect on patients. DuBois cited DDT in particular, which he says counteracts barbiturates.

An interm report by the HEW Department's National Cancer Institute, made public May 1, states that mice that were fed DDT as a part of their regular diet developed significantly more tumors of the liver than did mice who were not fed DDT. The report stresses, however, that the dose of DDT received by the mice was "far in excess of that likely to be consumed by humans," and that more research was needed to establish a link between human cancer and DDT.

Disagreement

Not all medical researchers are agreed, however, that DDT or other pesticides present a health hazard to man. One outspoken defender of DDT is Dr. Wayland Hayes Jr., former chief toxicologist for the Public Health Service.

Toxicity of any chemical, including DDT, Hayes contends, must be measured in relation to its dosage. Appearing before the Wisconsin department in April of this year, Hayes recounted Public Health Service experiments in which prison volunteers were exposed to large amounts of DDT—in some cases as much as 1,000 times the amount normally consumed by the average person. "In each of the studies," Hayes said, "we could find no chemical effect on the men."

Critics of the studies cited by Hayes—such as the Environmental Clearinghouse Inc., a Washington-based, nonprofit organization—point out that these studies and similar ones made in DDT-manufacturing plants were made only on certain types of adults. The effects DDT might have on children, pregnant women or the aged have not been adequately investigated.

REGULATION ISSUE

Federal consumer protection efforts concerning the pesticide industry are administered under the Federal Insecticide, Fungicide and Rodenticide Act (7 USC 135–135k) and a 1964 interdepartmental agreement. Basically the Act provides that before pesticides can be sold in interstate commerce a manufacturer must register his product, attesting to its safety and efficacy, with the Agriculture Department. The Act also gives the department procedures for enforcing the registration requirement.

Registration

According to the department, more than 60,000 pesticide formulations, based on more than 900 individual chemical compounds, have been registered during the last two years. Registration is valid for a period of five years, after which manufacturers are required to reregister their products.

The interdepartmental agreement was promulgated by the Agriculture Department in 1964, after a 1963 President's Science Advisory Committee report urged legislation to give the HEW Department greater authority in registering pesticides. Under the agreement, data supplied by the manufacturers are evaluated by three departments—Interior, HEW and Agriculture—before a decision is made on the proposed registration.

Interior—The fish and Wildlife Service assesses the effects of the pesticides on wild birds, mammals and fish, and their habitat.

HEW—The FDA, which is part of the department's Public Health Service, establishes

residue tolerances in raw and processed foods and other agricultural commodities and assesses the effects the pesticide may have on the health of man.

Agriculture—The Agricultural Research Service assesses the safety and effectiveness of the pesticide for controlling pests when it is used as directed on the label.

Except for the Agriculture Department, only the FDA has the power to block approval—and only then if it finds that the proposed use is likely to result in residues exceeding the tolerance level. Assessments of the dangers of pesticides to human and animal health by the FDA and the Interior Department are not binding on the Agriculture Department during registration.

Attempts to give the FDA and the Interior Department more authority and to require the Agricutural Research Service to accept their assessments have consistently failed. A bill containing such a provision passed the House in April 1968 but failed to emerge from the Senate Commerce Committee. It was opposed by both the National Agricultural Chemicals Association and the Agriculture Department.

Enforcement

The Agricultural Research Service is also responsible for enforcing the registration requirements. Procedures for enforcement include criminal prosecution, product seizure and cancellation of registration for mislabeled products. How well the Agricultural Research Service has pursued this responsibility has become a controversy in itself.

GAO audits

After auditing the pesticide regulatory activities of the Agricultural Research Service, the General Accounting Office (GAO) reported Sept. 10, 1968, to Congress:

That the service, while acting against misbranded, adulterated or unregistered products at one location, did not determine, in most cases whether shipments of the same products were available to the public in other locations.

That in its operating guidelines, the service did not include procedures for determining when shippers who had violated the law would be reported to the Justice Department for prosecution.

That in 13 years, the service had not reported violators for prosecution. This was true, GAO said, even of firms which were repeatedly major violators.

In a second audit issued on Feb. 29, the GAO reported that the service continued to permit the use of lindane pesticide vaporizers in food-handling establishments—despite the fact that the Public Health Service and other federal, state and private organizations, including the American Medical Association, had long contended lindane is dangerous to health and that its use in vaporizers could contaminate food. On April 29, the service canceled registration for lindane in food-handling establishments—almost 16 years after its safety was first seriously questioned by the Public Health Service.

Interagency friction

Rep. L. H. Fountain, D–N.C., chairman of the House Government Operations Subcommittee on Intergovernmental Relations, held hearings in May and June based on the two GAO audits. The hearings revealed that over the years, a good deal of friction has existed between the Public Health Service and the Agricultural Research Service over the health aspects of pesticide registration.

Deputy Associate FDA Commissioner Reo E. Duggan indicated in the hearings that in fiscal 1969, the Agricultural Research Service had registered or reregistered 185 products over the Public Health Service's objections.

Thomas H. Harris, director of the FDA's pesticide registration division, further underlined the conflict between the two agencies. His division, he said, had objected to registering a product that was a proven carcinogen (cancer producer) for laboratory animals. The Agriculture Department, Harris said, told the FDA "that until we could produce evidence that this product produced cancers in human beings from skin contact, that they would continue to register the product."

The key issue here, Harris told the *National Journal*, is whether the FDA should have the responsibility for producing evidence of injury, or whether the manufacturer should have the responsibility for producing evidence of safety. Other health officials agree with Harris that the responsibility should lie with the manufacturer. One who prefererd not to be named, added that as an assurance of human health, the interdepartmental agreement "is not worth the paper it's written on."

INTEREST GROUPS

The origins of the current debate go back at least to 1962, when Rachel Carson's *Silent Spring* was published and created a public outcry against pesticides. The book spurred the Senate Government Operations Committee to hold hearings in 1963 on the role of DDT and other persistent pesticides in the environment.

The day before the hearings opened, the White House released the President's Science Advisory Committee report which called for an orderly phasing out of the use of DDT and other persistent pesticides.

Since then, conservation organizations, such as the Conservation Foundation, the National Audubon Society and the Izaak Walton League, have continuously tried to make the public more aware of the potential dangers of pesticides, such as DDT, that do not readily degrade and remain unchanged in the environment for many years. Consumer groups, such as the Consumer Federation of America, which has 136 member-organizations, also have called for stricter controls on pesticide usage.

The efforts of these organizations, however, has thus far been largely ineffective in bringing about significant changes by Congress or the administrative agencies. More effective have been the efforts of the friends and users of pesticides—farmers, government officials, legislators and pesticide manufacturers and distributors—to resist further restrictions on pesticide use.

Producer organizations

Representing the producers of the two agricultural commodities on which most DDT is used (*see box*) are the National Cotton Council, which has its headquarters in Memphis, Tenn., and the Tobacco Growers' Information Committee, of Raleigh, N.C. At its annual meeting in January, the National Cotton Council, which represents both producers and manufacturers, passed a resolution opposing "legislation that restricts the sound development and use of agricultural chemicals." According to a council spokesman, this resolution "has been interpreted" as a stand opposing further restrictions on DDT. The council did not, however, actively oppose a recent Arizona ban on DDT, although Arizona is a major cotton-producing state.

According to William H. W. Anderson, spokesman for the tobacco growers, DDT use is "fading out along with the mule." Anderson points out that there are other, safer pesticides for tobacco that are rapidly gaining acceptance by the growers and that restricting DDT is not likely to be an issue with most growers.

Statistics from the Agriculture Department tend to support Anderson's statement. Domestic use of DDT has declined during the past 10 years from a high of 70 million pounds in the 1959–60 crop year to 32.7 million pounds in the 1967–68 crop year.

General farmer organizations—such as the 1.7-million-member American Farm Bureau Federation and the National Farmers Union with a membership of 250,000 farm families—have as yet taken no formal position on the DDT controversy. Spokesmen for each indicated, however, that their respective organizations generally hold the view that:

If DDT adversely affects the environment, its unrestricted use should be carefully evaluated.

Use of agricultural chemicals should not be restricted unless there is sufficient scientific evidence that they are harmful.

Industry representation

The $1.7-billion-a-year pesticide industry is represented in Washington by the National Agricultural Chemicals Association. Within the association is a special task force on DDT, comprised of representatives of the five domestic DDT manufacturers: Allied Chemical Corp., Diamond Shamrock Corp., Lebanon Chemical Corp., Montrose Chemical Corp. and Olin Mathieson Chemical Corp.

The association's position concerning not only DDT but all pesticides is simply that there is nothing wrong with any of them if they are used and handled correctly. "Our basic philosophy," says association president Parke C. Brinkley, "is that there are some safe uses for all the products and some unsafe ones. We don't think a total ban on a product is a very smart way of doing it. It would not be in the public interest."

Congressional support

In agreement with the association's position is Rep. Jamie L. Whitten, D-Miss., chairman of the House Appropriations Agriculture Subcommittee. Whitten, whose 1966 book defending pesticides, *That We May Live*, was largely researched by the Agriculture Department, summed up his philosophy on the DDT-residue controversy during the March 1968 appropriations hearings: "The worst residue problem we have to face today," Whitten said, "is the residue of public opinion left by Rachel Carson's *Silent Spring*."

Whitten and other cotton-belt Members of Congress, who largely control the agriculture committees in both houses through subcommittee chairmanships, represent a constituency that used about 70 per cent of the 40.3 million pounds of DDT applied to U.S. crops during the 1966–1967 season.

In committees dominated by farm-oriented Members, a bill to regulate further the manufacture or application of pesticides usually receives a chilly welcome. Sen Abraham A. Ribicoff, D-Conn., introduced a bill in the 90th Congress that would require the Agriculture Department to inspect pesticide manufacturers to see if proper precautions and controls were being followed. But the bill died after referral to the Senate Agriculture and Forestry Subcommittee on Agricultural Research and General Legislation. Reflecting on the fate of this bill, Brinkley told his chemicals association members: "Through the understanding of Congress, and particularly Sen. (B. Everett) Jordan (D-N.C., subcommittee chairman), we have been given some time to see if the situation might be improved without the necessity of federal intervention."

Administrative defense

The Agriculture Department comes to the defense of farmers and other pesticide users whenever the issue of further regulation arises—and Congress expects as much. Whitten made this clear during the 1968 appropriations hearings when he said: "If the department does not appear on behalf of the farm producers at hearings (on pesticide residues) as to whether it is essential on one side and to question whether it does any injury on the other side, we are in a bad way."

OUTLOOK

Commission agenda

The Mrak commission staff director, Dr. Albert C. Kolbye Jr., is reluctant to discuss the commission's work until its final report is issued in early November. He concedes,

however, that the commission's principal concern mirrors that of other key health officials in the HEW Department—the FDA's lack of legislative authority under the Federal Insecticide, Fungicide and Rodenticide Act.

At minimum, these officials contend, evaluations regarding the potential human health hazards of pesticides by the FDA should be binding on the Agriculture Department. As one key HEW official, who did not wish to be named, put it: "If you want us to protect the public health, give us the authority to do it.

Congressional action

While a number of bills have been introduced in both the House and the Senate to ban DDT, there is no optimism about getting such bills out of the agriculture committees. An aide to Senate Agriculture Committee Chairman Allen J. Ellender, D-La., summed up the prospects for one bill to ban DDT: "This is hardly the most pressing matter before the committee at this time."

At present, congressional foes of DDT are attempting flanking maneuvers to by-pass the agriculture committees by amending legislation that has been reported out of committee.

Hart amendment—On July 7, when the Agriculture Department's appropriations bill (HR 11612) passed the Senate, Philip A. Hart, D-Mich., successfully amended the bill to prohibit the department from using in its pest control programs, such as those in national forests, any pesticide that has been banned by the state in which the control program is located. A similar attempt by Rep Richard L. Ottinger, D-N.Y., to amend the bill in the House May 27 failed, 25–75.

Chances that the Hart amendment will survive a House-Senate conference on the appropriations bill seem slim. But in the view of some DDT opponents, the amendment is a symbolic indication that legislation to reform pesticide policy may be gaining congressional support.

Nelson amendment—Sen. Gaylord Nelson, D-Wis., who has inserted in the *Congressional Record* more than 70 articles on the dangers of pesticides, successfully amended the proposed Water Quality Improvement Act (S. 7), which passed the Senate 86–0 on Oct. 8.

Nelson's amendment, which is given an excellent chance for survival in the forthcoming Senate-House conference on the bill, would require the Interior Department to establish pesticide residue tolerances as part of the department's water pollution control activities. The tolerances would then become mandatory on states for controlling pollution of interstate rivers, streams and lakes.

States

Two states—Arizona and Michigan—already have banned DDT. California has banned it for some uses. Other states, such as Maryland and Wisconsin, are considering banning or greatly restricting its use.

A Senate aide points out that should state bans and restrictions on DDT usage continue, they can be expected to build up considerable pressure in Congress for federal legislation, particularly with regard to residues that may be carried by interstate rivers and to crop spraying that may carry the pesticide across state lines.

White House

Balancing recent state actions, however, was a June 20 statement by Presidential Science Adviser Lee A. DuBridge. At a press briefing before the first meeting of the President's Environmental Quality Council, DuBridge appeared to side with the Agriculture Department and other defenders of DDT: "How can we balance the values of DDT against the dangers? That is the problem and it is not one that is solved easily just by wholesale banning. Every environmental problem has a price. . . . If there is something to replace DDT it may be far more expensive. Who is going to pay the bill?"

Health issue

The questions of human health, raised in the salmon seizures, and of deficiencies in the Agriculture Department's protection of the public, raised by the GAO audits, suggest that the arena for the controversy is shifting from an issue of conservation to one of human health.

Should this shift continue, it is likely that enterprising DDT foes will propose legislation based on health issues rather than on pesticide regulations. Such legislation would be referred to House and Senate health committees, rather than agriculture committees; in the health committees, it would undoubtedly fare better than it has in the agriculture committees.

Even without legislation, however, the use of DDT is declining as more effective pesticides become available. The Agriculture Department reports a 48-per cent decline in the domestic consumption of DDT (although it is still, worldwide, the most-used pesticide) from 78.6 million pounds in 1958–59 to 40.3 million pounds in 1966–67. This trend has carried to the use of DDT by the federal government on public lands. Three years ago, then Interior Secretary Stewart L. Udall banned DDT from Interior Department lands. The Agriculture Department, which sprayed 4.9 million acres of national forest in 1957 at a rate of about one pound of DDT per acre, used only 81 pounds last year on national forests.

These trends raise the possibility that, with or without further federal action, one congressional aide may be right when he says: "DDT's days are numbered."

NEW BAN

The White House Oct. 29 ordered a ban on a persistent, widely used weed killer: 2,4,5–T.

The ban, which becomes effective Jan. 1, prohibits the use of the herbicide on U.S. food crops. More than 14 million pounds of 2,4,5–T were produced in the United States in 1967.

The chemical has been widely used for defoliation in Viet Nam. The ban was ordered by Presidential Science Adviser Lee A. DuBridge after National Cancer Institute tests reportedly linked 2,4,5–T to cancer in mice.

The Vietnamese press has charged that since the herbicide's use began in that country, birth defects among Vietnamese children have sharply increased.

DDT USE

[Thousands of pounds]

	1964	1966	1968
Total production	135,749	142,329	126,936
Total domestic use	50,542	46,672	32,753
Total farm use	32,000	27,000	(1)
Cotton	23,600	19,200	(1)
Tobacco	1,200	800	(1)
Soybeans	500	700	(1)
Vegetables (including potatoes)	1,700	1,400	(1)
Fruits	1,900	1,500	(1)
Other crops	2,300	2,700	(1)
Livestock and buildings	800	700	(1)
Total nonfarm use (mosquito control, municipal parks, dry cleaning plants, household use)	18,542	19,672	(1)
Exports	77,178	94,867	92,915
Stockpiles:			
Beginning of year	26,946	13,757	8,510
End of year	34,975	14,547	9,778

[1] Breakdown not available for 1968.

Source: Agriculture Department.

[From the New York Times, Nov. 14, 1969]

PHASING OUT DDT

The warning sounded by Rachel Carson in "Silent Spring" is finally being heeded in Washington. After nearly a decade of evidence of the harmful effects of DDT and other hard pesticides on the country's environment and ecology, the Federal Government plans to outlaw these chemical killers except for essential uses in the next two years.

The agreement among the three concerned departments—Agriculture, Interior and Health, Education and Welfare—recognizes the peril to natural and human life caused by the insect killers. The H.E.W. commission headed by Dr. Emil M. Mrak of the University of California reported evidence that cancer was produced in mice treated with heavy doses of DDT. Agricultural workers have become sick in the fields after breathing or touching certain pesticides. Toxologists have found that infants were ingesting twice the amount of DDT recommended as a maximum intake by the World Health Organization.

Since it was introduced into the environment about 25 years ago, DDT has performed wonders in the battle against malaria, typhus and other pestborne human diseases. It has helped to double the yield of cotton fields by controlling the boll weevil, saved fruit and other chops, and increased the production of livestock.

But, on balance, the price has been deathly high for various animal species and potentially high for unborn generations of man carrying chemicals transmitted through mothers' milk. Thanks largely to the conservationists, the perils of the pesticides began some years ago to be discovered and exposed. Research of marine biologists showed that certain chemicals such as DDT pollute rivers and lakes and oceans, contaminating fish as a source of food; other scientists discovered DDT has a disastrous effect on the fertility of some bird species, such as the bald eagle.

The indiscriminate spraying of DDT has turned it into a worldwide contaminant. In the United States 100 million pounds are released into the environment every year, uncontrolled by laws except, recently, in a handful of states and communities where the miracle has at last been recognized as a menace. DDT and the other hard pesticides have a life of their own; toxicity can remain for years after initial spraying to contaminate the food supply.

It is essential that administrative action be taken at local and state as well as the Federal level. But meanwhile, Secretary Finch's announcement is a giant step forward in reducing the menace to all living creatures of the long-lasting poisons that have been used with such careless and ignorant abandon for so many years.

[From the Washington (D.C.) Post, Nov. 13, 1969]

OFFICIAL WAR AGAINST DDT

The doom of DDT has long been overdue. For some years scientists and others concerned over the increasing pollution of our environment have been demanding that use of this pesticide be abandoned. Their efforts have been resisted by some because of the effectiveness of DDT in controlling agricultural pests and various organisms that are deadly to man. As use of the stuff has increased, however, it has become clearly evident that the cure is worse than the pests it is used against.

The public should realize, however, that no government action can suddenly eliminate the DDT from our environment. Its use has become pervasive. More than 100 million pounds of DDT have been released into the environment each year. Even if its use could be suddenly cut off, residual amounts of the poison will remain in the

soil, water and food supplies and indeed in human tissues over extended periods because of the extraordinary chemical stability of DDT.

What is now in the works is a governmental movement against DDT on a broad front. Some weeks ago the Environmental Defense Fund asked the Food and Drug Administration to reduce the tolerance of DDT in raw agricultural projects to zero. The law seems to require such action. But if the Department of Health, Eductaion and Welfare acted alone, it could well produce a crisis of another sort, since DDT residues are found in nearly all human foods. Environmental Defense also moved against the Department of Agriculture.

Agriculture is undoubtedly the key agency in the fight, for it has permitted the use of DDT as a pesticide. Presumably the announcement yesterday of a multiagency agreement to outlaw the use of DDT within two years, except for "essential uses" for which there is no suitable alternatives, means that Agriculture will withdraw the registration of DDT, at least for general use. HEW can then move progressively toward its elimination in our food supplies.

The necessity for action under the law seems clear enough. The Federal Food, Drug and Cosmetics Act provides that—

No additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In recent years many scientists have produced unimpeachable evidence that large doses of DDT cause cancer in mice. That seems to give HEW a mandate to move against food containing DDT as promptly as is feasible. The danger to human life is said to be more than marginal because the reservoirs of DDT built up in the human body may release their poison in concentrated volume in the milk of women who have recently given birth.

We think the whole country will be relieved that a broad program to eliminate this new man-made menace in our environment has been launched. We hope that action will not be lost in interdepartmental bureaucracy. A new enemy recently supposed to be a friend to mankind has been amply identified. The country must devote extraordinary efforts to the elimination of this cancer-producing agent which was mistakenly supposed to be harmful only to insects.

VICE PRESIDENT AGNEW AND THE MEDIA; A LONG-OVERDUE APPRAISAL

Mr. DODD. Mr. President, when Vice President AGNEW last night accused the television networks of distorting the news by selective and biased presentation, he was giving voice to the thoughts of countless millions of Americans who have come to distrust the media because their bias has sometimes been so obvious.

The Vice President deserves a world of credit for his courageous statement. In a loud, clear, and refreshing voice, he has said something that badly needed saying.

The reaction of the TV networks, not very surprisingly, was defensive. They said it was untrue that their news coverage was biased. And some of the network spokesmen made the completely unfounded charge that the Vice President was calling for Federal press censorship.

My prediction is that the network officials, within the year, will have to eat humble pie, just as they had to do in the aftermath of the Chicago convention riots.

When some of us who were eyewitnesses of these riots accused the networks of biased and selective coverage, the brickbats started flying thick and fast from network sources and from certain elements in the press.

But the overwhelming reaction of the American people finally compelled the networks to rethink their position.

How the networks finally changed their position was the subject of a remarkable article in TV Guide for September 27, 1969, entitled "The Silent Majority Comes Into Focus."

NBC documentary producer Shad Northshield was quoted as saying about the public reaction to the network coverage of the Chicago convention:

I was stunned by the public reaction to Chicago. We all were. I was stunned, astonished, *hurt*. It's the key thing that opened my eyes to the cleavage between newsmen and the majority. We didn't *know* 56 percent would have thought we were unfair. It raises enormous questions about journalism.

And Bill Leonard of CBS, while defending their coverage of Chicago, nevertheless gave voice to a bitter attack on bad reporting. Here are his words:

Most reporting is *lousy*. It's lousy because people are lazy, because people don't think ahead, because they approach things in rote ways. We have these kinds of reporters here, unfortunately. The worst problem of all is the reporter who doesn't ask the next question—the *cheap, lousy* reporter who'll quote an attack but doesn't go to the other side, because the answer might kill his story. . . . And these producers who develop and edit a broadcast from the point of view of the way *they* want it to turn out—with their own prejudices showing. That happens quite often. . . . If we could get rid of those people we'd be a lot closer to our goal of objectivity.

In the face of the frank admissions of prejudice that were made by many top-ranking TV executives to TV Guide, it is a bit ludicrous, to say the least, when the networks now tell us that they are not prejudiced, and that they do not seek to slant the news or to put across their single viewpoint.

Network spokesmen are completely evading the point, too, when they say, in reply to Vice President AGNEW, that they draw a sharp line between what they call hard news and commentary.

Vice President AGNEW did not accuse them of failing to draw such a line. What he did say was that their presentation of the news was biased, because in their selection of the items to be shown, they seek to promote a viewpoint rather than seeking a conscientious balance of the news.

It is no defense to say that network news is "hard" news because film clips cannot lie. By showing certain film clips and rejecting others, a program producer can patch together a television version of a situation like the convention riots which is just as false as if it were completely fabricated.

Vice President AGNEW performed a real service in describing how network news programs are produced. This is what he said:

A small group of men, numbering perhaps no more than a dozen anchormen, commentators and executive producers, settle upon the 20 minutes or so of film and commentary that's to reach the public. This selection is made from the 90 to 180 minutes that may be available. Their powers of choice are broad.

They decide what 40 to 50 million Americans will learn of the day's events in the nation and in the world.

Now what do Americans know of the men who wield this power?

We do know that to a man these commentators and producers live and work in the geographical and intellectual confines of Washington, D.C., of New York City, the latter of which James Reston terms the most unrepresentative community in the entire United States.

Both communities bask in their own provincialism, their own parochialism.

We can deduce that these men read the same newspapers. They draw their political and social views from the same sources. Worse, they talk constantly to one another, thereby providing artificial reinforcement to their shared viewpoints.

I have quoted these paragraphs at length because I believe they hit the nail right on the head.

I hope the Vice President will pursue the national discussion which he has inaugurated with his recent remarks, by taking up the question of the slanted presentation of the news in our press.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of the article entitled "The 'Silent Majority' Comes Into Focus," published in TV Guide on September 27. I also ask unanimous consent to have printed in the RECORD the entire text of the speech made by Vice President AGNEW.

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

[From the TV Guide, Sept. 27, 1969]

THE "SILENT MAJORITY" COMES INTO FOCUS

(By Edith Efron)

"The Riots."

"Chicago."

They stick like giant burrs in the newsmen's minds—symbols of the clash between them and the majority of the public.

That clash has not yet been resolved. It still flares up at the slightest provocation and is a chronic issue at the networks, where top executives wait tensely for the day's mail and look back nostalgically at the days when five critical letters were a crisis.

The nature of the public's simmering anger is well-understood. CBS's Bill Leonard says: "The right and the middle complain that we put on irresponsible people from the left." ABC documentary producer Steve Fleischman, too, says: "People feel we've given too much play to the radicals." And NBC News president Reuven Frank says: "The general view of the public is that we have too many radicals in the network news departments."

The newsmen's awareness of the seriousness of this situation was brought to a peak by the "conservative" electoral results—"conservative" being the odd "new politics" label for an amorphous antiradical coalition encompassing the spectrum from "Establishment Democrats" through the Nixon center to the far-right Wallace voters. This active antiradicalism of the majority has reoriented important aspects of the newsmen's professional thinking. As a result, something new is happening in programming. It is a development that will please many Americans and anger others.

What is happening results from a change in newsmen's thinking—so we'll start with that.

The most obvious change is the sudden emergence in strength of an attitude that has been commonplace among viewers for years. Namely, that there has been too much one-sided attacking of the United States, the institutions and its citizens, on the airwaves. This opinion, once viewed as "flag waving" by many newsmen, today is enunciated as follows:

ABC's Lester Cooper: "I want to do a show on what's right with America. We've heard so much about what's wrong. I'm not a chauvinist, but I am a patriot. There's a great America out there to cover."

CBS's Bill Leonard, on an upcoming documentary: "It will capture the spirit of America. We'll be showing strengths as well as weaknesses. It's a wonderful country and it's absurd. You'll be laughing and crying. That's what the U.S. is all about."

NBC's Eliot Frankel: "One of the themes in First Tuesday is to show what's right with America, as well as what's wrong. There's a lot that's right. Decent people, leading decent lives, knocking themselves out for others. . . ."

A good many men are also engaging in intensive soul-searching into the issue of biased reporting. NBC's documentary producer Shad Northshield says: "Bias is on everybody's mind. We've claimed we don't have it. And the viewers say, 'Yes, you do.' I was stunned by the public reaction to Chicago. We all were. I was stunned, astonished, hurt. It's the key thing that opened my eyes to the cleavage between newsmen and the majority. We didn't know 56 percent would have thought we were unfair. It raises enormous questions about journalism.

One of the issues it raises for Northshield and others is a pronounced bias in favor of minority coverage in past network operations. "In TV news departments," says Northshield, "we appear to know a lot about the black minority. It's the silent majority we must explore. We haven't done it. We didn't know it was there!" CBS's Phil Lewis says: "We're beginning to realize we've ignored the majority. America doesn't end at the Hudson!" CBS News star Joseph Benti says: "We spend so much time on angry blacks, angry youth. But what about the vast forgotten army out there? How many hard-working, law-abiding whites are mad as hell because their story isn't being told?"

Other men have taken their analyses further, in an attempt to get at the causes of this pro-minority emphasis. CBS's Desmond Smith is one of those who suspects that the newsmen have been politically used: "There's been a great deal of manipulation from the left. The left and SDS have been getting a great deal of play. Americans are getting to feel they're not getting the whole story."

Fred Freed of NBC goes further yet. He attributes the situation to the newsmen's own liberal ideology: "This generation of newsmen is a product of the New Deal. These beliefs that were sacred to the New Deal are the beliefs that news has grown on. This is true of the networks, of Newsweek, of The New York Times, of all media. Men of like mind are in the news. It's provincial. The blue- and white-collar people who are in revolt now do have cause for complaint against us. We've ignored their point of view. It's bad to pretend they don't exist. We did this because we tend to be uppermiddle-class liberals. We think the poor are "better" than the middle class. We romanticize them. The best thing that happened to me was a month I spent walking in Detroit slums after the riots. I stopped romanticizing the poor.

"I've come to understand that it's really the same with all classes. You've got to sit down with the cop, with the little storekeeper, and get their views. They're human beings like everyone else. Their attitudes emerge logically from their interests and their values. They should be covered that way."

There are those in top managerial positions who don't pour out such confessions. CBS's Bill Leonard, for example, claims objectivity for CBS News, and declares vehemently: "We have nothing to apologize for, nothing—and I personally include our coverage of Chicago." But, in the course of several hours of conversation, Leonard relaxes and launches into an attack on "bad reporting"—which turns out to be a powerful disquisition on bias: Most reporting is lousy. It's lousy because people are lazy, because people don't think ahead, because they approach things in rote ways. We have these kinds of reporters here, unfortunately. The worst problem of all is the reporter who doesn't ask the next question—the cheap, lousy reporter who'll quote an attack but doesn't go to the other side, because the answer might kill his story. . . . And these producers who develop and edit a broadcast from the point of view of the way they want it to turn out—with their own prejudices showing. That happens quite often. . . . If we could get rid of those people we 'd be a lot closer to our goal of objectivity."

And finally . . . there are those who are not theorizing about bias because they're too busy traveling back and forth between New York and Washington, coping with Congressional investigations into their alleged practice of it. CBS News producer Jay McMullen says the following: "We're getting a lot of flak from Congress and the FCC—a lot of harassment. The Congressional focus is on the news area. It has to do with this whole business of our coverage of the riots, of Chicago. Producers are being called down to Washington and asked to explain their news decisions."

With all of this ferment going on behind the scenes, what, precisely is happening to news and public-affairs programming? The trends are exactly what you might guess: there is a shifting of coverage patterns at the polar ends of the usual spectrum covered by the network. The basic coverage, which has a moderate-liberal orientation, will remain the same. But in network news there is a distinct deflation of the coverage of radical left and of radical-left causes, particularly those of a militant type.

Prime-time news, for example, which operates in a restricted timeslot, is upping its coverage of the middle and lower-middle classes. CBS has inaugurated a polling service to be used in key controversial stories to check on nation-wide opinion. Regular coverage of suburbia and lower-middle-class areas in the environs of New York City is being stepped up by CBS and NBC New York stations.

These trends are far more visible, however, in the documentary realm, where subjects are few and where the selective process is readily apparent.

Much of the vigorous planned activity for the season's opening lies in the area of "exploring middle- and lower-middle-class Americans." Various broad-gauge sketches of the Nation are ready to go. Some may already have appeared before you read this. At CBS: "A Day in the Life of the United States of America"; "The Making of the President: 1968"; two on "The Generation Gap." At NBC: a two-and-a-half-hour "From Here to the Seventies"; "Election '69: What We Learned," and, on *First Tuesday*, says producer Eliot Frankel, one of the themes will be "the malaise in middle-class life."

As for ABC, there is a veritable outbreak of Americana—with a list of shows up for sale to sponsors with names like: "The American Dream," "Hemingway's Idaho," "Small Town Judge," "A Country Preacher," "American Farmer," "Forest Ranger," "The Marines" and "Sousa Sound"—14 or 15 of such projected shows, as compared to eight last year. According to documentary vice president Tom Wolf, this reflects the thinking of sponsors, who themselves are responding to "the shift of climate in this country, the new attitudes of viewers."

By contrast to this ferment of activity on the majority front, "problem coverage"—the kind that increasingly requires the inclusion of radical opinion white and black—is in decline. The same number of documentary hours is scheduled as last year—a significant proportion of them, however, now packed into two "magazine" formats at CBS and NBC, which, of necessity, have acquired a lighter, "variety" approach to coverage. The number of straight, hour-length documentaries has shrunk and with it has come a diminution of "hard" problem coverage.

Why is this happening? Because of political pressures—defined in its broadest sense, from Congress down to the smallest grass-roots hamlet. The most visible pressure is coming from Congress. Says McMullen: "The tendency, when Congress harasses, is for individual producers to pull in their horns. I think this whole Congressional thing might be affecting the documentary operation." ABC's Steve Fleischman, too, says: "The medium is generally frightened of the documentary realm."

The three network presidents are on record with strong statements that, for the past year or so—ever since some of the public started to blast away at the networks' featuring of radicals and radical issues—Congressional pressures have been threatening the medium's First Amendment rights.

On the national grass-roots level, which underlies Congressional pressure, there is evidence that resistance is building up to coverage of the radicals and radical issues at local broadcasting stations—for whom network news and documentary production is destined. A nation-wide survey conducted by Television Age indicates that programs on these issues are declining. "It may indicate," says Television Age, "that the public has been satiated with studies of . . . urban crises . . . racial tensions . . . dope addiction and poverty"

There are many students of the broadcasting world who believe that the networks, always fear-ridden in the realm of politico-economic coverage, can scarcely afford to become more so. ("We never did have more than four or five tough documentaries a year," concedes CBS's Bill Leonard, "and at that we had more than the other networks put together.") Protests are now surfacing from the left side of the political spectrum—from liberals, radicals and militant blacks who are beginning to charge that the news departments are going "conservative."

One prominent TV journalist describes the trend as "the Nixonization of the airwaves." Variety, the industry's trade paper, accused the networks of cutting back on "hard" issues. And FCC Commissioner Nicholas Johnson charged broadcasters with squeezing out radical thought and of censoring news of capitalist-caused "death, disease, dismemberment and degradation."

Some TV newsmen, too, view the trends in the news departments as "conservative." Says Steve Fleischman, who describes himself as "ABC's kept radical": "Television is reflecting the national trend. There's a conservative, know-nothing stream in this country. And there's a liberal-progressive-radical stream. And there's a great body of people in the middle. The majority of newsmen are in that middle group. Today, that middle group is swinging back to conservatism. It's all part of the white blacklash."

Needless to say, many other newsmen actively repudiate the Variety-Johnson-Fleischman criticism.

CBS's Salant has already hurled an answer to Johnson into print (TV Guide, Sept. 20)

in which he presents a long list of anti-corporation stories aired by CBS; and, in answer to the charge that there is not enough "death, disease, dismemberment and degradation" on the air, says: "Let [the Commissioner] drop into my office some time and see the viewers' mail that comes across my desk complaining that that is all we ever talk about."

And others too grow angry at being described as creatures of a reactionary "establishment."

Snaps Lester Cooper of ABC: "Such criticisms are made by self-conscious, self-righteous, guiltridden people who feel the only way they can say something is by attacking." NBC's Shad Northshield raps out: "Doctrinaire, dogmatic opinion!" And NBC's Reuven Frank groans, "Oh, it's so tendentious. Those people want so to be 'in.' The next thing you know, Nick Johnson will be wearing Pucci pants!"

What really seems to be happening is this: "Public-interest" programming—and, most of all, documentary programming—is adjusting itself in a jerky, impulsive yet fear-ridden way to the massive pressure of middle-class opinion, while straining to attain a journalistic perspective. By virtue of this trend, coverage of militant-radical groups will not be eliminated, but it is decreasing. As a corollary, the view of America as one vast abscess is now being corrected.

[From the New York Times, Nov. 14, 1969]

TRANSCRIPT OF ADDRESS BY AGNEW CRITICIZING TELEVISION ON ITS COVERAGE OF THE NEWS

(NOTE.—Following is a transcript of an address last night by Vice President Agnew to the Mid-West Regional Republican Committee at Des Moines, Iowa, as recorded by the New York Times:)

Tonight I want to discuss the importance of the television news medium to the American people. No nation depends more on the intelligent judgment of its citizens. No medium has a more profound influence over public opinion. Nowhere in our system are there fewer checks on vast power. So, nowhere should there be more conscientious responsibility exercised than by the news media. The question is are we demanding enough of our television news presentations? And are the men of this medium demanding enough of themselves?

Monday night a week ago, President Nixon delivered the most important address of his Administration, one of the most important of our decade. His subject was Vietnam. His hope was to rally the American to see the conflict through to a lasting and just peace in the Pacific. For 32 minutes, he reasoned with a nation that has suffered almost a third of a million casualties in the longest war in its history.

WEEKS OF PREPARATION

When the President completed his address—an address, incidentally, that he spent weeks in the preparation of—his words and policies were subjected to instant analysis and querulous criticism. The audience of 70 million Americans gathered to hear the President of the United States was inherited by a small band of network commentators and self-appointed analysts, the majority of whom expressed in one way or another their hostility to what he had to say.

It was obvious that their minds were made up in advance. Those who recall the fumbling and groping that followed President Johnson's dramatic disclosure of his intention not to seek another term have seen these men in a genuine state of nonpreparedness. This was not it.

One commentator twice contradicted the President's statement about the exchange of correspondence with Ho Chi Minh. Another challenged the President's abilities as a politician. A third asserted that the President was following a Pentagon line. Others, by the expression on their faces, the tone of their questions and the sarcasm of their responses made clear their sharp disapproval.

To guarantee in advance that the President's plea for national unity would be challenged, one network trotted out Averell Harriman for the occasion. Throughout the President's message, he waited in the wings. When the President concluded, Mr. Harriman recited perfectly. He attacked the Thieu Government as unrepresentative; he criticized the President's speech for various deficiencies; he twice issued a call to the Senate Foreign Relations Committee to debate Vietnam once again; he stated his belief that the Vietcong or North Vietnamese did not really want a military takeover of South Vietnam; and he told a little anecdote about a "very, very responsible" fellow he had met in the North Vietnamese delegation.

All in all, Mr. Harriman offered a broad range of gratuitous advice—challenging and contradicting the policies outlined by the President of the United States. Where the President had issued a call for unity, Mr. Harriman was encouraging the country not to listen to him.

ABOUT HARRIMAN

A word about Mr. Harriman. For 10 months he was America's chief negotiator at the Paris peace talks—a period in which the United States swapped some of the greatest military concessions in the history of warfare for an enemy agreement on the shape of the bargaining table. Like Coleridge's Ancient Mariner, Mr. Harriman seems to be under some heavy compulsion to justify his failure to anyone who will listen. And the networks have shown themselves willing to give him all the air time he desires.

Now every American has a right to disagree with the President of the United States and to express publicly that disagreement. But the President of the United States has a right to communicate directly with the people who elected him, and the people of this country have the right to make up their own minds and form their own opinions about a Presidential address without having a President's words and thoughts characterized through the prejudices of hostile critics before they can even be digested.

When Winston Churchill rallied public opinion to stay the course against Hitler's Germany, he didn't have to contend with a gaggle of commentators raising doubts about whether he was reading public opinion right, or whether Britain had the stamina to see the war through.

When President Kennedy rallied the nation in the Cuban missile crisis, his address to the people was not chewed over by a roundtable of critics who disparaged the course of action he'd asked America to follow.

The purpose of my remarks tonight is to focus your attention on this little group of men who not only enjoy a right of instant rebuttal to every Presidential address, but, more importantly, wield a free hand in selecting, presenting and interpreting the great issues in our nation.

First, let's define that power. At least 40 million Americans every night, it's estimated, watch the network news. Seven million of them view A.B.C., the remainder being divided between N.B.C. and C.B.S.

SOLE SOURCE OF NEWS

According to Harris polls and other studies, for millions of Americans the networks are the sole source of national and world news. In Will Rogers' observation, what you knew was what you read in the newspaper. Today for growing millions of Americans, it's what they see and hear on their television sets.

Now how is this network news determined? A small group of men, numbering perhaps no more than a dozen anchormen, commentators and executive producers, settle upon the 20 minutes or so of film and commentary that's to reach the public. This selection is made from the 90 to 180 minutes that may be available. Their powers of choice are broad.

They decide what 40 to 50 million Americans will learn of the day's events in the nation and in the world.

We cannot measure this power and influence by the traditional democratic standards, for these men can create national issues overnight. They can make or break by their coverage and commentary a moratorium on the war.

They can elevate men from obscurity to national prominence within a week. They can reward some politicians with national exposure and ignore others.

For millions of Americans the network reporter who covers a continuing issue—like the ABM or civil rights—becomes, in effect, the presiding judge in a national trial by jury.

It must be recognized that the networks have made important contributions to the national knowledge—for news, documentaries and specials. They have often used their power constructively and creatively to awaken the public conscience to critical problems. The networks made hunger and black lung disease national issues overnight. The TV networks have done what no other medium could have done in terms of dramatizing the horrors of war. The networks have tackled our most difficult social problems with a directness and an immediacy that's the gift of their medium. They focus the nation's attention on its environmental abuses—on pollution in the Great Lakes and the threatened ecology of the Everglades.

But it was also the networks that elevated Stokely Carmichael and George Lincoln Rockwell from obscurity to national prominence.

Nor is their power confined to the substantive. A raised eyebrow, an inflection of the voice, a caustic remark dropped in the middle of a broadcast can raise doubts in a million minds about the veracity of a public official or the wisdom of a Government policy.

One Federal Communications Commissioner considers the powers of the networks equal to that of local state and Federal Governments all combined. Certainly it represents a concentration of power over American public opinion unknown in history.

Now what do Americans know of the men who wield this power? Of the men who produce and direct the network news, the nation knows practically nothing. Of the commentators, most Americans know little other than that they reflect an urbane and assured presence seemingly well-informed on every important matter.

We do know that to a man these commentators and producers live and work in the geographical and intellectual confines of Washington, D.C., of New York City, the latter of which James Reston terms the most unrepresentative community in the entire United States.

PROVINCIALISM CHARGED

Both communities bask in their own provincialism, their own parochialism.

We can deduce that these men read the same newspapers. They draw their political and social views from the same sources. Worse, they talk constantly to one another, thereby providing artificial reinforcement to their shared viewpoints.

Do they allow their biases to influence the selection and presentation of the news? David Brinkley states objectivity is impossible to normal behavior. Rather, he says, we should strive for fairness.

Another anchorman on a network news show contends, and I quote: "You can't expunge all your private convictions just because you sit in a seat like this and a camera starts to stare at you. I think your program has to reflect what your basic feelings are." "I'll plead guilty to that."

Less than a week before the 1968 election, this same commentator charged that Presi-

dent Nixon's campaign commitments were no more durable than campaign balloons. He claimed that, were it not for the fear of hostile reaction, Richard Nixon would be giving into, and I quote him exactly, "his natural instinct to smash the enemy with a club or go after him with a meat axe."

Had this slander been made by one political candidate about another, it would have been dismissed by most commentators as a partisan attack. But this attack emanated from the privileged sanctuary of a network studio and therefore had the apparent dignity of an objective statement.

The American people would rightly not tolerate this concentration of power in Government.

FAIR AND RELEVANT

Is it not fair and relevant to question its concentration in the hands of a tiny, enclosed fraternity of privileged men elected by no one and enjoying a monopoly sanctioned and licensed by Government?

The views of the majority of this fraternity do not—and I repeat, not—represent the views of America.

That is why such a great gulf existed between how the nation received the President's address and how the networks reviewed it.

Not only did the country receive the President's address more warmly than the networks, but so also did the Congress of the United States.

Yesterday, the President was notified that 300 individual Congressmen and 50 Senators of both parties had endorsed his efforts for peace.

As with other American institutions, perhaps it is time that the networks were made more responsive to the views of the nation and more responsible to the people they serve.

Now I want to make myself perfectly clear. I'm not asking for Government censorship or any other kind of censorship. I'm asking whether a form of censorship already exists when the news that 40 million Americans receive each night is determined by a handful of men responsible only to their corporate employers and is filtered through a handful of commentators who admit to their own set of biases.

The questions I'm raising here tonight should have been raised by others long ago. They should have been raised by those Americans who have traditionally considered the preservation of freedom of speech and freedom of the press their special provinces of responsibility.

They should have been raised by those Americans who share the view of the late Justice Learned Hand that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection.

Advocates for the networks have claimed a First Amendment right to the same unlimited freedoms held by the great newspapers of America.

SITUATIONS NOT IDENTICAL

But the situations are not identical. Where The New York Times reaches 800,000 people, N.B.C. reaches 20 times that number on its evening news.

The average weekday circulation of The Times in October was 1,012,367; the average Sunday circulation was 1,523,558.

Nor can tremendous impact of seeing television film and hearing commentary be compared with reading the printed page.

A decade ago before the network news acquired such dominance over public opinion, Walter Lippmann spoke to the issue. He said there's an essential and radical difference between television and printing. The three or four competing television stations control virtually all that can be received over the air by ordinary television sets. But besides the mass circulation monthlies, out-of-town newspapers and books. If a man doesn't like his newspaper, he can read another from out of town or wait for a weekly news magazine. It's not ideal, but it's infinitely better than the situation in television.

HOUSE REPORT CITED

There if a man doesn't like what the networks are showing, all he can do is turn them off and listen to phonograph. Networks he stated which are few in number have a virtual monopoly of a whole media of communications.

The newspapers of mass circulation have no monopoly on the medium of print.

Now a virtual monopoly of a whole medium of communication is not something that democratic people should blindly ignore. And we are not going to cut off our television sets and listen to the phonograph just because the airways belong to the networks. They don't. They belong to the people.

As Justice Byron White wrote in his landmark opinion six months ago, it's the right of the viewers and listeners, not the right of the broadcasters, which is paramount.

Now it's argued that this power presents no danger in the hands of those who have used it responsibly. But, as to whether or not the networks have abused the power they enjoy, let's call as our first witness former Vice President Humphrey and the city of Chicago. According to Theodore White, television's intercutting of the film from the streets of Chicago with the current proceedings on the floor of the convention created the most striking and false political picture of 1968—the nomination of a man for the American Presidency by the brutality and violence of merciless police.

If we are to believe a recent report of the House of Representatives Commerce Committee, then television's presentation of the violence in the streets worked an injustice on the reputation of the Chicago police. According to the committee findings, one network in particular presented, and I quote, a one-sided picture which in large measure exonerates the demonstrators and protesters. Film of provocations of police that was available never saw the light of day which the film of a police response which the protesters provoked was shown to millions.

Another network showed virtually the same scene of violence from three separate angles without making clear it was the same scene. And, while the full report is reticent in drawing conclusions, it is not a document to inspire confidence in the fairness of the network news.

SERIOUS QUESTIONS RAISED

Our knowledge of the impact of network news on the national mind is far from complete, but some early returns are available. Again, we have enough information to raise serious questions about its effect on a democratic society. Several years ago Fred Friendly, one of the pioneers of network news, wrote that its missing ingredients were conviction, controversy and a point of view—the networks have compensated with a vengeance.

And in the networks endless pursuit of controversy, we should ask: What is the end value—to enlighten or to profit? What is the end result—to inform or to confuse? How does the ongoing exploration for more action, more excitement, more drama serve our national search for internal peace and stability.

Gresham's Law seems to be operating in the network news. Bad news drives out good news. The irrational is more controversial than the rational. Concurrence can no longer compete with dissent.

One minute of Eldridge Cleaver is worth 10 minutes of Roy Wilkins. The labor crisis settled at the negotiating table is nothing compared to the confrontation that results in a strike—or better yet, violence along the picket lines.

Normality has become the nemesis of the network news. Now the upshot of all this controversy is that a narrow and distorted picture of America often emerges from the televised news.

A single dramatic piece of the mosaic becomes in the minds of millions the entire picture. And the American who relies upon television for his news might conclude that the majority of Americans feel no regard for their country. That violence and lawlessness are the rule rather than the exception on the American campus.

We know that none of these conclusions is true.

Perhaps the place to start looking for a credibility gap is not in the offices of the Government in Washington but in the studios of the networks in New York.

QUIET MEN LESS KNOWN

Television may have destroyed the old stereotypes but has it not created new ones in their places?

What has this passionate pursuit of controversy done to the politics of progress through local compromise essential to the functioning of a democratic society?

The members of Congress or the Senate who follow their principles and philosophy quietly in a spirit of compromise are unknown to many Americans, while the loudest and most extreme dissenters on every issue are known to every man in the street.

How many marches and demonstrations would we have if the marchers did not know that the ever-faithful TV cameras would be there to record their antics for the next news show.

We've heard demands that Senators and Congressmen and judges make known all their financial connections so that the public will know who and what influences their decisions and their votes. Strong arguments can be made for that view.

But when a single commentator or producer, night after night, determines for millions of people how much of each side of a great issue they are going to see and hear, should he not first disclose his personal views on the issue as well?

In this search for excitement and controversy, has more than equal time gone to the minority of Americans who specialize in attacking the United States—its institutions and its citizens?

Tonight I've raised questions. I've made no attempt to suggest the answers. The answers must come from the media men. They are challenged to turn their critical powers on themselves, to direct their energy, their talent and their conviction toward improving the quality and objectivity of news presentation.

They are challenged to structure their own civic ethics to relate their great feeling with the great responsibilities they hold.

And the people of America are challenged, too, challenged to press for responsible news presentations. The people can let the networks know that they want their news straight and objective. The people can register their complaints on bias through mail to the networks and phone calls to local stations. This is one case where the people must defend themselves; where the citizen not the Government, must be the reformer; where the consumer can be the most effective crusader.

DEPENDENT ON MEDIA

By way of conclusion, let me say that every elected leader in the United States depends on these men of the media. Whether what I've said to you tonight will be heard and seen at all by the nation is not my decision, it's not your decision, it's their decision.

In tomorrow's edition of The Des Moines Register, you'll be able to read a news story detailing what I've said tonight. Editorial comment will be reserved for the editorial page where it belongs.

Should not the same wall of separation exist between news and comment on the nation's networks?

Now, my friends, we'd never trust such power, as I've described, over public opinion in the hands of an elected Government. It's time we questioned it in the hands of a small and unelected elite.

The great networks have dominated America's airwaves for decades. The people are entitled to a full accounting of their stewardship.

FEDERAL MONETARY POLICY

Mr. KENNEDY. Mr. President, I was distressed to read this morning that the Chairman of the Council of Economic Advisers apparently supports the continuation of the administration's present severely restrictive monetary policy in the fight against inflation.

In a speech last Thursday in Springfield, Mass., I stated in detail my strong belief that the time has come to begin easing monetary policy by relaxing the severe restrictions on the supply of money and credit that we have maintained for so long in this crucial area of our overall fight against inflation.

Let me make clear that I am not saying that we should now be using monetary policy to stimulate the economy. In other words, I am not advocating that we should put our foot on the accelerator. What I am saying, however, is that we must begin to take our foot off the brake.

Today, every American citizen is well aware of the heavy price we are paying in the fight against inflation, in terms of soaring interest rates, high taxes, and rising unemployment. In recent weeks, many eminent economists have stated in strong terms that the price has now become too heavy, and that if we continue our present course, we are risking the very real threat of a serious recession in 1970.

The administration appears determined to maintain its current spartan policy until it is certain that the war against inflation is won. We know, however, that any change in monetary policy may take as long as 6 to 9 months to make itself felt in the economy. In these circumstances, it is clear that if we wait until we are certain that inflation has been conquered, it may be too late to avoid a subsequent recession. The stakes are high. I believe we must start to relax the monetary pressure now and risk the danger of a slower conquest of inflation. If we keep the pressure on too long, we risk the far more serious dangers of overkill and recession. By acting now, we can begin to relieve the heavy burden of high interest rates on the homeowner, the homebuilder and all the other citizens who are especially hard hit by our monetary policy.

One of the most serious contemporary consequences of our current economic policy is the rising level of unemployment, which strikes most heavily against those in our society who are least able to afford it—the poor, the disadvantaged, the blacks, and other minority groups who are the first casualties in any war against inflation.

When I spoke last week, I noted that the rate of unemployment had jumped from 3.5 percent in August to 4 percent in September, the highest level since the fall of 1967 and the highest monthly increase since the 1960 presidential campaign. Since I spoke, the figure for October has become available, showing an unemployment level of 3.9 percent. We know that the sharp increase in September was no fluke, that the fight against inflation is taking its high and inexorable toll in unemployment.

One further point should be made clear. Although the administration is waging all-out fiscal and monetary war against inflation, it is doing far too little in another crucial area of economic policy. In recent weeks, I have repeatedly urged the administration to make greater efforts to enlist the voluntary cooperation of business and labor leaders in the war against inflation. We simply cannot fight inflation effectively without using every reasonable weapon in our arsenal. More important, by taking a more active role in opposition to inflationary wage and price decisions, the President and the Chairman of the Council of Economic Advisers can gain precious new flexibility in easing our brutal monetary policy, the first and foremost area of the economy where the strictness of our current policy be relaxed.

I am hopeful, therefore, that the administration will reconsider the apparent course it has set, and will begin to demonstrate a more flexible strategy in what we all agree is the single overriding economic issue of the day, the war against inflation.

LET THE RECORD SPEAK FOR ITSELF

Mr. PELL. Mr. President, in reading the transcript of Vice President AGNEW's speech of last night, I was particularly disturbed at the manner in which the Vice President assailed Averell Harriman, and ask Senators to let the record speak for itself.

Along with so many of my colleagues, I have long known and admired Averell Harriman. He was the first major official of the Truman administration to speak out publicly of the danger of Soviet expansionism—and this was before Winston Churchill's famous Iron Curtain speech.

There is no one who knows better, and few who know as well, the leaders, philosophies, and strategies of the Communists and the Communist world.

Mr. Harriman, in the years since the Truman administration, has served us faithfully and well. He has occupied with equal vigor positions of high prestige and positions of lower rank when called upon to do so to better serve our Government and our people.

I saw and listened to his remarks following the President's speech on November 3. Contrary to the implications of the Vice President's speech, I found Mr. Harriman's remarks completely spontaneous and unrehearsed. I must add, too, that I find myself in complete agreement with Mr. Harriman's observations.

For these reasons, I ask unanimous consent that there be printed in the RECORD Mr. Harriman's remarks which were so assailed by Vice President AGNEW.

As a matter of fairness, I ask unanimous consent that the relevant portion of Mr. AGNEW's speech be printed in the RECORD following Mr. Harriman's remarks.

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

TRANSCRIPT OF ABC NEWS PROGRAM FOLLOWING PRESIDENT NIXON'S VIETNAM SPEECH, MONDAY, NOVEMBER 3, 1969

SCALI. Governor, could you tell us what is your immediate reaction to Mr. Nixon's address?

HARRIMAN. Well, John, I'm sure you know I wouldn't be presumptuous to give a complete analysis of a very carefully thought-out speech by the President of the United States. I'm sure he wants to end this war and no one wishes him well any more than I do. But since I'm here, I've got to answer your question. He approaches the subject quite differently from the manner in which I approach it. Let me first say, though, that I'm utterly opposed to these people who are talking about cutting and running. I'm against the Republican Senator from New York's proposal, Senator Goodell, to get out our troops in a year willy-nilly. I think we should have a responsible withdrawal. But my emphasis has been, and I think it should be on winning the peaceful contest that will come after the fighting stops. The first thing we must do is do everything we can to end the fighting and I think we could have made more progress in that direction. As far as winning the peaceful contest, we've got to look at who this government is—President Thieu. He is not representative of the people in my opinion from all that I've heard. Today, you've probably noticed that the most popular man in South Vietnam, General Duong Van Minh (Big Minh) proposed that there be a national convention to consider the future. He didn't define what it should be but it should combine what I've been saying—all of the non-communist groups. This is a very small group that are in the government—we've been talking to him (President Thieu) for two years about expanding his base and he's contracted it this last time (he changed the cabinet). There's nothing said in his speech about that, which to me is the all important question. I don't think we can be successful in Vietnamizing the war, because I don't think they can carry the weight. People should consider that. We can reduce our forces, no doubt, we can take down to a couple of hundred-thousand troops, but we will have to leave, probably, for many years a very large force. If we attempt to reduce the fighting earnestly and reduce the fighting, we can possibly get the South Vietnamese to expand the base of their government and to bring together, rally all of the non-communist forces.

SCALI. President Nixon, Governor, says nothing at all about the advisability of some kind of cease-fire. Do you favor this as a step?

HARRIMAN. Well, I have said that I thought we ought to have taken [that] up in early [last] November. You know, the trouble also—something he leaves out—was that we expected President Thieu to have his representative in Paris on November 2nd. And then progress would have been made. The North Vietnamese had disengaged in the northern two provinces where the toughest fighting had been. Ninety percent of their troops were taken out, half of those had gone to 200 miles north of the DMZ and we never had a chance to talk about it. They have stated of course, that the February and March offensive were counter-offensive to our pressures. Now, whether that's true, whether it isn't, one can't judge, but they did give us to understand that if we wanted to accept the status quo then that we could make progress. If we tried to improve our position militarily, then there would be—[just] talk. Now, even after this table question was

settled, which I thought was a stall so as to wait until President Nixon was in.—Maybe I was wrong. But President Thieu said he wouldn't sit down privately [with the NLF]. Now, all these things have been left out, and I think this should be very carefully debated by the Congress, particularly by the Foreign Relations Committee and take a look at where we're going.

SCALI. But do you think one of the prompt steps should be to initiate a cease-fire—to propose a cease-fire?

HARRIMAN. Well, I think the first thing we should do is to begin to work right away to freeze the reduction in the fighting; to announce that we're going to keep this fighting down. To insist that the South Vietnamese do the same and demand the same thing of the other side—working toward the cease-fire.

SCALI. Right.

HARRIMAN. Cy Vance wants to have a cease-fire called for now. If that is what the President proposes, I would certainly support it.

SCALI. Do you agree that there would be a blood bath in South Vietnam if the North Vietnamese were to take over.

HARRIMAN. Well, you know, I may be entirely wrong, but I don't think from the talks we've had that either the North Vietnamese nor their colleagues the VC—NLF want to have a military takeover. They want to see a settlement. I think they assume that over a period of years they can win out. But I'm sure they'd agree to have the South independent from the North for five or ten years. They've already proposed that it not be what they call a communist society.

SCALI. Do you see a reign of terror there?

HARRIMAN. No. Well, there might be a reign of terror if there was a complete (immediate) pullout, but there's no need—for a pull-out—if we sit down with these people and try to work out the details. Now, of course, the President gives us some inkling that he's had private talks. I found Mr. Le Duc Tho, the North Vietnamese representative in Paris, a very responsible man. He's a member of the politburo, and I would have liked to have seen some talks with him. Explore with him before we make proposals what proposition they have to make to us. I think we could have gotten more out of that—than our making formal proposals. Now these things—perhaps I'm wrong, but this is my first reaction, and my first reaction is that we ought to give more thought to whom we're supporting, whom President Thieu represents, how much political influence he has in the country and how this group could win the political contest which is going to come after the fighting stops.

SCALI. Governor, you've had a distinguished career as a politician in the United States. You're a Governor of New York, so I don't hesitate to ask you a question of this kind. Do you think that the silent majority in the United States will rally behind the President as a result of his speech?

HARRIMAN. I don't know whether it's a silent majority or not or whether it's a silent minority. I just don't know. You can pick any poll you want. There were 57% for the Goodell resolution in one poll. There's another poll which shows that 64% of the people want to see the government in Saigon changed. There are other polls which show the President has the support of the people. I think he's got the full support of the people—he certainly has got my support—in hoping he will develop a program for peace. But I think we've gone so far in Vietnam that this has to be discussed [and] cannot be accepted without more explanation and [it] seems to me the Senate Foreign Relations Committee would be a very fine place for that discussion.

SCALI. I gather, then, Governor, you were somewhat disappointed in the President's approach.

HARRIMAN. Well, I wouldn't say I was disappointed. I was not surprised. Because this is about what I thought he would say from the positions he had previously taken. He's followed the advice of many people who believe this. Many people who advised President Johnson—which wasn't successful—and I'm not sure that this advice would be successful in the future. We heard Thieu this evening [if] accurately reported saying "the war is being won now—anyone who is a neutralist is stupid". Has the President abandoned the end of a military—or he ruled out on May 14 a military solution. There are so many things we've got to know about this, but I want to end this by saying I wish the President well, I hope he can lead us to peace. But this is not the whole story that we've heard tonight.

SCALI. Governor Harriman, thank you very much.

MR. AGNEW'S REMARKS

To guarantee in advance that the President's plea for national unity would be challenged, one network trotted out Averell Harriman for the occasion. Throughout the President's message, he waited in the wings. When the President concluded, Mr. Harriman recited perfectly. He attacked the Thieu Government as unrepresentative; he criticized the President's speech for various deficiencies; he twice issued a call to the Senate Foreign Relations Committee to debate Vietnam once again; he stated his belief that the Vietcong or North Vietnamese did not really want a military takeover of South Vietnam; and he told a little anecdote about a "very, very responsible" fellow he had met in the North Vietnamese delegation.

All in all, Mr. Harriman offered a broad range of gratuitous advice—challenging and contradicting the policies outlined by the President of the United States. Where the President had issued a call for unity, Mr. Harriman was encouraging the country not to listen to him.

ABOUT MR. HARRIMAN

A word about Mr. Harriman. For 10 months he was America's chief negotiator at the Paris peace talks—a period in which the United States swapped some of the greatest military concessions in the history of warfare for an enemy agreement on the shape of the bargaining table. Like Coleridge's Ancient Mariner, Mr. Harriman seems to be under some heavy compulsion to justify his failure to anyone who will listen. And the networks have shown themselves willing to give him all the air time he desires.

NATIONAL CONGRESS OF AMERICAN INDIANS 1969 CONVENTION RESOLUTIONS

Mr. KENNEDY. Mr. President, I had the privilege last month of attending the 26th Annual Convention of the National Congress of American Indians in Albuquerque, N. Mex. At that convention, I had an opportunity to speak with many of the representatives from the more than 100 Indian tribes, and to discuss with them the matters for consideration by the convention.

These matters were made the subject of convention resolutions, to be voted upon by all the representatives attending. I have reviewed the resolutions adopted by the convention, and because I think that the other Members of the Senate should have the opportunity to review the ones dealing with substantive matters, I ask unanimous consent that they be printed in the RECORD at this point.

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

RESOLUTION NO. 1—TREATY HUNTING AND FISHING RIGHTS

Whereas, in their respective treaties with the United States Government many Indian tribes retained and reserved for all time the right to hunt, trap and fish on the reservation and in certain areas and at certain usual and accustomed places outside the reservations; and

Whereas, these treaties have never been amended and, although often urged by state officials and others to do so, Congress has never limited those rights or offered compensation for the wholesale elimination thereof (but has authorized compensation in certain specific cases of inundation of fishing places), but many state officials and others, including specifically the states of Oregon, Washington and Idaho, have for many years sought to avoid or eliminate or ignore those treaty rights; and

Whereas, the efforts of the state officials are actually on behalf of non-Indian commercial fishermen and sportsmen, and the state regulatory bodies are not responsive to Indian needs, and in many instances the states' efforts have been carried out through continuous harassment, arrests, threats of arrests and confiscation of guns and gear utilized by the Indians, and

Whereas, the expense to the tribes of continually being called upon to defend the treaty rights promised a century or more ago, and the hardships imposed upon the individuals who suffer such harassment, arrests, threats, and losses are becoming intolerable,

Now, therefore, be it resolved, that the National Congress of American Indians, in Convention assembled in Albuquerque, New Mexico, October 6–10, 1969, hereby adopts the following:

1. The steadfast efforts of the tribes and their members, with due regard for the conservation of game and fish, to defend their treaty rights has the full support of the National Congress of American Indians.

2. The National Congress of American Indians congratulates the Department of the Interior and the Justice Department of the United States Government for their efforts in recent years to support and defend those treaty rights as against the attacks of state officials and others.

3. The states and their officials and all others are hereby called upon to put an end to their harassment and other conduct described above, and to allow the treaty Indians to retain their treaty rights and the culture which those treaties were intended to preserve as long as the Indians wished to preserve it.

4. Copies of this resolution shall be furnished to the wildlife management agencies of such states as designated by the request of any member tribe and to the Department of the Interior and the United States Justice Department.

RESOLUTION NO. 2—INDIAN SCHOOLS

Whereas, for many years the Bureau of Indian Affairs school facilities located at Chemawa, north of Salem, Oregon, have been used almost exclusively for the education of children from Alaska and from the Navajo Indian Reservation, by reason of the shortage of facilities near their homes, and at the same time school children from the Pacific Northwest who are eligible for attending Indian schools have been required to attend Chilocco, Riverside, Fort Sill, and Concho Indian Schools, all located in Oklahoma; and

Whereas, many more schools are now being built nearer to the homes of the Navajo children, and there is hoped-for progress in connection with the needs of Alaskan children; and

Whereas, the Bureau of Indian Affairs states that it is now the policy of the Bureau of Indian Affairs to phase out the Navajo program at Chemawa and to accept

applications for eligible students from Pacific Northwest tribes for attendance at Chemawa, and also states that there are now 160 students from Pacific Northwest Tribes attending Chemawa out of a total enrollment exceeding 850.

Now, therefore, be it resolved, that the National Congress of American Indians, in Convention assembled at Albuquerque, New Mexico, October 6–10, 1969, hereby adopts the following: That the above described new policy of the Bureau of Indian Affairs is hereby endorsed as is the principle that Indian schools in the Pacific Northwest should be the principal Indian schools attended by children from Pacific Northwest Tribes.

Further resolved, that the Bureau of Indian Affairs is urged not to close down any Indian boarding schools as long as needed for education of socially deprived Indian children.

RESOLUTION NO. 3—MEMBERSHIP IN INDIAN TRIBAL ORGANIZATIONS

Whereas, there has been introduced in the 91st Congress S. 1301 which is a bill relating to membership and voting rights in Indian tribal organizations and would provide for absentee ballots to those members living off the reservation so they may participate in all elections and referendums pertaining to the tribe's political offices or to its tribal estate; and

Whereas, said bill would make far-reaching changes in tribal election procedures; and

Whereas, passage of said legislation could very well shift the balance of political power to persons more interested in distributing tribal assets than in maintaining the reservation and would be a step toward termination of all tribes; and

Whereas, it has long been recognized that it is within the sovereign prerogative of each tribe to determine its own membership and election procedures;

Now, therefore, be it resolved, that the National Congress of American Indians, in Convention assembled at Albuquerque, New Mexico, October 6–10, 1969, that it strongly objects to the passage of S. 1301 in view of the great danger it poses to all Indian tribes in the United States; and

Be it further resolved, that copies of this resolution be forwarded to Senator Allott, and to the Senate Committee on Interior and Insular Affairs, and to other committees that be considering this legislation.

RESOLUTION NO. 4—WHITE HOUSE CONFERENCE ON INDIAN AFFAIRS

Whereas, there has been introduced in the past several Congresses measures which would provide for a White House Conference on Indian Affairs; and

Whereas, from past experience it has been proved that one of the most effective methods for drawing attention to a national problem is to call a "White House Conference", and such conferences in the past have led directly to far-reaching new legislation in the fields of education, civil rights, and economical development; and

Whereas, a White House Conference on Indian Affairs would make it possible for eligible states to bring together, prior to the White House Conference on Indian Affairs, interested citizens to discuss problems in the state and make recommendations for appropriate action to be taken at local, state and federal levels, and said bill would provide for a sum of money to assist in carrying on said conferences; and

Whereas, the National Congress of American Indians, in the past conventions has passed resolutions endorsing such legislation calling for a White House Conference on Indian Affairs; and

Whereas, it is necessary that Congress consider a new Indian policy which would make it possible for interested citizens to overcome a depressing situation which has been vividly described by former President Johnson, as well as President Nixon;

Now, therefore, be it resolved, that the National Congress of American Indians, in Convention assembled at Albuquerque, New Mexico, October 6–10, 1969, that it respectfully requests the 91st Congress to pass legislation which would provide for a White House Conference on Indian Affairs; and

Be it further resolved, that copies of this resolution be transmitted to members of the 91st Congress of the United States so that members will introduce and pass legislation calling for a White House Conference on Indian Affairs.

RESOLUTION NO. 5—MINING REGULATIONS

Whereas, former Secretary of the Interior Stewart Udall, shortly before leaving office, approved with only minor changes proposed regulations governing the surface exploration, mining, and reclamation of Indian lands, the new regulations (25 CFR, Part 177) being published in the Federal Register for January 18, 1969; and

Whereas, the proposed new regulations were strongly opposed by tribal leaders of many Indian Reservations due to the fact that the regulations are in apparent disregard for Indian property rights and long recognized principles of tribal self-government; and

Whereas, the new regulations as published do not give either tribal or individual landowners any real voice in the use of their property; and

Whereas, the new regulations will undoubtedly hold back reservation mineral development;

Now, therefore, be it resolved, that the National Congress of American Indians, in Convention assembled at Albuquerque, New Mexico, October 6–10, 1969, strongly opposes the new regulations to Title 25, Part 177, and respectfully requests Secretary of the Interior Walter J. Hickel to reconsider the final regulations as now published so as to provide for tribal consultation and approval of any plan for the surface exploration, mining and reclamation of Indian lands.

Be it further resolved, the copies of this resolution be forwarded to Louis Bruce, Commissioner of Indian Affairs, and to other members of the Department of the Interior concerned with the mining regulations.

RESOLUTION NO. 6—BIA TRANSFER TO DEPARTMENT OF HEW

Whereas, on February 24, 1968, Alvin M. Josephy, Jr., submitted to the White House, upon request, a study of the American Indian and the Bureau of Indian Affairs, with recommendations; and

Whereas, the main recommendation is to place the Bureau of Indian Affairs as an independent agency in the Executive Office of the President, with an alternative proposal to transfer its principal functions to the Department of Health, Education and Welfare; and

Whereas, the Affiliated Tribes of the Northwest Indians and other tribes throughout the United States have gone on record against such transfer; and

Whereas, it would be speculative, even dangerous, to assume that the placement of the Bureau as an independent agency or in the HEW could produce results beyond those now achieved, with the Congress coming across consistently with appropriations needed and requested;

Now, therefore, be it resolved, by the National Congress of American Indians in Convention assembled October 6–10, 1969 that it go on record as strongly opposed to the recommendation, calling upon its officers and membership to appear at hearings in the Congress and wherever opposition may be effectively advanced, for the following reasons;

(1) Any failures of the Bureau in the past were due in the main to interferences in operation by higher authorities within the Department of the Interior and by congressional statements of policy, with inadequate appropriations to assure sustained progress;

(2) The detachment of the Bureau from the Department of the Interior could lead to restatement of policy and principles, such as attended the transfer of Indian health to HEW, but on a wider and more devastating scale in reference to treaty and other fundamental rights;

(3) Indians tribally and individually are making progress and we feel assured that this progress could be further stimulated and accelerated by the proper reorientation of executive authority in a reorganization of the Department of the Interior in respect to Indian Affairs.

RESOLUTION NO. 7—INDIAN ACTORS IN TELEVISION AND MOVIES

Whereas, television and movie producers and television networks use much material portraying the American Indian in which they use individuals of other than Indian origin to portray the roles; and

Whereas, the American Indian has pride in his race and culture and members of the group should be used to represent the race in the public media;

Now, therefore. be it resolved, that the National Congress of American Indians, in Convention assembled at Albuquerque, New Mexico, October 6–10, 1969, shall pursue every reasonable course of action to encourage television and movie producers and television networks to use Indians to portray Indians in their programs,

And, be it further resolved, that a special committee be appointed to review movies and television programs dealing with Indians and determine whether such movies and television programs are detrimental to the Indian people of this country and take all appropriate action thereafter.

RESOLUTION NO. 8—SAVE THE CHILDREN FEDERATION

Whereas, the Save the Children Federation has established a long standing record of selfless and valuable service to American Indians throughout the United States; and

Whereas, through their efforts, many hundreds of thousands of dollars have been applied directly to the benefit of deserving Indian children on many reservations and additional sums have been made available to assist Indian communities in the development of social, economic and domestic projects; and

Whereas, the thousands of SCF sponsors have been brought into closer contact with and have developed a better understanding of the problems and homelife of individual Indian children and Indian families living on the various reservations; and

Whereas, the efforts and achievements of the SCF have been recognized by national leaders and made a part of the Congressional Record;

Therefore, be it resolved, that the National Congress of American Indians in its 26th Annual Convention, assembled at Albuquerque, New Mexico, October 6–10, 1969, commend and express its appreciation to the Save the Children Federation for its efforts on behalf of all American Indians.

Be it further resolved, that the Save the Children Federation be encouraged to continue the good work that it is now doing.

RESOLUTION NO. 9—RED LAKE BAND OF CHIPPEWA INDIANS OPPOSE BIA TRANSFER

Whereas, the Senate Subcommittee on Indian Education has before it for consideration reorganization of the Bureau of Indian Affairs; and

Whereas, the Indians should have their programs co-ordinated under one office.

Now, therefore, be it resolved, that the Red Lake Band of Chippewa Indians opposes any transfer of the Bureau of Indian Affairs functions in whole or in part to any other Executive Office, Commission or Department, but that the Bureau of Indian Affairs remain in the Department of the Interior.

Be it further resolved, that the Bureau of Indian Affairs have its separate Under-Secretary of Interior or the Commissioner of Bureau of Indian Affairs be given Under-Secretary of Interior status.

Be it further resolved, that copies of this resolution be sent to the Senate Subcommittee on Indian Education, other Congressional Committees, Members of Congress, Secretary of the Interior, Commissioner of Indian Affairs, National Council on Indian Opportunity, and Minnesota State Indian Affairs Commission requesting their earnest support.

RESOLUTION No. 10—SNOHOMISH RESERVATION

Whereas, the Snohomish Tribe has never received its own reservation, despite a treaty promise to do so, and its members have been located on public domain allotments or on the Tulalip Reservation;

Now be it resolved, that the National Congress of American Indians support the efforts of the Snohomish Tribe to obtain its own reservation.

RESOLUTION No. 11—CONSTRUCTION OF BRIDGE AT CHARGING EAGLE BAY

Whereas, construction of the Garrison Dam on the Missouri River resulted in the inundation of substantial portions of the Ft. Berthold Indian Reservation and split the reservation into five parts; and

Whereas, the former line of communication between the portions of the reservation separated by the Missouri River have been cut with a resultant severe adverse effect on the economy of the reservation; and

Whereas, the Three Affiliated Tribes of the Ft. Berthold Reservation have supported the construction of a bridge across the Garrison Reservoir on the reservation at Charging Eagle Bay,

Now, therefore, be it resolved, that the National Congress of American Indians support the Three Affiliated Tribes of North Dakota in securing the necessary authorization and appropriation to construct a bridge at that site to remedy the damage to the reservation created by the construction of the Garrison Dame.

RESOLUTION No. 12—TAOS BLUE LAKE

Whereas, Taos Pueblo has for more than half a century been seeking the return of its sacred Blue Lake Area, consisting of 48,000 acres in northern New Mexico, wrongfully seized by the Federal Government and incorporated in the National Forest; and

Whereas, the findings of the Indian Claims Commission in September 1965, leave no doubt about the justice of the Bill, H.R. 471, sponsored in the Congress by Representative James A. Haley, which would place the Blue Lake Sanctuary in trust and preserve it intact as a wilderness for its rightful Indian owners; and

Whereas, that Bill, which has twice been passed by the House of Representatives, is now pending before the Senate Subcommittee on Indian Affairs; and

Whereas, that Subcommittee is also considering S. 750 introduced by Senator Clinton P. Anderson, which would deprive Taos Pueblo of many of the limited rights it now holds to the Blue Lake Sanctuary; and

Whereas, passage of H.R. 471 by the U.S. Senate would signal a repudiation of past prejudice and discrimination for all Indians and Indian tribes, not only for the Pueblo of Taos, and would usher in a new day of respect and honor for the Indian cultures and religion;

Now, therefore, be it resolved, that this Convention of the National Congress of American Indians hereby urges the members of the Subcommittee on Indian Affairs and the U.S. Senate as a whole to protect Indian rights and religious freedoms by supporting the enactment of H.R. 471 to return ownership of the 48,000 acre Blue Lake Sanctuary to Taos Pueblo, and rejecting S. 750, which would infringe upon these rights and freedoms.

Be it further resolved, that copies of this resolution be sent to all members of the Senate Committee on Interior and Insular Affairs and other U.S. Senators.

RESOLUTION No. 13—ESTABLISHMENT OF A NATIONAL INDIAN BOARD OF EDUCATION

Whereas, several proposals for the improvement of education of American Indians have been presented to the National Congress of American Indians at its Albuquerque, New Mexico Convention; and

Whereas, all of these proposals have stressed and emphasized the importance of maximum participation and involvement of American Indians in assessing quality education for their children, and assuming the responsibility and authority for the operation of schools where feasible; and

Whereas, the proposal providing for the establishment of a National Indian Board of Education appears to be worthy of further study and exploration for its possibilities for reorganizing and improving Indian education at all levels; and

Now, therefore, be it resolved, by the National Congress of American Indians that an Education Committee be created for the purpose of developing the proposal for the establishment of a National Indian Board of Education in more specific details in cooperation with other Indian-directed education organizations and the Senate Subcommittee on Indian education, and further that the detailed proposal be submitted to Indian groups at the local levels for any additional suggestions and recommendations, and further that the Senate Subcommittee on Indian Education be requested to withhold its final report until the above has been accomplished.

RESOLUTION No. 14—JOHNSON-O'MALLEY FUNDS

Whereas, States and school districts often direct Johnson-O'Malley Public Law—874 and similar Federal Funds to non-Indian purposes;

Therefore, be it resolved, that Johnson-O'Malley funds and other special education funds granted to school districts by virtue of Indian children attending school in those districts be not released to those districts by the Department of Public Instruction until an Indian Advisory Committee shall have satisfied itself that these funds are actually to be used for programs specifically designed to meet the needs of Indian students, rather than as supplemental funds for general programs;

Be it further resolved, that the National Congress of American Indians will make representations to this effect to the Superintendents of Public Instructions in the various States;

Be it further resolved, that among the requirements for the receipt of such Federal monies by a school district, shall be the eligibility of resident Indians without taxable real estate, to vote in all school, school board and school tax levy elections and, if otherwise eligible, to serve on the school board.

RESOLUTION No. 15—ESTABLISHMENT OF INDIAN EDUCATION COMMITTEE

Whereas, the Education of Indian children both on and off the reservation is given a high priority by the National Congress of American Indians; and

Whereas, the National Congress of American Indians is desirous of positioning itself as the spokesman of all Indians, both on and off the reservation on all matters, especially Indian Education; and

Whereas, there is no voice of NCAI for Indian Education in the form of/or an Education Co-ordinator, and Education Committee; and

Whereas, the lack of a Education Co-ordinator or standing Indian Education Committee at NCAI is to the detriment of Indian children and to the total voice of NCAI in Indian affairs, because it results in non-Indians writing education programs for Indians, thus reducing the self-determinism of Indians at all levels of education, from pre-school through post-grad; and

Whereas, NCAI seeks to alleviate this detriment and strengthen Indian autonomy on the education of Indian children,

Now, therefore, be it resolved, that the Executive Council be directed to set up immediately a standing committee on Indian Education, all of whom will be Indian, and this committee will select, if desired an Indian Education Co-ordinator. This proposed Education Co-ordinator and this proposed committee would be charged with liaison between U.S. Office of Eucation, National Education Association, National Council of Bureau of Indian Affairs Educators, BIA, Universities, Educational Labs, All Tribal Governments, and other National, State, and Local organizations who are desirous of improving Indian Education. Tribal reaction to ALL Indian Education proposals will be a reality through implementation of this resolution.

RESOLUTION No. 16—INDIAN WATER RIGHTS

Whereas, land without water is like a body without blood. A tiny fraction of their once vast domains remain in Indian ownership today, and many of these remaining lands, for which the United States has a trust responsibility to the Indian owners, are now threatened with the expropriation of the water the Indians must have to make their lands valuable and useable; and

Whereas, the interests fighting the Indians for their water and water rights are well-financed, well-represented and politically powerful. Some of these adverse interests, including the Bureau of Reclamation and the Bureau of Land Management, are within the Trustee's own Department; and

Whereas, among the tribes, and there are many more, whose property and property rights are threatened by attempts to deprive them of their water are: the Fort Hall Tribe, San Ildefonso Pueblo, the Nez Perce Tribe, the Flathead Tribe, the Colorado River Tribe, the Yakima Tribe, the Agua Caliente Tribe, and the Pyramid Lake Tribe, possibly the most outrageous and urgent case of all; and

Whereas, although in some cases, the Trustee has promised to take steps to protect vital Indian claims for water, the Department of the Interior has been unwilling or unable to take the immediate and effective action necessary today to assure Indian ownership of these rights tomorrow.

Now, therefore, be it resolved, that the National Congress of American Indians pledges the full power of its resources and influence to support the efforts which Indians themselves must take in the absence of action by the Trustee to protect and secure the water and water rights necessary for their present and future needs, and to this end,

1. National Congress of American Indians will continue its efforts to persuade the Department of the Interior to vigorously claim and secure for the Indian people, to whom it has a trustee responsibility of the highest order, full ownership, control and use of all water and water rights for which they have a claim or entitlement and future needs.

2. The National Congress of American Indians will assist tribes and Indian groups who must themselves take immediate action to prevent the loss of their water and water

rights, and hence the loss of the value and usefulness of their lands, and the Indian's hope for survival and progress.

3. The National Congress of American Indians will sponsor and support financial grants from foundations and other sources to aid those tribes and groups which have been carrying the full burden and expense of their battle for water, both in the courts of law and in the courts of public opinion.

4. The National Congress of American Indians recognizes the crisis facing the Pyramid Lake Tribe is typical of the situation that faces and will face other tribes, and that this shocking crisis will bankrupt those people, who have so valiantly carried on their fight alone, unless they are assisted in carrying on a cause that will establish precedents of vital importance for the protection of all Indian property rights.

5. The National Congress of American Indians recommends the creation of a National Advisory Committee of Indian leaders to recommend effective action for the protection of Indian water rights. It also recommends the establishment by the appropriate agency of a department adequately staffed to be responsible for the necessary water surveys, research, data gathering legal analysis and other work, with full authority to take all action, including legal action, necessary to protect Indian water claims and rights for the benefit of the Indian people and future generations of Indians.

RESOLUTION NO. 17—INDIANS OF LOUISIANA

Whereas, there are over 5,000 Indian people living in the state of Louisiana in dire poverty; and

Whereas, these Indian people have not received any help from the Bureau of Indian Affairs or the State of Louisiana;

Now, therefore, be it resolved, that through its Washington, D.C. (staff) the National Congress of American Indians will render all possible assistance to these Indian people of Louisiana.

RESOLUTION NO. 18—PYRAMID LAKE

Whereas, the National Congress of American Indians had in the past supported the Pyramid Lake Tribe in its struggle to preserve its property and property rights, particularly its water and water rights for the maintenance and preservation of Pyramid Lake, the principal asset remaining to the Pyramid Lake Indians; and

Whereas, if the Indian owners of Pyramid Lake are assured of their right to sufficient water to restore its nationally known fishery and to maintain and preserve the lake for recreation and for conservation, our people will have a fair chance to survive economically and socially;

Now, therefore, be it resolved, that the National Congress of American Indians and the representatives of other groups interested in justice for Indians be requested to support the Pyramid Lake Tribe in its struggle to maintain its property and property rights and most particularly to support the Tribe's long struggle for water to maintain and preserve Pyramid Lake, the major asset of the Tribe without which the social and economic advancement to its Indian owners is impossible.

RESOLUTION NO. 19—CHANNELING OF FEDERAL FUNDS

Whereas, there is an increasing policy to channel federal funds through state agencies; and

Whereas, while this policy may be generally beneficial to state agencies and state entities such as cities and counties but is extremely prejudicial to reservations and tribes which are not a part of the state political system;

Now, therefore, be it resolved, that federal funds available to Indian tribes and reservations be, as far as possible, without denying tribes the benefit of funds that should or must come through state agencies channeled directly to the tribes and reservations rather than through the state government.

RESOLUTION NO. 20—JIM THORPE—RESTORATION OF HONORS

Whereas, Jim Thorpe, Sac and Fox Indian, was a true American athlete born in Prague, Oklahoma, May 13, 1888, and educated at Haskell Institute, Lawrence, Kansas and Carlisle Indian School, Carlisle, Pennsylvania.

Whereas, Jim Thorpe was a member of the United States Olympic Team during the Olympic Games of 1912 and wherein he won the Decathlon and the Pentathlon events;

Be it resolved, we do hereby support the efforts of the Carlisle Junior Chamber of Commerce to petition the United States Olympic Committee and make cause before the International Olympic Committee to hold an extraordinary hearing to review the findings of the International Olympic Committee in 1912, to the end that it may be found that Jim Thorpe, Sac and Fox Indian, was a true amateur within the meaning of the rules and within the contemporary standard of his time, and in fact within present standards, that there may be restored to him, his people and his country the rightful recognition which he singularly and valiantly achieved, that the honor and glory of his achievements may be restored to the official 1912 Olympic Books.

RESOLUTION NO. 21—TRANSFER OF BIA SERVICES TO FT. THOMPSON AND THE CREATION OF THE CROW CREEK INDIAN AGENCY

Whereas, in the late fall of 1954 the Bureau of Indian Affairs relocated it's services from Fort Thompson to Pierre, South Dakota, thus creating undue hardship on Indian people under their jurisdiction, who do not have adequate or dependable transportation to make periodic treks to the present headquarters; and

Whereas, the Crow Creek Sioux Tribe stress the fact that social problems and economic problems which prevail can be alleviated or improved if the Bureau's services were closer to the problem, and a more realistic approach could be devised if the two tribes and the Bureau could cooperatively work on the betterment of the reservations; and

Whereas, with the establishment of the new Neighborhood Center or as improvements are completed on other tribal facilities it will be possible to provide adequate office space for all the departments now headquartered at Pierre, South Dakota; and

Whereas, the office rental to be charged will be no more or no less than that now paid by the Bureau of Indian Affairs at their Pierre location;

Now, therefore, be it resolved, by the National Congress of American Indians that the Commissioner of Indian Affairs be requested to return all services of the Bureau of Indian Affairs from Pierre, South Dakota to Fort Thompson, South Dakota, and improve the day to day services to the Crow Creek and Lower Brule Indian Reservations.

RESOLUTION NO 22—CALIFORNIA INDIAN SELF-DETERMINATION ACT

Whereas, an Act has been proposed to be known as the California Indian Self Determination Act establishing a California Indian Self-Determination planning commission; and

Whereas, this proposed Act provides that the composition of the proposed Commission shall consist of twenty-five members with twenty members designated by the governing body of each of the following organizations in California;

1. The five tribes with the largest membership, irrespective of whether such tribes are officially recognized by the Bureau of Indians Affairs;

2. The first five in alphabetical order of the remaining tribes which have at least twenty five members;

3. The five Indian-controlled statewide organizations with the largest membership; and

4. The five Indian-controlled urban organizations with the largest membership;

The remaining five members are to be designated by the foregoing twenty members, by majority vote at their first meeting; and

Whereas, there are approximately seven thousand California Indians residing on seventy-six reservations and rancherias and approximately ninety two thousand Indians residing elsewhere in California who are not all California Indians, therefore, creating a possible situation where several members of the proposed California Indian Self-Determination Planning Commission could be non-California Indians; and

Whereas, the reservation and rancheria Indians are in the minority and the proposed composition of the membership of the Planning Commission would be in * * * to insure the * * * of this minority group would be represented, and

Whereas, the Inter-Tribal Council represents thirty seven reservations and rural Indian organizations constituting a membership of approximately ten thousand Indians in California with the proposed membership composition under the Act providing for only one representative member on the Planning Commission; and

Whereas, this Act propose that the qualification of a member to sit on the Commission when it is initially established shall be decided by majority vote of the Temporary Qualification Committee of the Commission which shall consist of one member selected by the governing body of (1) California Indian Education Association; (2), California Indian Legal Services; and (3) Inter-Tribal Council of California; and

Whereas, the members of the governing body of the California Legal Services are not all Indian and because the controlling interest of the California Indian Education Association and California Indian Legal Services are one and the same, therefore, the Temporary Qualifications Committee of the proposed Commission would be controlled by these two organizations; and

Whereas, the members of the governing body of the California Indian Legal Services refused to vote on this proposed Act. The members of the governing body directed that the proposed act be distributed to all Indian groups in California for approval or disapproval. Time has not been allowed for this proposed Act to be distributed to all interested Indian groups for their due consideration and action;

Now, therefore, be it resolved, that the National Congress of American Indian opposes the passage of the proposed Act labeled as the California Indian Self-Determination Act, and declares that said proposed Act is vague and uncertain in its terms and is not in the best interest of all California Indians.

Be it further resolved, that a copy of the resolution be sent to Congressman Tunney, Senator Church and other interested Senators and Congressmen.

RESOLUTION NO. 23—REAFFIRMATION OF PREVIOUS POSITION ON THE OMNIBUS BILL, COLVILLE TERMINATION, WATER LEVEL OF THE AMERICAN FALLS DAM, CONSTRUCTION OF BEAVER DAM, ETC.

Whereas, at the last Annual Convention of the National Congress of Amreican Indians, resolutions were adopted against the termination of the Colville Confederated Tribes, the Omnibus Bill (5918, 5919, 5920, H.R. 6717, 6718, 6719, 6720), the proposed elevation of the water level of the American Falls Dam, the construction of Beaver Dam, and recession of Resolution 108; and

Whereas, the situation to which the foregoing resolutions were addressed is the same

now as before, calling for a reaffirmation of our position at this time;

Now, therefore, be it resolved, that such resolutions, as passed at the last convention, be hereby reaffirmed by the National Congress of American Indians in convention and the President and Executive Director of the organization be directed to take any action that be necessary thereon.

RESOLUTION NO. 24—TAXATION

Whereas, the Internal Revenue Service has not retreated from its systematic efforts to tax income derived by Indians and tribes from trust and restricted property; and

Whereas, the tax exemption and immunities guaranteed to Indians, which are constantly under attack in individual cases, are best defended and protected by Indians and their organizations acting together and collaborating in the mutual protection of these valuable rights; and

Whereas, the case of Stevens vs Commissioner, taxing on Indian income from trust land he had purchased, appears to have been lost because of a failure to adequately present the law in favor of the Indians; and

Whereas, that the National Congress of American Indians and its legal counsel have now become involved in the appeal of that case;

Now, therefore, be it resolved, that the National Congress of American Indians act as a clearing house for the exchange of information about pending tax cases which have implications for other tribes and Indians.

Be it further resolved, that we express our approval to the National Congress of American Indians staff and its legal counsel for becoming involved in the case of Stevens vs Commissioner, and the whenever appropriate and advisable it do so in other cases so that general Indian tax exemption will be protected.

Be it further resolved, that the direction taken in this respect be it legislation or court, action, be left to the officers of the National Congress of American Indians and their attorneys with the duty to counsel with tribal attorneys concerned with the problem.

RESOLUTION NO. 25—INDIAN SOVEREIGNTY

Whereas, we as tribes believe that we must make our own decisions and thereby determine our destiny, as exemplified by Bureau of Indian Affairs policy for the last few years and as exemplified by representatives of the Nixon Administration; and

Whereas, various statewide Indian agencies have become incorporated under state laws to provide some particular government service to Indians; and

Whereas, this vast array of agencies are outside responsible federal or state government; and

Whereas, we believe these agencies are beneficial to some extent, but frequently lack adequate internal administrative controls, resulting in an inferior quality of service; and

Whereas, this lack of administrative controls was originally designed to provide maximum Indian involvement, however, even though one Indian member from each tribe does sit on an agency board, local tribal involvement is not to our expectations due to lack of local tribal sophistication and other reasons; and

Whereas, these decisions made by these agencies result in the gradual chipping away of the remnants of our tribal sovereignty; and

Be it further resolved, that federal agencies concerned consider cross-funding in order to pool funds in either the Bureau of Indian Affairs or governing bodies of Indian reservations; and

Be it further resolved, that in no way would this effort at cordination lead toward termination of the special federal trust relationship to Indian tribes.

RESOLUTION NO. 26—INDIAN PARTICIPATION ON STATE, FEDERAL AND INTERNATIONAL FISHING REGULATORY BOARDS AND COMMISSIONS

Whereas, the Treaty guaranteed fishing rights of Northwest Indian tribes have been under constant attack and erosion; and

Whereas, fishing constitutes a major source of livelihood and income for members of Northwest Indian Tribes; and

Whereas, a recent federal court decision directs that these tribes having fishing rights be made a meaningful part of the regulation process for the purpose of assuring conservation and for the purpose of assuring the Indian a fair and equitable share of the fish landing; and

Whereas, this organization does wholeheartedly support the stand of the tribes particularly involved;

Now, therefore, be it resolved, that Indian representatives from the tribes involved be made a party to all regulatory boards, commissions, etc., that regulate the taking of fish whether such boards or commissions be state, federal or international in nature;

And, be it further resolved, that where the law forbids such participation, the laws be amended to permit such participation and pending such participation an advisory group composed of members of the tribes involved be created to officially advise said regulatory groups pending the change in the law;

And be it further resolved, that the officers of this organization be directed to take all necessary steps to assure that this Indian participation on state, federal and international fishing regulatory boards and commissions be effective in the immediate future.

RESOLUTION NO. 27—CUTBACK OF FEDERALLY FINANCED PROJECTS

Whereas, President Nixon's Administration has announced a 75% cut-back in federally financed construction projects; and

Whereas, this Anti-inflation move will, unless modified effect delay and prevent vitally needed construction projects on Indian reservations; and

Whereas, this federal responsibility to Indians is surely equal to any other, should be vastly preferred to any obligation our nation might have to foreign nations in its foreign nations aid program;

Now, therefore, be it resolved, that every possible effort be made by all available means to secure an exception for Indians, their tribes and reservations in the proposed cut-back of federally financed projects and in "Anti-inflationary" cuts in any other programs that affect Indians.

RESOLUTION NO. 28—TRIBAL LAWYERS—DEVELOP A POOL OF LEGAL EXPERIENCE

Whereas, our panels of tribal lawyers on taxation, water rights, law and order and other Indian subjects have demonstrated the common interest each of the tribes have in these subjects; and

Whereas, tribal lawyers develop a pool of legal experience, knowledge and precedent, which should be freely shared by all tribal lawyers and by the tribes themselves;

Now, therefore, be it resolved, that the National Congress of American Indians develop a program of periodic meetings and group studies and discussions by tribal lawyers for the exchange and sharing of legal experiences and information;

And, be it further resolved, that the lawyers be hereby requested to communicate with each other fully as possible to achieve this desired exchange and sharing of information to the fullest extent possible.

RESOLUTION NO. 29—INDIAN LAND: THE SALE OF ALLOTTED INDIAN LAND TO TRIBES BE ENCOURAGED BY BIA REGULATIONS

Whereas, rigid and inflexible rules and regulations governing land sales are working not to prevent the alienation of land to fee title status, but rather to discourage purchase of allotted land by tribes; and

Whereas, there should be greater freedom of negotiation between allottees and their tribes so that capable informed tribal members may, if they wish, sell their land to the tribe at prices lower than BIA appraisals; and

Whereas, every possible tribal preference should be made available to protect the tribal land base.

Now, therefore, be it resolved, that the BIA and the solicitors office and the Department of Interior review and modify its rules and regulations concerning land sales so that there exists the greater flexibility possible in view of the BIA's trust responsibility to allow and encourage purchase of allotted Indian land by tribes rather than by non-Indians;

And, be it further resolved, that there is a moratorium of land sales out of trust until the particular tribe and reservation has funds reasonably available to purchase such lands that are for sale.

RESOLUTION NO. 30—HUNTING AND FISHING RIGHTS

Whereas, over the period of years there has been continual infringement upon the Indian's hunting and fishing rights; and

Whereas, a continual financial burden has been placed upon tribes and tribal members in the protection and preservation of these rights; and

Whereas, the United States Government as trustee has an obligation to protect these rights whenever they are infringed upon; and

Whereas, the United States, through the urgency of the Northwest Tribes, has recently participated in a major law suit to protect these rights upon the Columbia River.

Now, therefore, be it resolved, by the National Congress of American Indians that the United States as trustee of Indian Hunting and Fishing rights be urgently requested through its Departments of Interior and Justice to continue to commence and participate in appropriate legal proceedings whenever necessary to protect and preserve these rights from further infringment.

RESOLUTION NO. 31—TREATY RIGHTS—LUMMI TRIBE

Whereas, the Lummi Indians have in the treaty agreement of 1855 reserved the exclusive right to the use of tidal lands for the benefit of the Indian people; and

Whereas, the Corps of Army Engineers are attempting, through their authority over navigatable waters, to infringe upon treaty rights; and

Whereas, the Lummi Tribe, through their delegates, are asking support of the National Congress of American Indians to have the exclusive rights by treaty recognized.

Now, therefore, be it resolved, that this convention go on record in support of the Lummi Tribe in their efforts to preserve their treaty rights to the use of these tidal lands.

RESOLUTION NO. 32—INDIAN ADMINISTRATORS OF INDIAN PROGRAMS

Whereas, various agencies of the Bureau of Indian Affairs have been given the administrative responsibility of determining Education and Welfare needs of Indian people; and

Whereas, the Bureau of Indian Affairs has required the Indian people to first exhaust all other sources of help in their areas; and

Whereas, this requirement results in an erosion of Indian rights to these services and this leads to slow but sure termination.

Now, therefore, be it resolved, that the National Congress of American Indians request the United States Government to comply with the intent of the treaty agreements and prepare and place Indian people in all levels of administrative responsibility in Indian Affairs.

RESOLUTION NO. 33—INDIAN HEALTH—TO CONTINUE THE NEUROLOGICAL AND SENSORY DISEASE CONTROL PROGRAM

Whereas, ear disease continues to be the leading reported health problem affecting American Indians and Alaska Natives; and

Whereas, as many as 66% of Alaska Native children have been found to have chronic ear disease before the age of three years and 60% of the adults in some Alaska villages are known to be partially deaf, and similar figures for ear disease are found in the Indian population in other States; and

Whereas, the occurrence of this disease has doubled within the past six years and the disease occurs in children during the critical time for learning language and the disease is both a health and educational problem; and

Whereas, the Neurological and Sensory Disease Control Program (NSDCP) has for the past several years devoted a major portion of its resources for the prevention and control of ear disease in American and Alaska Native children and has proved to be beneficial; but

Whereas, the Department of Health, Education and Welfare (DHEW) has made budgetary reductions affecting programs again of direct concern to Indians and NSDCP is among those programs to be eliminated in the near future; and

Whereas, NSDCP has provided the research and development activity in ear disease and its prevention to the Indian Health Service and the Indian Health Service would be without this support if this activity were to be discontinued.

Now, therefore, be it resolved, that the National Congress of American Indians in Convention assembled on October 6–10, 1969, here expresses its concern to the President of the United States and Congress and the Department of HEW over the proposed elimination of NSDCP and does strongly urge the continued financing of this program at a level sufficient to conduct its field activities.

But, it is further resolved, that the Executive Director is hereby instructed and authorized to make our position known to these people to secure these ends.

RESOLUTION NO. 34—OMNIBUS CRIME CONTROL: SUPPORT OF S. 1229 AND H.R. 9262 AND H.R. 10582 IN WHICH THE SECRETARY OF THE INTERIOR ACT IN PLACE OF STATE GOVERNORS

Whereas, most Indian tribes lack the funds, facilities and manpower to engage in preventative, punitive and rehabilitative programs of crime control; and

Whereas, Indian tribes performing law enforcement functions on Indian reservations were included as eligible recipients of grants under the Omnibus Crime Control and Safe Streets Act of 1968; and

Whereas, said Act requires that Indian tribes apply for such grants for the state in which they are located; and

Whereas, State governments are not always sympathetic with or aware of the unique problems that exist on Indian Reservations; and

Whereas, Senator Burdick of North Dakota, Congressman Udall of Arizona, and Congressman Burton of Utah have introduced in the 91st Congress, S. 1229, H.R. 9262, and H.R. 10582, respectively, which would amend said Act, the Secretary of the Interior will act in lieu of the State.

RESOLUTION NO. 35—INDIAN LEGISLATION—OPPOSITION OF H.R. 7962

Whereas, H.R. 7962, introduced by Congressman Berry in the 91st Congress is an attempt to provide a federal monetary incentive for the employment by private industry of Indian people; and

Whereas, this is accomplished by providing that a service contract received by a private firm be increased by 10% if more than 25% of the service employees are Indians; and

Whereas, the National Congress of American Indians, supports in principal, this incentive mechanism; but

Whereas, H.R. 7962 does not guarantee that the service contractor continue employing Indians at a rate of 25%.

Now, therefore, be it resolved, that the National Congress of American Indians meeting this 10th day of October, 1969, in its 26th Annual Convention in Albuquerque, New Mexico, does hereby strongly oppose the enactment of H.R. 7962 in its present form, because it does not provide the guarantees mentioned and it may not be the best manner in which to provide incentive.

RESOLUTION NO. 36—INDIAN LEGISLATION: SUPPORT FOR S. 201 DESIGNED TO PROVIDE MORE AID FOR INDIAN HOUSING

Whereas, housing conditions on Indian reservations are in a most deplorable state; and

Whereas, existing laws and regulations relating to housing do not adequately take into consideration circumstances prevalent on Indian reservations; and

Whereas, Senator Anderson of New Mexico, has introduced S. 201 in the 91st Congress which would make Indians eligible for assistance under section 117 of the Housing Act of 1949 and authorizing the Secretary of HUD to review existing programs with a view to determine whether additional legislation is necessary in order for Indian tribes on reservations to qualify for assistance under such programs.

Now, therefore, be it resolved, that the National Congress of American Indians on October 10, 1969, in Convention assembled does go on record as supporting the enactment of S. 201; and

Be it further resolved, that the Executive Director be authorized to represent the National Congress of American Indians and make recommendations to persons and agencies concerned.

RESOLUTION NO. 37—TAX EXEMPTION OF TRUST LAND—H.R. 12589

Whereas, H.R. 12589 introduced in the 91st Congress by Congressman Tunney of California provides that the Federal Government shall pay to the State the amount of money a State would realize if it were permitted to tax Indian trust land and restricted property; and

Whereas, this amount would not in most cases equal the amount spent by the Federal Government in providing the services to the Indians the tax money would provide if collected; and such money would be in the nature of a "windfall" to the recipient states; and

Whereas, the provision of federal money in lieu of taxes may give rise to statements that the government is paying for its obligation to the Indians twice and therefore, the Indians should pay their own taxes; and

Whereas, tax exemption on trust and restricted property is guaranteed to the Indian people by law.

Now, therefore, be it resolved, that the National Congress of American Indians meeting this day of October 10, 1969, in its 26th Annual Convention in Albuquerque, New Mexico, does hereby strongly oppose the enactment of H.R. 12589.

RESOLUTION NO. 38—SUPPORT FOR H.R. 10093

Whereas, an amendment by the Secretary of the Interior amended 25 CFR, Part 161, to provide that rights-of-way may be granted over the lands of organized tribes that are not organized under IRA without consent or consultation; and

Whereas, this is contrary to the principles of fair play and property ownership; and would amount to taking of property without consent or compensation to the owners; and

Whereas, H.R. 10093, introduced by Congressman Moss of California in the 91st Congress, would require tribal consent by said unorganized tribes to all grants of a right-of-way over Indian tribal land.

Now, therefore, be it resolved, that the National Congress of American Indians in Convention assembled October 6–10, 1969, at Albuquerque, New Mexico, do hereby support the enactment of H.R. 10093.

RESOLUTION NO. 39—S. 2130, H.R. 9261, AND H.R. 10581

Whereas, most Indian tribes lack the funds, facilities and manpower to engage in a preventative, punitive and rehabilitative program of juvenile delinquency control; and

Whereas, Indian tribes were included as eligible recipients of grants under the Juvenile Delinquency Prevention and Control Act of 1968; and

Whereas, said Act requires that Indian tribes apply for such grants from the state in which they are located; and

Whereas, state governments are not always sympathetic with or aware of the unique problems that exist on Indian reservations; and

Whereas, Senator Burdick of North Dakota, Congressman Udall of Arizona, and Congressman Burton of Utah have introduced in the 91st Congress, S. 1230, H.R. 9261 and H.R. 10581, respectively, which would amend said Act to provide that for purposes of making grants to Indian tribes under said Act, the Secretary of the Interior will act in lieu of the State.

Now, therefore, be it resolved, that the National Congress of American Indians on October 6–10, 1969, at its 26th Annual Convention assembled at Albuquerque, New Mexico, does hereby strongly urge the enactment of this legislation if amended to insure that an adequate and reasonable amount be given to the Secretary for distribution to the tribes.

RESOLUTION NO. 40—H.R. 2056 AND H.R. 2059

Whereas, H.R. 2056 and H.R. 2059 have been introduced in the 91st Congress and would compensate the Crow Tribe for land erroneously taken from them (H.R. 2056) and the value of the minerals that would have been derived from that land (H.R. 2054) respectively; and

Whereas, compensation is not within the jurisdiction of the Court of Claims and requires a separate act of Congress; and

Whereas, similar bills have been presented to Congress for the last ten years and there has been no action by Congress.

Now, therefore, be it resolved, that the National Congress of American Indians in Convention assembled does hereby support the passage of H.R. 2056 and H.R. 2059.

RESOLUTION NO. 41—H.R. 431—CONSOLIDATION OF VARIOUS REVOLVING LOAN FUNDS

Whereas, the needs of the Indian community for funds provided by various revolving loan funds administered by the Bureau of Indian Affairs is great; and

Whereas, H.R. 431 has been introduced by Congressman Edmondson in the 91st Congress which would consolidate such various revolving loan funds into a single fund and would increase the amount of money available to Indians from such a fund; and

Whereas, H.R. 431 contains none of the objectionable language found in other proposals to increase or establish these funds.

Now, therefore, be it resolved, that the National Congress of American Indians in Convention assembled does hereby support the passage of H.R. 431.

RESOLUTION NO. 42—SCHOOL BOARDS—MINORITIES

Whereas, the State of New Mexico has amended Chapter 103 of its statues to provide for expansion of local public school boards to include representatives of minorities in the school district; and

Whereas, this can provide a meaningful transition for Indian people into full electoral participation; and

Whereas, certain tribes have been ignored by their local school boards in attempts to implement this local option; and

Be is resolved, that the National Congress of American Indians goes on record in support of these tribal efforts to improve the quality of education their children receive; and

Be it further resolved, that copies of this resolution is sent to the Governor of New Mexico, David F. Cargo, the Superintendent of all school districts with Indian students in the State of New Mexico and to all Chairmen of the boards of education in those districts.

RESOLUTION NO. 43—1970 CENSUS OF INDIAN DATA

Whereas, the census of the United States provides for a complete count of all the people and accurate information on their living conditions; and

Whereas, the census will thus make known the facts about the number and needs of the American Indians; and

Whereas, such knowledge is essential to tribal as well as government plans for social and economic development; and

Whereas, the 1970's census is designed to collect more data than ever before on the basis of tribes and reservations, as well as on the status of the American Indian regardless of his place of residence; and

Whereas, the law requiring participation in the census will assure that this information is obtained, and at the same time held in the strictest confidence as far as any individual is concerned; and

Whereas, the Bureau of the Census plans to employ American Indians insofar as possible to assist in taking the count in areas populated by Indians; and

Whereas, it is to the benefit of our people to support this effort.

Now, therefore, be is resolved, that the National Congress of American Indians endorses and fully backs the taking of a complete census in 1970 to assemble the facts essential to proper recognition of the Indian and to guarantee his fair share of governmental representation and services.

RESOLUTION NO. 44—INDIAN COMMUNITY COLLEGES

Whereas, American Indians are beginning to pursue higher education in greater numbers; and

Whereas, due to (a) language problems, (b) different cultural orientation, (c) financial problems, (d) the philosophy of the American school system, (e) lack of counseling in the high school, (f) lack of orientation toward college; there is a high drop out rate among Indians.

Now, therefore, be it resolved, that the National Congress of American Indians goes on record supporting the establishment of community colleges near Indian areas, and that they be funded from a federal program or any other available sources, in order to promote a favorable solution to the problems of Indian students; and

Be it further resolved, that the Bureau of Indian Affairs be requested to seek increased funds for its scholarship program.

RESOLUTION NO. 45—WISCONSIN WELFARE BUDGET CUTS

Whereas, the legislature of the State of Wisconsin in regular session drastically cut the already inadequate welfare aids; and

Whereas, these grant cuts deprive a great number of Wisconsin Indian families of the basic human needs, such as food, clothing, and shelter, as well as other special needs; and

Whereas, aids to dependent children are now terminated at age eighteen thereby excluding those young people from the opportunity to continue their schooling; and

Whereas, programs designed to permit trainable welfare recipients to upgrade their standard of living have also been eliminated; and

Whereas, these welfare budget cuts are causing great hardship particularly to the children and the aged.

Now, therefore, be it resolved, that the National Congress of American Indians at their Convention in Albuquerque, New Mexico in October 1969 urge the Wisconsin legislature in its special session now in progress in Madison, Wisconsin to restore to the Wisconsin welfare budgets those monies requested by the Governor in the original budget; and

Be it further resolved, that future welfare programs be funded and administered in a manner that enhances the dignity of the Wisconsin Indians and all other Wisconsin citizens requiring welfare assistance.

RESOLUTION NO. 46—INDIAN TREATY RIGHTS

Whereas, the decision rendered in Dodge vs Nakai did construe Title II of the Indian Civil Rights Act of 1968 (PL–90–284) so that it applied to non-Indians in their relationship with tribal governments; and

Whereas, treaty rights of tribes guarantee the prerogative of barring unauthorized personnel from entering the reservation; and

Whereas, this decision, in effect, implies that Indian tribes may not give preferential treatment to its own members; and

Whereas, S. 2172 and 2173 introduced by Senator Ervin of North Carolina in the 91st Congress would reaffirm the treaty rights of tribes and prevent the further misconstruction of Title II by the courts.

Now, therefore, be it resolved, this day of October 10, 1969, during its 26th Annual Convention, the National Congress of American Indians does strongly support the passage of S. 2172 and 2173.

RESOLUTION NO. 47—NATIONAL INDIAN WEEK

Whereas, the Indian heritage has been a foundation of the democratic form of government in these United States of America, and

Whereas, the lands ceded by Indians have created a home for the citizens of these United States; and

Whereas, the Indian people have supported democratic governments from the time of the revolution through all wars with foreign governments.

Now, therefore, be it resolved, by the National Congress of American Indians that the Congress of the United States be requested to established by legislation a "National American Indian Week."

RESOLUTION NO. 48—INDIAN HEALTH SERVICE—PERSONNEL FREEZE AND CONSTRUCTION CURTAILMENT

Whereas, the American Indian and Alaskan Native people are very concerned with the personnel freeze imposed on the Indian Health Service, and the curtailment of government spending for all construction which has affected the quality and quantity of services available; and

Whereas, it is a recognized fact that, despite considerable improvement, the health status of the American Indian and Alaskan Native people is still far below that of the general population of the United States. The American Indian and Alaskan Native people are in dire need of all health facilities and health needs; and

Whereas, approximately 50–60% of the total staff in the Indian Health Service are American Indian and Alaskan Native, this personnel freeze will mean that many more American Indians and Alaskan Natives will be without a livable income because of the Indian Health Service being unable to fill vacancies; and

Whereas, it has become increasingly difficult to retain personnel because of the increased work load placed upon them due to the personnel freeze; and

Whereas, it has been common knowledge that despite numerous resolutions from American Indians and Alaskan Native tribal groups concerning these impositions set upon the Indian Health Service, it appears these resolutions have been continuously ignored; and

Whereas, Vice President Spiro T. Agnew has pledged the support of the Nixon administration to achieve a better life for American Indians in his address to this Convention; and

Whereas, it is our understanding now that both houses of the United States Congress voted to exclude the Indian Health Service from the personnel freeze.

Now, therefore, be it resolved, that the National Congress of American Indians urge the President of the United States, the Vice President of the United States, and the Secretary of the Department of Health, Education and Welfare, to recognize the decision of the United States Congress to abolish the personnel freeze which is being imposed on the Indian Health Service, so that the Indian Health Service facilities may function at their highest capacity, thus providing these much needed health services.

And, be it further resolved, that the National Congress of American Indians urge the President of the United States, the Vice President of the United States, the United States Congress and the Secretary of the Department of Health, Education and Welfare to grant special exemption from the construction curtailment to the Indian Heatlh Service, Department of HEW.

RESOLUTION NO. 49—VANDALISM AND PROFANITY

Whereas, during the National Congress of American Indians Convention words have been used by a minute minority that cannot be found in any Indian language or dialect; and

Whereas, the use of foul and profane language is offensive to the members of the National Congress of American Indians; and

Whereas, there have been some acts of vandalism during this convention.

Now, therefore, be it resolved, by this National Congress of American Indians in Convention assembled that: (1) that acts of vandalism and use of foul language be severely condemned; (2) that there be established as a permanent rule of the National Congress of American Indians that in any of its meetings, panels or discussions that the use of foul or profane language is prohibited and any speaker using such language be ruled out of order and denied the floor by the moderator or chairman.

RESOLUTION NO. 50—INDIAN DESK FOR HUD

Whereas, the "mainstream oriented" HUD offices, policies, and regulations are not sufficiently flexible and adaptable to fill the special needs and requirements of Indians and Indian Reservations or lands;

Now, therefore, be it resolved, (1) that HUD establish an Indian desk or office in

Washington, D.C. to process all Indian applications and adapt regulatory procedures to meet Indian requirements; (2) that HUD immediately implement an Indian Reservation Housing Staff Program to train tribal committees and personnel to work more knowledgeably to solve tribal housing problems; (3) that HUD revise all its available housing program so that they are flexible enough to be responsive to and actually fill the varying needs and wishes of individual Indian reservations and lands; (4) that HUD avoid forcing on Indian people "pre-packaged" Housing plans and specifications that do not fit in with the special housing needs on particular reservations and which ignore the available materials and skills already available on a reservation.

RESOLUTION NO. 51—FARMERS HOME ADMINISTRATION LOAN REQUIREMENTS

Whereas, the Farmers Home Administration enabling legislation now permits rural families who live on fee simple land but who are non-agricultural and meet other requirements to obtain loans from the Farmers Home Administration and families who meet the same requirements but who live on leased land should also be eligible for the same loans; and

Whereas, most reservation Indians live on land which is owned in common by the tribe and leased to the individual family and most Indian reservation residents are rural although some may not be agricultural.

Now, therefore, be it resolved, that legislation governing Farmers Home Administration home improvement and new home construction loans to rural families living on leased land should be changed to permit non-agricultural rural families living on leased land to permit non-agricultural rural families to be eligible.

RESOLUTION NO. 52—CONVEY LAND TO BURNS-PAIUTE COLONY

Whereas, home of members of the Burns-Paiute Colony are located on lands owned by the United States;

Now, therefore, be it resolved, that we express our support for H.R. 379 and S. 1544 which are bills that would convey title in trust to said lands to the Burns-Paiute Colony to give it a land base and title to the lands on which its members reside.

RESOLUTION NO. 53—INDIAN HEALTH—KIDNEY MACHINES

Whereas, for those having kidney disease, the availability of a kidney machine is a matter of life or death; and

Whereas, there is a necessity for adequate budgeting in HEW–PHS, for this item for Indian people.

Now therefore be it resolved by the NCAI that HEW–PHS budget such funds to make kidney machines available to Indian people and to finance operation of the machines.

RESOLUTION NO. 54—EVALUATION OF VISTA PROGRAM

Whereas, various tribes have reported dissatisfaction with the conduct and/or performance of some non-Indian VISTA workers; and

Whereas, some non-Indian VISTA workers have promoted or participated in activities that breed mistrust and destroy confidence among Indian people in their own worth, competence, and leadership and have sometimes displayed their prejudgments and bias against tribal governing bodies and BIA even before they have opportunity and experience to make such judgments; and

Whereas, it is awkward and embarrassing for individual tribes to deal with problems created by persons who purport to "volunteer" their services to Indian tribes, at the invitation of tribes; and

Whereas, information on current successes and failures of VISTA work is needed in order to determine whether action is indicated.

Now therefore be it resolved that the National Congress of American Indians, in convention assembled in Albuquerque, New Mexico, October 6–10, 1969, is directed to request the Executive Council to name a special committee to solicit and evaluate the 1970 first quarter meeting of the Executive Council (the special inquiry to cover recruitment, training, supervision, placement, and evaluation of VISTA workers); and

Be it further resolved that NCAI take appropriate action as indicated by the results of this special committee's work no later than May of 1970.

RESOLUTION 55—INDIAN LANDS—OPPOSITION TO VOYAGEUR NATIONAL PARK

Whereas, the proposed Voyageur National Park will encompass lands originally owned by the various bands of the Chippewa Tribe and Nation of Indians, and were acquired by treaties that are now under litigation for revision of the compensation agreed to be paid pursuant to said treaties; and

Whereas, the treaties provided for various Indian reservations within the boundaries of which the Chippewa Indians were to have the exclusive right of use, occupancy and control, including the rights to hunt, fish, trap and gather wild rice and control the same, which rights and control have not been protected as guaranteed by the United States in the treaties.

Now, therefore, be it resolved, that the establishment of the proposed Voyageur National Park is hereby opposed until such time as the Chippewa Tribe and Nation of Indians have been fairly compensated for the lands originally acquired from them, within which the Voyageur National Park is proposed to be located, and their reservation rights and control are protected.

Be it further resolved, that if development of the proposal Voyageur National Park proceeds prior to the establishment of effective protection of their reservation rights and payment of just compenation to the Chippewa Indians for the lands, that steps be taken to file an action for injunction of the establishment of the Park in the United States courts.

Be it resolved, that copies of this Resolution be transmitted to the U.S. Congressional delegation and the Senate and House Interior Insular Affairs to the Secretary of the Interior; to the Commissioner of Indian Affairs; to the National Congress of American Indians; to the National Council of Indian Opportunity; to the Governors of Minnesota, Wisconsin, and Michigan; to the State AFL–CIO; to the State League of Women Voters, requesting their earnest support.

RESOLUTION NO. 56—HUNTING AND FISHING RIGHTS—MINNESOTA

Whereas, the game wardens of the Conservation Department of the State of Minnesota have violated the rights of Indians with respect to their exclusive rights to hunt, fish, trap and gather wild rice within the original boundaries of their reservation and control the same;

Now, therefore, be it resolved that this illegal action on the part of the Conservation Department of the State of Minnesota be and the same is hereby publicly denounced and that steps be taken with United States law enforcement officials to see that such harassment of the Indians does not continue.

RESOLUTION NO. 57—INDIAN LANDS—APOSTLE ISLANDS NATIONAL PARK

Be it resolved, that the National Congress of American Indians does hereby support the position of the Bad River Band of Chippewa Indians and the Red Cliff Band of Chippewa Indians, that there be no establishment of the Apostle Island National Lakeshore that would involve any lands within the original boundaries of the Bad River or Red Cliff Indian Reservation except on such terms as may be acceptable to the Bad River and Red Cliff Bands and only with their expressed consent and agreement.

RESOLUTION NO. 58—HUNTING AND FISHING RIGHTS—WISCONSIN

Whereas, the game wardens of the Conservation Department of the State of Wisconsin have violated the rights of Indians with respect to their exclusive rights to hunt, first, trap and gather wild rice within the original boundaries of their reservation and control the same;

Now, therefore, be it resolved, that this illegal action on the part of the Conservation Department of the State of Wisconsin be and the same is hereby publicly denounced and that steps be taken with United States law enforcement officials to see that such harassment of the Indians does not continue.

RESOLUTION NO. 59—HUNTING AND FISHING RIGHTS—GRAND PORTAGE

Whereas, the Grand Portage Reservation Business Committee of the Grand Portage Band of Chippewa Indians is duly authorized to speak on behalf of these Indians, this authority being part of the tribal Constitution governing the Minnesota Chippewa Tribe; and

Whereas, part of that constitution states that the Grand Portage Reservation Business Committee shall at all times protect the rights of the members it represents; and

Whereas, it has been known that the Grand Portage have always depended on the plentiful fish from this great lake, and also the wild game and fur bearing animals that existed off its shores; and

Whereas, when it came about that the U.S. Government made treaties with the Grand Portage people, it was always the intention of the chiefs and head man to reserve these important hunting and fishing rights whether on the land they ceded and of which they never got paid for, or on the present reservation.

Now, therefore, be it resolved that the Grand Portage Reservation Business Committee descendants of these treaties go on record as upholding these same hereditary rights and privileges and also demand that said rights be preserved.

RESOLUTION NO. 60—INDIAN EDUCATION—MINNESOTA

Whereas, the State of Minnesota has failed drastically in the education of urban and reservation Indians as evidenced by the large sixty-five per cent high school dropout rate of our Indian young and the shameful potential dropout rate of Indian young presently in the sixth, seventh, and eighth grade levels; and

Whereas, the Bureau of Indian Affairs has also failed in education policies due to the lack of imagination and foresight, and their inability to be creative in innovating educational programs geared to unique needs of Indian people, such as Indian parental involvement and control; and

Whereas, demonstrated abusive community and school personnel attitudes continue to be a major contributing factor in the huge dropout and potential dropout rate of Indian young people; and

Whereas, the curriculum of the public schools is practically void of Indian sensitivity and awareness and does little to upgrade the Indian image, and is alien to Indian history, contributions, lore, art, music, and language; and

Whereas, outdated policies geared to assimilation have caused a sense of rejection to Indian identity and pride; and

Whereas, certain programs have shown that Indian people can effectively administer their own programs; and so

Therefore, be it resolved, that the National Congress of American Indians and the National Council on Indian Opportunity support the desires of the Indian Upward Bound staff and Board of Directors, to establish a large, equal and separate Indian educational system within the State of Minnesota which will be proposed as an Educational Park Complex on the White Earth Reservation and within the urban Indian area of Minneapolis, Minnesota. The complex will be on a demonstration basis and will constitute programs such as Head Start, Kindergarten, STAIRS, Elementary, Secondary, Upward Bound, Associated Arts College, Adult Basic, Vocational Training and Leadership Training. Total control by Indian parents and Indian community residents will be practiced through an all-Indian Board of Directors;

Be it further resolved, that the National Congress of American Indians and the National Council on Indian Opportunity recommend all elected National and State of Minnesota Congressmen and Senators who are sympathetic to the Indian's educational plight meet with a selected committee of Indian people.

RESOLUTION NO. 61—FUNDS FOR ECONOMIC DEVELOPMENT—MICHIGAN

Whereas, the Inter-Tribal Council or Michigan is composed of four Michigan Indian reservations, Keweenaw Bay Indian Community, the Saginaw-Chippewa Tribe of Mount Pleasant, the Hannahville Indian Community and the Bay Mills Indian Community; and

Whereas, the Inter-Tribal Council of Michigan Inc., is incorporated under the provisions of Act No. 327 of the Public Arts of 1931, as amended; and

Whereas, the Inter-Tribal Council of Michigan has applied to the Economic Development Administration, Indian Desk, Washington, D.C., for a Title III Planning and Administrative Grants in Aid, to staff a person within the Michigan Indian Community Action Program structure to concentrate on the economic development of the four reservations in the State of Michigan.

Now, therefore, be it resolved, by the National Congress of American Indians endorse and assist the Inter-Tribal Council of Michigan in obtaining the necessary funding for this program.

RESOLUTION NO. 62—FUNDS FOR ADULT BASIC EDUCATION—PINE RIDGE

Whereas, an adult basic education program, highly mobile in nature to take the program to every district, has operated on the Pine Ridge reservation in South Dakota since 1967, has reached significant numbers of tribal members, has proved highly beneficial to the Oglala Sioux Tribe, and is supported by the Tribe, public and parochial schools, the Bureau of Indian Affairs, and the State Department of Education; and

Whereas, this program could provide a model for other tribes;

Now, therefore, be it resolved, that the National Congress of American Indians strongly supports continued funding of this program by the Office of Education, HEW; and

Be it further resolved, that such programs requested by other tribes also be funded.

RESOLUTION NO. 66—COMMENDATION TO WENDELL CHINO AND JOHN BELINDO

Whereas, Wendell Chino is completing his fourth and final year as President of the National Congress of American Indians, a period during which NCAI has made more substantial progress than ever before in making the leaders in Congress and the Executive Branch aware of and willing to assist on Indian needs and aspirations, and in making NCAI the spokesman for all the Indians;

Whereas, John Belindo, has been Executive Director since 1967, and shares credit for much of the progress achieved during that period and for organizing the largest and most meaningful Convention in the history of NCAI.

Now, therefore, be it resolved, that the National Congress of American Indians in Convention here assembled in Albuquerque, New Mexico, October 6–10, 1969, hereby records its great appreciation and commendation to Wendell Chino, and hopes that he will continue to offer effective leadership on behalf of Indians; and

Be it further resolved, that the National Congress of American Indians records its great appreciation and commendation to John Belindo.

RESOLUTION NO. 67—HOUSING—REQUEST FOR ADDITIONAL FUNDS

Whereas, the American Indians are suffering from unsanitary, unsafe, and inadequate housing and to quote Senator Joseph M. Montoya, New Mexico, labeled Indian housing "a National disgrace and a blot on our nation," and Senator Edward Kennedy stated "there is a need for 50,000 homes for the Indian people"; and

Whereas, the Affiliated Tribes of Northwest Indians are concerned with inadequate living conditions; and

Whereas, as a consequence this is resulting in serious health problems affecting the lives of Indian people to the extent the mortality rate is far above that of the national average; and

Whereas, a good home is conducive to establishing good study habits for children thus reducing school absenteeism and also the home is the hub of activity for families and the contributing factor involving health, education and welfare of individual families; and

Whereas, under the present structure of the Housing Development Program under the Bureau of Indian Affairs is unable to function effectively in the best interest of the Indian people due to inadequate funds appropriated for this purpose; and

Whereas, there is an immediate need for proper housing; and

Now, therefore, be it resolved, that the National Congress of American Indians request additional funds to be appropriated through the necessary channels for this worthy and much needed money for homes for the Indian population.

CONCLUSION OF MORNING BUSINESS

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of executive business.

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

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

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

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

The bill clerk proceeded to call the roll.

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

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

I

Mr. COOK. Mr. President, what is the historic role of the Senate; What is the relevant inquiry, politics or qualifications?

Nowhere are prejudices more mistaken for truth, passion for reason, and invective for documentation than in politics.—JOHN MASON BROWN, *"Through These Men,"* 1952.

All politicians have read history; but one might say that they read it only in order to learn from it how to repeat the same calamities all over again.—PAUL VALERY, Saturday Review.

Mr. President, many have viewed the furor surrounding the nomination of Judge Clement F. Haynsworth, Jr., to the Supreme Court as something rather unique in American history. Therefore, to put this controversy in its proper perspective, I think it appropriate and certainly timely that we examine briefly the history of some of the controversial Supreme Court appointments for the lessons they can teach and the assistance they can provide in treating his nomination with the dispassionate objectivity the dignity of this body would seem to require.

United Press International reports that in the history of the Supreme Court nine candidates have been rejected. Five other times the Senate took no action whatsoever and on five occasions the President withdrew his nominee, at least temporarily.

Harris, in his fine book "The Advice and Consent of the Senate," sums up the history of Supreme Court nominations by pointing out that approximately one-fifth of all appointments have been rejected by the Senate. However, since 1894, there has been only one rejection. In the preceding 105 years, 20 of the 81 nominees were rejected. Four of Tyler's nominees, three of Fillmore's, and three of Grant's were disapproved during a period of bitter partisanship over Supreme Court appointments.

Harris concludes of this era:

Appointments were influenced greatly by political consideration, and the action of the Senate was fully as political as that of the President. Few of the rejections of Supreme Court nominations in this period can be ascribed to any lack of qualifications on the part of the nominees; for the most part they were due to political differences between the President and a majority of the Senate.

The eminent Supreme Court historian, Charles Warren, cites only four situations in which lack of qualifications or of fitness were important factors—John Rutledge, 1795; Alexander Wollcott, 1811; George H. Williams, 1873; and Caleb Cushing, 1874.

The first rejection of a nominee was that of former Associate Justice John Rutledge, of South Carolina, in 1795. He had been nominated for the Chief Justiceship by President George Washington. Warren reports that Rutledge was rejected essentially because of a speech he had made in Charleston in opposition to the Jay Treaty. Although his opponent in the predominantly federalist

Senate also started a rumor about his mental condition, an objective appraisal reveals his rejection was based entirely upon his opposition to the treaty. Verifying this observation, Thomas Jefferson wrote of the incident:

> The rejection of Mr. Rutledge by the Senate is a bold thing, because they cannot pretend any objection to him but his disapprobation of the treaty. It is, of course, a declaration that they will receive none but tories hereafter into any department of the Government.

On December 28, 1835, President Andrew Jackson sent to the Senate the name of Roger B. Taney, of Maryland, to succeed John Marshall as Chief Justice. As Taney had been Jackson's Secretary of the Treasury and Attorney General, the Whigs in the Senate greatly disliked him. Daniel Webster wrote of the nomination:

> Judge Storey thinks the Supreme Court is gone and I think so, too.

Warren reports:

> The bar throughout the North, being largely Whig, entirely ignored Taney's eminent legal qualifications, and his brilliant legal career, during which he had shared . . . the leadership of the Maryland bar and had attained high rank at the Supreme Court bar, both before and after his service as Attorney General of the United States.

Taney was approved, after 2½ months of spirited debate, by a vote of 29 to 15 over vehement opposition including Calhoun, Clay, Crittenden, and Webster. He had actually been rejected the year before, but was resubmitted by a stubborn Jackson.

History has judged Chief Justice Taney great, and his tribulations prior to the confirmation were completely overshadowed by an outstanding career. A contrite and tearful Clay related to Taney after viewing his work on the Court for several years:

> Mr. Chief Justice, there was no man in the land who regretted your appointment to the place you now hold more than I did; there was no Member of the Senate who opposed it more than I did; but I have come to say to you, and I say it now in parting, perhaps for the last time—I have witnessed your judicial career, and it is due to myself and due to you that I should say what has been the result—that I am satisfied now that no man in the United States could have been selected more abundantly able to wear the ermine which Chief Justice Marshall honored.

It is safe to conclude that purely partisan politics played the major role in the rejections of Supreme Court nominees occuring in the 19th century. The cases of Rutledge and Taney have only been mentioned to highlight a rather undistinguished period in the history of this body when Senators exercised incredibly poor judgment on numerous occasions.

I do not mean to imply that Supreme Court appointments in the 20th century have been without controversy, because certainly this has not been the case. However, as I stated earlier, only one nominee has been rejected in the last 60 years.

The controversy surrounding President Woodrow Wilson's appointment of Louis D. Brandeis is certainly not without parallel to the current turmoil over the Haynsworth nomination. A major difference, however, is that Brandeis, unlike Haynsworth, was without support of substantial and respected portions of the legal community. William Howard Taft, Elihu Root, and three other past presidents of the American Bar Association signed the following statement:

> The undersigned feel under the painful duty to say . . . that in their opinion, taking into view the reputation, character and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States.

It is reported that hearings were conducted by a Senate Judiciary Subcommittee for a period of over 4 months and were twice reopened. The hearings volumes consisted of over 1,500 pages.

Walter Lippmann stated in the New Republic that his opponents were essentially that "powerful but limited community which dominated the business and social life of Boston."

The nomination of Brandeis, just like the nomination of Haynsworth, was a cause celebre for the opposition party in the Senate. The political nature of the opposition is indicated by the fact that the confirmation vote was 47 to 22. Three progressives and all but one Democrat voted for Brandeis and every Republican voted against him.

The basic opposition to Brandeis, just as the opposition to Haynsworth, was born of a belief that the nominee was essentially "out of step" with the prevailing views of the Court at the time.

The publicly stated reasons used to oppose Brandeis, just as the arguments against Haynsworth, were that he fell below standards of "fitness." However, the hearings concerning the Brandeis appointment, just as in the Haynsworth nomination, failed to substantiate any violation of the prevailing standards of conduct.

Louis Brandeis became one of the all-time greats of the Supreme Court. I confidently predict that Judge Clement Haynsworth's future will be just as dignified and distinguished.

Liberals in the Senate actively opposed the nominations of Charles Evans Hughes, 1930, and Harlan Fiske Stone, 1925, to the Court for various reasons best summed up as opposition to what they predicted would be their conservatism. It was generally conceded by liberals subsequently that they had misread the leanings of both nominees, who tended to side with the progressives on the Court throughout their tenures.

No review of the historical reasons for opposition to Supreme Court nominees, even as cursory as mine, would be complete without a brief discussion of the Parker nomination. John J. Parker, a member of the court of appeals for the fourth circuit from North Carolina, was designated for the Supreme Court by President Hoover in 1930. Harris reports that opposition to Parker was essentially threefold: First, he was alleged to be antilabor; second, unsympathetic to Negroes; and, third, politics dictated his selection.

Opposition to Haynsworth, another member of the fourth circuit, has followed an almost identical scenario. Judge Parker was defeated 41 to 39, but went on to become one of the outstanding judges in the Nation as he remained on the fourth circuit. The special interest groups who engineered his defeat subsequently admitted that they had defeated a nominee who was essentially liberal.

Judge Parker, however, was spared subjection to the fabricated ethical charges which have been leveled against Haynsworth.

What can we conclude from this brief summation of the Senate's history in regard to its constitutional duty to advise and consent to presidential nominations of the Supreme Court? It can be said, at least, that the challenge of the Senate remains as our revered senior statesman from Vermont (Mr. AIKEN) described it early in his Senate career when he said:

> The main issue involved in the vote which we are soon to take [upon the nomination of Aubrey Williams] is whether a man can come before this Senate for approval and have that approval granted or refused on the basis of the evidence presented on whether such judgment will be influenced by politics, prejudice, racial and religious discrimination, and all the other evils which Members of the United States Senate should rise above.

As my brief historical review, I believe, has demonstrated, the Senate has in its past almost without exception objected to nominees for the Supreme Court for political reasons. There were times, however, when it sought to hide its political objections under the veil of cries about fitness, ethics, and qualifications. This body has, in more recent years, come to the conclusion that the advice and consent responsibility of the Senate should mean an inquiry into qualifications and not politics. Various Senators of liberal persuasion have argued to conservatives in regard to appointments they liked that the ideology of the nominee was not the business of the Senate. I accept that argument. I agree that for the Senate to go back to its habit in the 19th century of purely political consideration of nominees to the Supreme Court would degrade the Court and certainly not distinguish the Senate. In addition, if political considerations were a valid inquiry, we might just as well introduce an amendment to the Constitution giving to the U.S. Senate the power to make Supreme Court appointments, as many argued for strongly during the Constitutional Convention.

I recently wrote a letter to a black student at my alma mater, the University of Louisville. He had written to me questioning my support of the Haynsworth nomination. My reply to him explains my philosophy in regard to the role of the Senate in reviewing and passing upon Supreme Court nominations. It includes a quotation from the Senator from Massachusetts (Mr. KENNEDY) during the debate on the Thurgood Marshall appointment with which I am in complete agreement.

I wrote to the young man as follows:

OCTOBER 21, 1969.

MR. CHARLES C. HAGAN,
University of Louisville,
Louisville, Ky.

DEAR MR. HAGAN: I appreciate very much your recent communication regarding my support of the nomination of Judge Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court.

First, as to the question of his views on

labor and civil rights matters, I find myself in essential disagreement with his civil rights decisions—not that they in any way indicate a pro-segregationist pattern, but that they do not form the progressive pattern I would hope for. However, as Senator Edward Kennedy pointed out to the conservatives as he spoke for the confirmation of Justice Thurgood Marshall.

"I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance. We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job."

Most Senators, especially of moderate and liberal persuasion, have agreed that while the appointment of Judge Haynsworth may have been unfortunate from a civil rights point of view, the ideology of the nominee is the responsibility of the President. The Senate's judgment should be made, therefore, solely upon grounds of qualification. As I agree with Senator Kennedy and others that this is the only relevant inquiry, I have confined my judgment of the nominee's fitness to the issue of ethics or qualifications.

Quite frankly, the criticism of Judge Haynsworth's ethical standards is completely baseless . . . those who know the judge best have testified that he is of unquestioned integrity and almost without peer as a legal scholar. The opponents of the judge are attempting to create a new ethical standard not previously in existence and apply it retroactively to Judge Haynsworth. The Washington Post, the New York Times, and other progressive papers have agreed that the ethical questions raised are not supportable, but they now say that since the furor has been raised, public confidence in the Court requires that the nomination be withdrawn. This is completely irresponsible because it would mean that the mere making of accusations should be enough to deny future nominees confirmation. This is fundamentally unfair. Each individual deserves to be judged upon the facts. The Supreme Court which you and I admire has spent the last 15 years standing up for the rights of individuals against the will of the majority. The Haynsworth affair is quite similar. Here you have the individual against the mass of aroused public opinion. Public opinion would be relevant if he were running for public office, but Supreme Court nominees are not elected but appointed, and for good reason.

If the Supreme Court were subjected to the public will rather than insulated against public outrage over unpopular decisions, do you think we would ever have been given *Brown* v. *Board of Education?* Never has a Supreme Court been more unpopular than the Warren court, but it was a good Court I am sure you will agree.

The point is that the nominee's philosophy is to be judged by the President of the United States, the elected representative of the people. While we in the Senate might object to the "ideological bent" of the nominee, we sit in judgment only on his judicial fitness. We are bound to be fair to the individual even if it means we must go against the majority of the people.

This is what the Supreme Court has done for the last 15 years. Our consideration of appointments to that body demands no less from us.

With best wishes,

Sincerely yours,

MARLOW W. COOK,
U.S. Senator.

II

The state of the law today: What is the existing standard?

Bad laws, if they exist, should be repealed as soon as possible, still, while they continue in force, for the sake of example they should be religiously observed.—ABRAHAM LINCOLN.

Since almost all of us here in the Senate have agreed that our only relevant inquiry should be the question of qualifications. We must first determine what the existing standards are by which we can measure the qualifications of Clement Haynsworth. The question is not what we wish the standards were but rather what, in fact, they are. Standards are not established by mere speeches and accusations. We must not allow a new standard to be created to stop an appointment some find objectionable for political reason. New standards, if they are needed—and I happen to think they are—must be established by legislation, not accusation. They must be created by the deliberative legislative functions of the Congress—not by an ad hoc determination designed to defeat a particular nomination. I hope the fundamental unfairness of the attempt to create a new standard for Clement Haynsworth and apply it retroactively is now apparent to my colleagues.

The relevant question, then, is what is the standard today? An examination of two recently announced cases in the fifth circuit supply the answer. It may not be the answer we would like, but it is nevertheless the state of the law today. It is the existing law, not the fabrications of aspiring politicians and special interest groups, which must dictate our judgment of the actions of Judge Haynsworth during his period on the fourth circuit court of appeals, and therefore his qualifications for the Supreme Court.

The first case is the controversial Federal Power Commission rate case, Austral Oil Co., Inc., against Federal Power Commission, which involves as much as $80 million of rate reductions per year. The fifth circuit, in a ruling issued October 17, 1969, although transferring the case to another panel for rehearings, unequivocally held that Chief Judge Brown and Judge Jones were not disqualified for any reason to sit on the case, despite the fact that both judges had considerable stock interests in several of the parties. Judge Brown individually owns stock valued at $36,400 in three of the litigants, as of the date of the hearing, and is the trustee of several trusts holding oil company stocks worth approximately $500,000. Judge Jones' wife has a beneficial interest in stock of some of the litigants and, like Judge Brown, Judge Jones is the trustee of certain trusts with a substantial portfolio in oil companies, many of which are parties in this case. The amount of stock interest and the potential impact of the case on that interest is infinitely greater than in any of the cases where opponents claim Judge Haynsworth should have disqualified himself. Yet, despite this much greater interest, the fifth circuit held:

The judges of the panel to which this case was assigned are not disqualified by prejudice, neither are they disqualified by interest, whether individual, fiduciary, or otherwise.

The second case is *Kinnear-Weed Corp.* v. *Humble Oil & Refining Compnay,* (403 F. 2d 437 (5th cir. 1968)) a patent infringement-type case commenced in 1953 in which the complaint contained a claim for $285 million in damages plus interest against Humble. The trial judge not only owned 100 shares of Humble stock, worth approximately $10,000 at the time, but he also: First, owned 25 percent of the stock and was an officer and director in a company which, during the time the judge sat on this case averaged almost 16 percent of its business with Humble; second, was a plaintiff in a contested lawsuit against Humble in which he received $409.24 out of the final settlement which was consummated after he began sitting on the case in question; and, third, executed leases and other instruments, many of which involved Humble in connection with lucrative oil leasehold interests owned by his wife. None of these dealings with Humble either singly or collectively required the trial judge to disqualify himself from this case.

As for the stock ownership in Humble, the fifth circuit in an en banc ruling written by Chief Judge Brown held:

This tiny fractional interest in the equity ownership of this huge industrial interprise does not amount, either as a matter of fact, or law, or both, to a substantial interest by the trial judge in the case or a prohibited connection with a litigant.[1]

A second ruling in this case, handed down September 5, 1969, by District Judge Ben C. Connally and as yet unpublished, found that there was absolutely no legal reason for the trial judge to disqualify himself because of his other business connections with Humble. On October 1, 1969, the fifth circuit ordered Judge Connally to enter an appropriate judgment dismissing all the conflict charges made by the plaintiff.

Surely this case should still, once and for all, the claim that Judge Haynsworth should have disqualified himself from the Darlington cases and the other cases involving customers of Carolina Vend-A-Matic as claimed by Senator BAYH and others. In fact a stronger case could be made in the Humble Oil case for disqualification than in the Darlington-type cases involving customers of Carolina Vend-A-Matic, since the company with which the trial Judge was connected did considerably more business with Humble than Carolina Vend-A-Matic did with any of the companies that came before Judge Haynsworth's court. In addition, the trial judge in the Humble case actually owned stock in Humble, and, as an individual, had other extensive business dealings with Humble, factors which were not present in any of the Carolina Vend-A-Matic cases challenged by the opponents of this nomination.

The Federal Power Commission and Humble Oil cases contain all of the claims of conflict of interest raised against Judge Haynsworth. In fact, in both these cases, the arguments for disqualification are much stronger than in any of the cases which Senator BAYH mentioned in his bill of particulars. Yet

[1] 403 F. 2d 437, 440.

the fifth circuit unequivocally held in both cases that there was no basis for disqualification. Among the judges joining in these rulings were Chief Judge Brown and Judge Wisdom, two judges that Joseph Rauh, an outspoken critic of Judge Haynsworth, stated at the hearings on Judge Haynsworth's nomination "would have been heroic additions to the Supreme Court." [2]

The charges of conflict of interest against Judge Haynsworth evaporate into nothingness in the face of these two fifth circuit cases. If Judge Haynsworth's critics continue to attack him on this basis, the attack will have to be broadened to impugn all the judges of the fifth circuit and others, such as the revered Judge Soper, who, as was reported at the hearings, sat on a case involving the B. & O. railroad while a stockholder of B. & O.[3] The very thought of charging all these other judges with violation of the judicial code and canons of ethics is ridiculous, and it is equally ridiculous, and totally without foundation, to make such charges against Judge Haynsworth.

III

The role of the press—have accurate impressions been conveyed?

Even when the facts are available, most people seem to prefer the legend and refuse to believe the truth when it in any way dislodges the myth.—JOHN MASON BROWN, Saturday Review.

We live under a government of men and morning newspapers.—WENDELL PHILLIPS.

To be perfectly blunt, the accusations which have been made against Judge Haynsworth by some of his opponents and by a much larger and more vocal group in the press only indicate an unawareness of the record and a total lack of interest in what the standards of conduct currently are for setting Federal judges. But this has not deterred the opposition.

Let us examine some of the remarks in the press. Anthony Lewis, in an article in the New York Times of October 19, 1969, concluded:

The point about Judge Haynsworth is that he does not have such high intellectual or legal qualifications. Few would call it a distinguished appointment.

Those who know him disagree. Senator JOSEPH TYDINGS, a longtime personal friend of the judge, said of him in the hearings before the Judiciary Committee:

I think I can say as a lawyer in the fourth circuit I found Judge Haynsworth, as a judge, to be thoughtful, fair and open-minded; and as an administrator and because of my subcommittee chairmanship I have become aware of the work of the chief judges of the several circuits. I have found him to be innovative and indeed, dynamic.

Senator TYDINGS subsequently decided to oppose the nomination in committee for reasons best known to himself.

Charles Allan Wright, McCormack professor of law at the University of Texas and one of the most distinguished legal scholars in the country, wrote to President Nixon:

I earnestly hope you will remain steadfast in your determination not to withdraw the nomination and that you will use all the powers of your office to obtain confirmation of Judge Haynsworth. To withdraw the nomination would give your opponents an unmerited victory, it would leave a permanent cloud over a man of high character, and it would deprive the supreme court of the services of a judge of great ability.

John Bolt Culbertson, of Greenville, S.C., a labor and NAACP lawyer for many years in the Deep South, has known Judge Haynsworth well and practiced against him. He said of the judge's legal ability in his testimony before the Judiciary Committee:

Judge Haynsworth, in my opinion, has one of the best legal minds, the most incisive mind that I have run into.

In addition, Chairman EASTLAND has received letters from all the senior district judges in the fourth circuit praising Judge Haynsworth. These are men who have worked with him and seen him sustain and overrule their decisions down through the years. They know his ability and will not be rattled nor silenced by ill-informed newsmen and politicians who ignore the facts and distort the truth.

Let us look at an example of guilt by association often used on editorial pages around the country. The Louisville Courier-Journal in my State said in an editorial on October 14, 1969:

Senator Cook makes a better front man than Senators Thurmond or Eastland would. It wouldn't look good to have these two racists out front. They are, however, key supporters of the nominee, which should tell us something.

Without commenting on their remarks about our colleagues, I feel compelled to ask who has been nominated for the Supreme Court—Senator EASTLAND, Senator THURMOND, or Judge Haynsworth? What does the fact that Senators EASTLAND and THURMOND are supporting Haynsworth tell us? Does it tell us he is unethical, anti-civil rights or antilabor? It does not. In fact, it says absolutely nothing more than that two Members of the U.S. Senate whom the Courier-Journal happens not to like will be voting to confirm the nomination.

Another sterling example of the distortions and unsubstantiated accusations bandied about is found in the same editorial. The Courier-Journal continued:

Despite all of Senator Cook's verbal thrashing around, he cannot conceal what the record shows—that Judge Haynsworth has a definite blind spot when it comes to judicial ethics.

The record, which I doubt they have read, shows none of these things. Even the Washington Post, which is unenthusiastic about the appointment, knows better. It accused the judge's supporters of raising these issues because they were so easily rejected.

It is not that he lacks integrity or honesty or that he has been involved in conflict of interest situations. These issues, it appears, were raised as strawmen by his own friends simply because they can be disproved so readily.

IV

What is Judge Clement F. Haynsworth, Jr., really like?

For the great majority of mankind are satisfied with appearances, as though they were realities, and are often more influenced by the things that seem than by those that are. (Author unknown.)

The result of the unfounded attacks against Judge Haynsworth has been an inability on the part of the public and many Senators to distinguish between appearance and reality. Therefore, answering the question, "What is Clement Haynsworth really like?" is central to our efforts on behalf of his confirmation. The best way to assess a judge is to look at the quality of his work.

Prof. Bernard J. Ward, for 15 years a member of the faculty of Notre Dame Law School, wrote in a letter to Senator HARTKE:

When the attacks upon Judge Haynsworth began, they struck me as nightmarish. I had known him for a dozen years through his opinions in the pages of the Federal Reporter. Far from being anti-black, or anti-labor, or anti-anything at all, the Judge Haynsworth I had known from hundreds of opinions was an utterly unbiased, compassionate, very human person. Indeed, the only bias I had ever so much as suspected was one in favor of the most pitiful wretches of all, the inhabitants of our jails. . . .

If there is one sure test of a judge's dedication and commitment to his office, it is his record in prisoner petition cases. Nothing is easier than for the busy or ease-loving judge to neglect those cases. They are invariably brought by friendless, helpless men who have already been afforded the normal channels of redress. Most of the cases are without merit. A judge must carefully consider scores and scores of them before coming on one that merits consideration. When he does find a meritorious petition, it usually involves him in the unpleasant work of calling in question the conduct of a fellow judge or of a member of the bar. It is utterly thankless work, work that a judge will eagerly take up only if he is utterly dedicated to his office.

Judge Haynsworth has eagerly undertaken such work during all of his twelve years on the bench. During the chief judgeships of Judge Sobeloff and Judge Haynsworth, the fourth circuit has become a model for the other ten, and for appellate courts everywhere, in the careful, painstaking consideration of prisoner petition cases. That fact will be attested to by any student of the subject; it is attested to most eloquently by the relatively enormous number of appeals in prisoner petition cases that are pressed upon the fourth circuit each year by those who know it to be sympathetic, indeed, critics of Judge Haynsworth may sneer that he is too hospitable to the claims of prisoners within his circuit, but none can deny that he has spent himself prodigously in an area that no judge would enter who was not driven by the pursuit of Justice.

Professor Ward knows Clement Haynsworth, the judge. It behooves those of us who are undecided to look to the words of persons who are knowledgeable to learn the reality rather than to rely upon the appearance.

Finally, Mr. President, in closing, I wish to read to this body a letter Judge Haynsworth received from a Frederick Leister, whose conviction for involuntary manslaughter he had upheld in an opinion he also had written. *U.S.A.* v. *Leister*, 393 F. 2d 920 (1968).

[2] Hearings, p. 469.
[3] Hearings, p. 253.

FEDERAL PRISON,
Lewisburg, Pa., October 26, 1969.

Hon. CLEMENT HAYNSWORTH,
Chief U.S. District Judge, Fourth Circuit Court of Appeals, Greenville, S.C.

DEAR JUDGE HAYNSWORTH: If you were to give up now you would be unworthy of the man who wrote the decision in my appeal: The man who saw that I had no attorney and appointed one of high calibre; the man who saw the need for treatment for the mentally ill but who gave society first priority; the man who condemned me to prison and who was right in doing so.

Because of the decision you wrote and your words, I began to strike back against the problems that I myself created. And I'm winning the battle.

This is probably the first time that you have ever been under serious attack for anything and I know how it hurts. Oh how it hurts! I have been under attack since I slipped from my mother's womb but I am not about to give up. Admittedly, I almost did a few times, but somewhere, someone always gave me the strength not to.

Your words helped me. They weren't fancy or glittering words but they were sensible words and I listened to them.

I am on my way back from the road that I once traveled, for the first time in my life, I will become a law-abiding citizen. I am not there yet but I am fast approaching my destination.

If you were to give up now, it would be a disappointment and shock to me that would certainly encourage me (and men like me) to detour if not to do so.

Stand firm, your honor, and stand proud. You have done nothing wrong, only human (and we are all human, aren't we?)

Keep in mind the tribulations that Christ and his followers encountered and yours will be easier to bear, and I am as positive as I am that I sit in this prison cell, that (1) you *will* be confirmed, and (2) that you will become one of the greatest Supreme Court Justices of all times . . .

May God bless you.

Respectfully,

FREDERICK F. LEISTER, Jr.

Let me assure Mr. Leister, today, that those of us who believe in Clement Haynsworth shall not give up until reality prevails over appearance.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. COOK. I yield.

Mr. ERVIN. I ask the Senator from Kentucky if the attack on Judge Haynsworth does not come from exactly the same sources that made the attack on Judge John J. Parker.

Mr. COOK. The identical sources.

Mr. ERVIN. Does not the Senator from Kentucky agree with the Senator from North Carolina that, notwithstanding Judge Parker's rejection by a margin of two votes in the Senate, Judge Parker served for many years as the chief judge of the Fouth Circuit Court of Appeals and proved himself to be one of the most able jurists America has ever known?

Mr. COOK. He did, indeed.

Mr. ERVIN. As a premise to my next question I would like to state that after the close of the hearings, the charge was made that Judge Haynsworth owned stock in the Carolina Vend-A-Matic Co. and that that company had contracts with textile firms which were parties to the Darlington case and the Milliken case.

I would like to ask the Senator from Kentucky if the record does not show the only contracts Carolina Vend-A-Matic had with Darlington or Milliken were five contracts, three of them being with Gayley Mill, Clemson Industries, and Mayco Yarns, which really constituted one enterprise. The other mills were Jonesville Products and Magnolia Finishing Plant. So, in effect, they only had dealings with three plants, none of which were parties to the suit.

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does not the Senator from Kentucky agree with the Senator from North Carolina that the record shows none of these textile plants were parties to the Darlington litigation?

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does not the record also show that these matters were called to the attention of Chief Judge Sobeloff of the Fourth Circuit Court of Appeals after the decision in the Darlington case; that the matter was fully investigated at that time; that Patricia Eames, counsel for the Textile Workers Union of America, had called these matters to the attention of Judge Sobeloff; and that there was a complete investigation by the Fourth Circuit Court of Appeals? Also, I wish to ask the Senator if the Fourth Circuit Court of Appeals did not give Judge Haynsworth a complete acquittal of any impropriety in the matter after its investigation?

Mr. COOK. The Senator is correct. As a matter of fact it came as an amazing revelation to me during the hearings, as the Senator will recall, that members of that union and their affiliates testified before the committee and said, "We were aware he was a director and vice president but we did not know his interest." Apparently the union decided it was all right to be a director and vice president and they dismissed it. They did not bring it up in the appeal or in the writ of certiorari to the Supreme Court.

Mr. ERVIN. I wish to ask the Senator from Kentucky if the record does not show that all the transactions between Carolina Vend-O-Matic and any of the mills which later developed as a part of the Milliken chain were completely known to the counsel for the Textile Workers Union right after the Darlington case, and that the Textile Union Workers' counsel did not move to set aside the judgment in the Darlington case and did not see fit to call the matter to the attention of the Supreme Court on the appeal in this case.

Mr. COOK. I might suggest they even knew it within the 30-day period in which they could have filed a motion for a new trial. They not only did not bring it up but they did not bring it up in the writ to the Supreme Court.

Mr. ERVIN. Does not the Senator agree that the counsel for the Textile Workers Union were diligent persons and would undoubtedly have brought this matter to the attention of the Fourth Circuit Court of Appeals on a motion for rehearing or a motion to set aside, or they would have called it to the attention of the Supreme Court if they thought there was any merit to the matter?

Mr. COOK. If they thought there was any merit to it and, second, if they wished to adequately represent their client.

Mr. ERVIN. I wish to ask the Senator if the record does not show that all these matters were known to counsel for the Textile Workers Union and the Fourth Circuit Court of Appeals, and that the Circuit Court of Appeals, through Chief Judge Sobeloff, sent the file to the Department of Justice? I wish to ask the Senator if it does not appear on page 19 of the record that on February 28, 1964, after investigating the matter, then Attorney General Robert F. Kennedy wrote a letter to Chief Judge Sobeloff as follows:

FEBRUARY 28, 1964.

Hon. SIMON E. SOBELOFF,
U.S. Court of Appeals for the Fourth Circuit, Baltimore, Md.

DEAR MR. CHIEF JUDGE: This will acknowledge receipt of your letter dated February 18, 1964, enclosing the file that reflects your investigation of certain assertions and insinuations about Judge Clement F. Haynsworth, Jr.

Your thorough and complete investigation reflects that the charges were without foundation. I share your expression of complete confidence in Judge Haynsworth.

Thanks for bringing this matter to my attention.

Sincerely,

ROBERT F. KENNEDY,
Attorney General.

Mr. COOK. The Senator is correct.

Mr. ERVIN. I would like to ask the Senator if Patricia Eames, attorney for the Textile Workers Union of America, which called this matter to the attention of Chief Judge Sobeloff, did not write a letter in which she stated, in effect, satisfaction with the investigation and the conclusion reached by Chief Judge Sobeloff.

Mr. COOK. She did, indeed.

Mr. ERVIN. I wish to ask the Senator from Kentucky if the record does not disclose that there is no merit whatever in the charge made against Judge Haynsworth that he showed an antiunion bias in decisions in which he participated as a member of the Fourth Circuit Court of Appeals.

Mr. COOK. As a matter of fact, as the Senator will remember, I was very disappointed that legal counsel for the AFL–CIO judged their entire case on 10 cases that went to the Supreme Court. They did not do justice to Judge Haynsworth. They did not take into consideration cases decided at the Fourth Circuit Court of Appeals level which did not go to the Supreme Court.

I asked Mr. Meany, based on the fact that Judge Haynsworth decided in favor of the union about 40 times at the Fourth Circuit Court of Appeals level and was only reversed 10 times on the Supreme Court level, if he did not feel the 4-to-1 record in favor of labor was a pretty good one.

Mr. ERVIN. I believe the record shows that Judge Haynsworth participated in 37 cases affecting labor which were decided in favor of labor.

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does the Senator from Kentucky agree with the Senator from North Carolina that the charge that Judge Haynsworth showed any racial bias is also unfounded, and that the record shows that while he did not anticipate Supreme Court decisions, Judge Haynsworth endeavored to follow those

decisions in subsequent cases after they were rendered.

Mr. COOK. I do agree with the Senator, but I think the Senator from New York will attempt to refute that very shortly.

Mr. ERVIN. I would like to ask the Senator this question. I wish to ask the Senator if the American Bar Association committee headed by the very distinguished chairman, Lawrence E. Walsh, did not state to the committee through Judge Walsh:

> Having found no impropriety in his conduct, and being unanimously of the opinion that Judge Haynsworth is qualified professionally, our committee has authorized me to express these views in support of his nomination as associate justice of the Supreme Court of the United States.

Mr. COOK. The Senator is correct.

Mr. ERVIN. Does not the Senator know that subsequent to the bringing out of other matters this committee met again and by a majority vote sustained their approval of the nomination of Judge Haynsworth?

Mr. COOK. The Senator is correct.

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senator from Kentucky yield to me briefly without losing his right to the floor so that I may make an observation or two.

Mr. COOK. I am glad to yield.

The PRESIDING OFFICER (Mr. HARTKE in the chair). Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I would like to say that I did not know Judge Haynsworth personally until he appeared before the Committee on the Judiciary subsequent to his nomination. However, he has been a member of the Fourth Circuit Court of Appeals for my circuit since 1957; and prior to the time I came to the Senate I practiced law rather extensively and read decisions of the Fourth Circuit Court of Appeals. I have continued that practice since coming to the Senate.

From my reading of the decisions of Judge Haynsworth, as chief judge of the circuit, he has demonstrated that he has no bias against any segment of our society; and he has demonstrated he is a sound judge and a good legal craftsman. My honest judgment, having spent most of my life in the law, is that he has the capacity to judge cases which come before him with, as Edmund Burke said, "The cold neutrality of an impartial judge."

I would urge the Senate not to repeat the tragedy which it enacted when it rejected the nomination of John J. Parker in this case. I knew him well. His brother was a classmate of mine at the University of North Carolina. I served in the same unit with his brother in World War I. In my opinion, his brother was the greatest civilian soldier this country ever had. He won every medal that could be given by this country—everything from the Congressional Medal of Honor on down to the other medals.

It was a great tragedy for our country to be deprived of the services of John J. Parker on the Supreme Court of the United States. I sincerely trust that the Senate will not reenact the tragedy of his rejection and deny the United States and its people the benefit of the services of a well qualified man such as Judge Haynsworth.

I thank the Senator from Kentucky for yielding.

Mr. BAYH. Mr. President, will the Senator from Kentucky yield for a moment?

Mr. COOK. I yield.

Mr. BAYH. I have been very much interested in the colloquy between my friend from North Carolina and my distinguished neighbor from Kentucky. I do not want to interrupt his remarks or indulge in a debate or discussion of any length right now because I want him to have the opportunity fully to develop his case. I think we respect each other's differences of opinion on this matter.

I think, that inasmuch as the position of Judge Sobeloff and the accusation made by Miss Eames have been put in the cauldron of discussion, it might be helpful to our colleagues and the public, for me to ask unanimous consent, if the Senator from Kentucky has no objection, to have Miss Eames letter to Judge Sobeloff printed in the RECORD at this time. It appears on page 6 of the hearings.

Mr. COOK. I have no objection.

Mr. BAYH. Mr. President, I ask unanimous consent to have the letter printed in the RECORD.

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

TEXTILE WORKERS UNION OF AMERICA,
New York, N.Y., December 17, 1963.

Hon. SIMON E. SOBELOFF,
Chief Judge,
Court of Appeals for the Fourth Circuit,
Post Office Building, Richmond, Va.

DEAR JUDGE SOBELOFF: I have taken the liberty of marking this letter as "personal" because I believe that you should be the first person to see it. It is written to you in your capacity as Chief Judge of the Court of Appeals.

The consolidated Deering Milliken cases were decided by the Fourth Circuit on Friday, November 15, 1963. On the morning of Wednesday, November 20th, our Union received a telephone call in which the caller, who said that he would not identify himself, stated substantially the following:

I believe that you should know that Judge Haynsworth, who voted against your Union in the Deering Milliken case is the First Vice President of Carolina Vend-A-Matic Company, and that two days after the decision in the Deering Milliken case, Deering Milliken cancelled its contracts with the company or companies which previously supplied vending machines to all of the numerous Deering Milliken mills in the Carolinas, and proceeded to sign a new contract with the Carolina Vend-A-Matic Company pursuant to which that Company would supply vending machines to all Deering Milliken mills.

We immediately proceeded to do what we could to check the accuracy of this allegation. The first element checked out readily; there is no doubt that Judge Haynsworth is or was until very recently the First Vice President of Carolina Vend-A-Matic Company. (We do not know the extent, if any, of his shareholding in the corporation, but we are informed that he has been the First Vice President since the company was founded, and that the Judge's former partner in the law firm of Haynsworth, Perry Bryant, Marion and Johnston, in Greenville, Mr. W. Francis Marion, is and has been the President of Carolina Vend-A-Matic Company.) As to the second element of the allegation—that regarding the throwing of the Deering Milliken vending machine contracts to Carolina Vend-A-Matic—we were first informed that a notice was posted in the Drayton Mill of the Deering Milliken chain at some time prior to December 11th of this year stating that as of January 1st, a complete new set of vending machines would be installed in the mill; we were later informed that the most recent story was that as of January 1, Deering Milliken would *take bids from* vending machine companies.

We have seen two credit reports on Carolina Vend-A-Matic Company. (These reports are not our property.) The first of these reports was dated October 18, 1963. The report stated that it was based upon an interview on October 8, 1963 with the general manager of Carolina Vend-A-Matic, Mr. Wade Dennis. (The interview could not have been held any earlier than October 1, 1963, since it includes the statement that volume for *the first nine months* of 1963 had increased about 25% over that for the corresponding period of 1962.) This report stated that the First Vice President of the corporation was Clement F. Haynsworth, Jr. It further stated that annual estimated sales were $2,000,000. It happened that there was a typographical discrepancy in the report: On the first page the report stated that the company had been founded in 1960; on the second page the founding date was stated as 1950.

A second report had been sought to reconcile this typographical discrepancy. The discrepancy was corrected (the proper date was 1950) in a report sent out on December 3rd entitled "Substitute Report of Even Date [presumably October 18]: Correcting Errors in Composition." This report, still stating that it was based upon the October 8th interview, claimed that "C. F. Haynsworth, Jr. formerly shown as First Vice President resigned about September 1, 1963 and no one has been elected to that office." (The corrected report further states that annual sales were estimated at $3,000,000, an increase of a million dolars—which could represent the Deering Milliken contract.) This is apparently an attempt *retroactively* to create a September, 1963 resignation from corporate office for Judge Haynsworth, since the first report of the October 8th interview (which had to have been written later than September 30th) stated that Judge Haynsworth *was* the First Vice President.

I am sure you can imagine that our Union is gravely disturbed. After having lost a case of the most serious importance by one vote, we have been informed that the party which won the case awarded a significant contract to a firm in which one of the judges was interested. The allegations have checked out: (1) In fact, the Judge was (at least until recently) an officer of the corporation, and there has been an effort to hide that fact, and (2) in fact, a notice was posted in the mill at Drayton that the vending machines were to be changed.

Thus far, the allegations are clear and definite—the kind of thing that clearly means something if it is true. Because we see these allegations checking out as apparently true, then we begin to wonder about the import of facts whose significance is less clear. For example, we are informed that Judge Haynsworth is extremely close to former Senator Charles Daniels, who in turn is extremely close to Roger Milliken. If this fact stood alone, we would endeavor not to be purturbed by it, but it does not. Knowing these facts, we cannot help but suspect that the reason why Deering Milliken moved for a hearing en banc was to be sure to have Judge Haynsworth on the panel. We cannot help but wonder whether the sentence in the decision regarding print cloth, which was evidently

not a part of Judge Bryan's original text (since it was added in handwriting to the typed manuscript) and which the Court has subsequently, on its own motion, omitted from the decision, was not introduced at Judge Haynsworth's suggestion and then withdrawn at his suggestion because Deering Milliken had pointed out to him that by going this far, he had caused the opinion flatly to contradict the record in the case.

We of course have no subpoena power. We cannot examine the officers and look into the books of the vending machine corporation or corporations which previously had the Deering Milliken contract (the chief among which corporations we believe to be the Spartamatic Corporation of Spartanburg, South Carolina), the records of which should presumably reflect any contract cancellation which may have occurred and the date of such a cancellation. Depending on a number of facts which we do not know but which could be discovered by an investigation with subpoena powers, there may or may not be violations of 18 U.S.C. sections 201 and 202. It would appear, however, that only one fact which is now unknown—namely whether or not the Deering Milliken contract was thrown to Carolina Vend-A-Matic—needs to be known in order to conclude that Judge Haynsworth should have disqualified himself from participating in this decision.

We had intended to wait until January 1st to see whether Carolina Vend-A-Matic machines were installed on that date as the notice at Drayton suggested. But the making of the changes in the financial report and the story regarding a taking of bids suggests that Carolina Vend-A-Matic may already fear discovery and consequently have begun an effort to cover its tracks.

We believe that an investigation should be made immediately. We do not know whether we ourselves should ask the Justice Department to investigate or whether we should leave the handling of this matter entirely up to you. It is clear to us that you are the first person to whom the matter should be referred. Whether or not a criminal violation has occurred, we certainly believe that if the Deering Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision in this case, and that the resulting two-to-two decision should lead to the sustaining of the NLRB decision below.

If you have any questions to ask of our Union, either I or anyone else in this organization to whom you may wish to speak will make himself immediately available to you.

Very truly yours,

PATRICIA EAMES,
Attorney for Textile Workers Union of America, AFL–CIO.

Mr. BAYH. Mr. President, I ask the indulgence of the Senator further, if I may, to say that it is important for the Senate to determine whether, indeed, Miss Eames was alleging fraud or alleging conflict of interest.

It is my opinion that when one looks at Miss Eames' allegations as contained in the letter about the anonymous phone call, one sees that the charge made was that Judge Haynsworth was involved in fraud and that——

Mr. COOK. May I say to the distinguished Senator right there, that I cannot quite understand the significance of the charge of fraud in Miss Eames' letter, which I am delighted has been placed in the RECORD—that as a result of this, the judge would have received a greater degree of business for his company, and that he would receive contracts for his company with the litigant, and that, as a result of this, he sat in the case.

Mr. BAYH. I think it is very easy to make a decided distinction.

Mr. COOK. Would the Senator make the distinction for me?

Mr. BAYH. I would be glad to try. I am fully convinced, however, that despite whatever efforts I might make, I am not going to convince my friend from Kentucky on this difference. We are looking at it from two different standpoints.

I do not suggest there was a cabal between the appellate court judge and the textile industry in which the judge sought to get contracts for Carolina Vend-A-Matic. Such an arrangement would have been fraudulent. I think that situation is entirely different from a judge failing to disqualify himself because he has an interest in the corporation involved. I think there is an obvious difference there.

Mr. COOK. Might I suggest to the Senator from Indiana that if he will read the letter from Miss Eames, he will find out that she did not ask that he be tried for fraud, but she asks that if the charge is true, he should be disqualified from participating in the decision. Now disqualification from a decision is very different from a charge of fraud.

She says:

We certainly believe that if the Deering-Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision in this case, . . .

Is that not the issue?

As a lawyer, I conclude, she is saying that the conflict of interest was so gross, that he should not participate in this case. Certainly, after saying that, and charging Judge Haynsworth with fraud, she would be putting his entire career as a judge in jeopardy.

Mr. BAYH. Is the Senator from Kentucky suggesting that if the facts which had been brought to light by Judge Sobeloff disclosed that Judge Haynsworth agreed to vote a certain way in return for contracts, there would be no fraud, despite what Miss Eames suggests?

Mr. COOK. Will the Senator give me a definition of fraud by his standards?

Mr. BAYH. I think the Senator from Kentucky does not need any help from a junior colleague in the Senate on that.

Mr. COOK. I am saying directly to the Senator that I do not agree with him. I am contending that——

Mr. BAYH. All right. That is what I wanted to know.

Mr. COOK. There is a difference between conflict of interest and fraud——

Mr. BAYH. If the Senator does not think this is fraud, then he is looking at it from an entirely different standpoint. I recognize it as fraud. I think that Judge Sobeloff recognized it. I think the only reason this was brought up was that the Senator from North Carolina suggested that Robert Kennedy, former Attorney General, had given Judge Haynsworth's conflict of interest a clean bill of health. It was this matter of fraud that the Attorney General was looking into. It was a spurious charge, an unfortunate charge, and I think it was good that it was laid to rest. None of us—let me make this last observation, and I will sit down and stop interrupting the Senator—none of us who are opposed to Judge Haynsworth have on any occasion suggested that he has been involved in fraud. I do not think he is that kind of man. That is not what concerns me at all. I thank my friend from Kentucky for his indulgence.

Mr. ERVIN. Mr. President, will the Senator from Kentucky yield for just one question?

Mr. COOK. I yield.

Mr. ERVIN. If there was any conflict of interest in the opinion of Attorney General Kennedy, he certainly would not have said that he shared Judge Sobeloff's complete confidence in Judge Haynsworth.

Mr. COOK. That is exactly what the Attorney General said.

Mr. HOLLINGS. Will the Senator from Kentucky yield?

Mr. COOK. I yield.

Mr. HOLLINGS. As I understand it, the Senator from Indiana has asked that the letter of Patricia Eames addressed to the Honorable Simon E. Sobeloff, dated December 17, 1963, be placed in the RECORD, is that right?

Mr. COOK. Yes.

Mr. HOLLINGS. This letter appears on page 6 of the hearing record. Let me read one sentence in the letter, about what is fraud and what is disqualification, because the Senator from Indiana charges fraud. He charges a crime, but he says, "No, we do not question his honesty." The Senator said that——

Mr. BAYH. The Senator is distorting what I said.

Mr. COOK. Mr. President, I think I have the floor. That is not what the Senator from Indiana has said at all.

Mr. HOLLINGS. Now let me get to the crime of fraud, because the Senator from Indiana has made some charges of various crimes. I will talk about the one crime of fraud.

Mr. COOK. Very well.

Mr. HOLLINGS. On page 7 of the hearings, appears a letter by Miss Eames to Judge Sobeloff, the original letter which the Senator has now made a part of the RECORD, in which she discussed whether or not a criminal violation had occurred, and in which she said:

We certainly believe that if the Deering Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating.

The entire opposition has constantly maintained, if the distinguished Senator from Kentucky please, that the matter of disqualification was never considered by Attorney General Robert Kennedy, when the actual letter itself raised the very question whether or not the crime of fraud was involved and that they wanted to consider disqualification. That is what Senator Kennedy found. Is that not correct?

Mr. COOK. The point is well made, that there were two issues involved—first of all, "We wonder whether there was a crime or not; we want to find out; and second, under the circumstances, whether or not he should have been disqualified."

Mr. HOLLINGS. That is right.

Mr. COOK. First of all, whether fraud

was committed; and, second whether the judge should have been disqualified from sitting in the case. Judge Sobeloff decided that both of those issues were not valid, and the Attorney General placed all confidence in Judge Sobeloff and in his ruling.

Mr. HOLLINGS. I do not want to labor the point, if the distinguished Senator from Kentucky please, but the Attorney General, Robert Kennedy, not only talks of the charge of crime and considering the matter of disqualification, but, on page 15 of the hearing, in the letter of Simon Sobeloff to Robert Kennedy stated February 18, 1964, it is stated:

Investigation has convinced us that there is no warrant whatever for these assertions and insinuations.

So they took up all the ancillary or corollary matters relative to the charge itself initially, whether a crime was involved, or even if disqualifications should have been considered, or, otherwise, the assertions, and insinuations of impropriety; and it was clearly put. Is that not correct?

Mr. COOK. As a matter of fact, Judge Sobeloff also said:

Inasmuch as this relates to alleged conduct of one of our colleagues, the issue is whether he violated the law or should have disqualified himself or, in this case, if he should have been disqualified.

Mr. BAYH. Mr. President, will the Senator answer one question for me?

Mr. COOK. Yes.

Mr. BAYH. Did I understand the Senator from Kentucky, in answer to the Senator from South Carolina to suggest that I had not charged the judge with fraud?

Mr. COOK. Yes; the Senator from Indiana did not say that there was any fraudulent action on the part of the judge. I want to make that clear.

Mr. BAYH. I thank the Senator.

Mr. COOK. Mr. President, I yield the floor.

MESSAGE FROM THE HOUSE

As in legislative session a message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H.R. 14705. An act to extend and improve the Federal-State unemployment compensation program;

H.R. 14751. An act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1970, and for other purposes; and

H.J. Res. 888. A joint resolution to authorize the President to designate the period beginning February 13, 1970, and ending February 19, 1970, as "Mineral Industry Week."

HOUSE BILLS AND JOINT RESOLUTION REFERRED

As in legislative session, the following bills and joint resolution were severally read twice by their titles and referred, as indicated:

H.R. 14705. An act to extend and improve the Federal-State unemployment compensation program; to the Committee on Finance.

H.R. 14751. An act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1970, and for other purposes; to the Committee on Appropriations.

H.J. Res. 888. A joint resolution to authorize the President to designate the period beginning February 13, 1970, and ending February 19, 1970, as "Mineral Industry Week"; to the Committee on the Judiciary

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

THE CIVIL RIGHTS OPINIONS OF JUDGE HAYNSWORTH: THE CASE ON THE MERITS AGAINST CONFIRMATION

Mr. JAVITS. Mr. President, I have refrained until now from stating my views in detail with respect to the nomination of Judge Clement F. Haynsworth, Jr., to the U.S. Supreme Court because I wanted to allow myself and other Senators ample time for a complete review of the merits of this nomination.

The hearings are now complete; the Judiciary Committee has filed its report, and the dissenting views are in. I have reviewed the record and I shall now state my view of the matter.

It is my intention to vote against confirmation. I will do so because I have found, on reviewing the written opinions of Judge Haynsworth, particularly in racial segregation cases, that, without any derogation of him personally, his views on the application of the Constitution to this most critical constitutional question of our time are so consistently out of date, so consistently insensitive to the centuries-old injustice which we as a nation have caused our black citizens to bear, that I could not support the introduction of Judge Haynsworth's judicial philosophy into the Nation's highest court.

I realize that there is much argument as to what should be the standard of decision for an individual Senator in this case, whether it should include what is learned from a man's philosophy, from his decisions. After I have analyzed the cases which have brought me to this decision, I will deal with that question.

Also I do not pass on the question of ethics. That has been stated by other Senators. We have just heard an interesting and illuminating debate on the issue among the Senators from Kentucky, South Carolina, and Indiana. Obviously, those Senators are divided in their views. As its determination was not necessary for my decision, I did not make it. That does not mean there is nothing to it. I just found it unnecessary to decide that question "yes" or "no" and I do not feel that I should deal with it in the presentation of my reasons for voting "no" on this confirmation.

ON THE MERITS—JUDGE HAYNSWORTH'S WRITTEN OPINIONS IN SEGREGATION CASES

I do not intend to analyze at this point every segregation case in which Judge Haynsworth has voted as a member of the court of appeals, for it is not always clear what an individual judge's views really are when he votes for a particular result in a particular case when the opinion is written by another judge. Indeed, in reaching a judgment particularly in en banc decisions, which were for years the rule in the Fourth Circuit desegregation cases, and in per curiam opinions, of which there were dozens on this subject, there is often a complex compromise between opposing viewpoints, so that one can never really know whether a voting judge who is not the author of the opinion really wanted it the way it appears in the published decision of the court.

When a judge himself writes the decision for the court, on the other hand, or where he writes his own dissenting views or a special concurring opinion, we can see exactly how he feels and thinks, for the opinion is in his own words.

I now intend, therefore, to analyze every segregation case in which Judge Haynsworth states his own views in his own words. I think this review demonstrates that, with the exception of one or two cases in which it would have been almost impossible to decide the case the other way, Judge Haynsworth has been consistently in error, systemically and relentlessly opposed to implementation of the Supreme Court's 1954 desegregation decision and consistently sympathetic to every new device for delay for desegregation.

First, it ought to be noted that Judge Haynsworth was on the court of appeals for 5 years before he wrote an opinion in a civil rights case, either for the court or dissenting. Perhaps it was because there was so little desegregation going on until 1963 that the outcome of any particular case in the fourth circuit was unlikely to make much difference in any event. Perhaps it was because Chief Judge Sobeloff chose to assign the decisions to other judges. Suffice it to say that from 1957 until 1962, I have looked in vain for a statement of Judge Haynsworth's views on this question in his own words.

In 1962, Judge Haynsworth, on the Court of Appeals for 5 years, finally wrote his first opinion in a civil rights case. This case, *Dilliard* v. *School Board of Charlottesville* (308 F. 2d 920 (4th Cir-1962))—8 years after the Supreme Court' landmark Brown school desegregation decision—was the first big case involving geographical zoning, in which each Negro had to take the initiative and ask to transfer out of his previously-segregated school. The circuit court struck the plan down, holding that "the purpose and effect of the arrangement is to retard intergration and retain segregation of the races." Judge Haynsworth, in his first civil rights opinion, dissented, arguing—as had been done unsuccessfully 8 years earlier in Brown—that the Negro child is hurt more by being sent to a strange white school than by being left in his black one.

There is a now-famous line in Judge Haynsworth's dissent:

If separation of Negro children "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone" [quoting from *Brown* v. *Board of Education*], such a child may be subjected to a much

more searing experience if, bereft of established friends and relations compelled to attend a school or classes in which all others are of the opposite race.

There is a familiar ring to Judge Haynsworth's words, "searing experience," for that is the very same argument which was made by the attorney general of South Carolina in 1954 before the U.S. Supreme Court in Briggs against Elliott, a case merged with Brown against Board of Education, the landmark case, for decision. The South Carolina attorney general, in his brief to the Supreme Court, said:

This Court may judicially notice the fact that there is a large body of respectable expert opinion to the effect that separate schools, particularly in the South, are in the best interests of children of both races as well as of the community at large.

That was the argument which the Supreme Court rejected in the Brown case, and yet 8 years after Brown, Judge Haynsworth, having read the decision but seemingly having learned nothing, was still arguing that it was in the best interests of the black children to stay with other black children in black schools. The Court of Appeals in Dillard rejected the school board's argument, Judge Haynsworth's dissent to the contrary notwithstanding, and the Supreme Court denied review and let the majority decision stand. (374 U.S. 827 (1963).)

Now I shall trace Judge Haynsworth's legal views right up to today. I started with the first of his decisions.

Judge Haynsworth's second civil rights opinion came the following year in *Bell* v. *School Board of Powhatan County*, 321 F. 2d 494 (4th Cir. 1963). This was on a technical but critically important point in segregation cases. The question was whether the court of appeals would allow counsel fees to be taxed against the school board for following a course of "undeviating adherence to the system of segregation, sustained by acts of omission and commission." The trial judge in that case had denied counsel fees but was reversed by the court of appeals. But again, 1 year later, Judge Haynsworth dissented and would have affirmed the trial judge, on grounds of trial court discretion—a euphemism, too often in that circuit, for ignoring the obvious.

So far, two out of two.

Judge Haynsworth's next civil rights opinion came in the same year, in *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963). I know that case very well, Mr. President, because I argued about it with the greatest and most ardent strength of which I am capable here on this floor, in the historic debate on the Civil Rights Act of 1964. Simkins was the case in which the plaintiff challenged the constitutionality of a Hill-Burton grant to a segregated hospital receiving State aid in addition to Federal funds. The court—that is, the circuit court—found such Federal aid unconstitutional, but Judge Haynsworth dissented again, on the ground that there was no "State action" and that the hospital, receiving State and Federal assistance, nevertheless would "serve no public purposes, except that their operation contributes to public health." Again the Supreme Court denied review, sustaining the circuit court majority.

Evidently, the rest of the court of appeals felt there was ample State action arising from the use of public funds, and most assuredly there was precedent for applying the 14th amendment in this instance, for the Supreme Court in 1961 had already ruled, in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961), that a private restaurant operated under lease from a public parking authority could not discriminate against black customers, because the public lease, and the public land under the restaurant, were sufficient public support to constitute the whole enterprise "State action" subject to the 14th amendment. The Court noted that the parking authority could have required nondiscrimination as a condition of the lease, and stated that "no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be," (365 U.S. 725)—a comment which has particular importance at a time when there is considerable discussion in the South concerning an abandonment of public education altogether in response to the Supreme Court's most recent desegregation ruling.

In any event, the majority of the court of appeals in Simkins did, in fact, find sufficient State action to outlaw discrimination in the hospital involved, Judge Haynsworth's dissent to the contrary notwithstanding, and the Supreme Court denied certiorari, 376 U.S. 938 (1964).

So that is three out of three.

Judge Haynsworth's first majority opinion came the same year in *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F. 2d 332 (4th Cir. 1963), *reversed*, 377 U.S. 218 (1964).

He was promptly reversed by the U.S. Supreme Court. This case came 9 years after Brown, in a case involving a school board in litigation ever since. The case raised the question whether Prince Edward County complied with an order to desegregate when it closed all schools in the county, although the white parents set up "private schools" for white children only, who then received State tuition grants. Judge Haynsworth upheld the school board, reversing the district court, and held that the closure of the schools satisfied the Constitution even if the school board actually procured the closure. Judge Bell dissented on the ground that the State could not support white private schools while closing the public schools to blacks. Judge Haynsworth was joined in the majority by Judge Boreman; we are told that Judge Sobeloff disqualified himself because he had been of counsel in an earlier connected case. So Judge Haynsworth finally got a majority. But the Supreme Court reversed unanimously, supporting the decision of the trial judge and the dissenting views of Judge Bell.

Wrong four times out of four for Judge Haynsworth.

Eventually, Judge Haynsworth wrote one which stuck. In *Pettaway* v. *County School Board of Surry County*, 332 F. 2d 457 (4th Cir. 1964), the District Court had denied a preliminary injunction which would have restrained payment of Virginia tuition grants and would have required a school reopening. Judge Haynsworth affirmed. For some reason, certiorari was not applied for, and the case never went to the Supreme Court, perhaps because the case only involved interim relief.

Finally, in 1964, Judge Haynsworth wrote an opinion on the right side of a desegregation case—but it is interesting that in doing so, he announced that he disagreed with the result on the merits. In *Eaton* v. *Grubbs*, 329 F. 2d 710 (4th Cir. 1964), an issue like Simkins was raised again—discrimination in a hospital. The Court found sufficient "State action." Judge Haynsworth wrote a special concurring opinion, stating that he still thought he was right in his Simkins dissent, but felt bound by the Circuit Court's en banc decision in the earlier case—despite the Supreme Court's even earlier ruling in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

Presumably he just wanted to let the world know that, if it were up to him, the hospital could go right on segregating.

Judge Haynsworth's sixth civil rights opinion—a set of opinions—covered several companion cases, *Bradley* v. *School Board of Richmond, Va.*, 345 F. 2d 310 (4th Cir. 1965), and *Gilliam* v. *School Board of Hopewell, Va.*, 345 F. 2d 325 (4th Cir. 1965), both vacated sub. nom., *Bradley* v. *School Board*, 382 U.S. 103 (1965), and *Nesbit* v. *Statesville City* Board of Education, 345 F. 2d 333 (4th Cir. 1965). In Bradley and Gilliam, Judge Haynsworth, writing for the Court sitting en banc, approved a plan of desegregation based on "freedom of choice"—again, a euphemism for forcing each black family to bear the burden of applying for a transfer out of a segregated school, and the risk of various forms of retaliation—which, of course, as we all know, the Supreme Court struck down as soon as the question came before it. The question of faculty segregation was also presented to Judge Haynsworth, but he remanded without directing the district court to consider that question. Judges Sobeloff and Bell dissented as to that part of the case, and would have directed the district court to hold a hearing on faculty segregation. The Supreme Court vacated, agreeing with Judges Sobeloff and Bell, and directed such a hearing. In that particular case, that is, in this case involving freedom of choice, the Supreme Court vacated the circuit court's order, and agreed with the minority.

The same day, Judge Haynsworth wrote the decision in Nesbit, which involved a freedom of choice, "stair step" plan. Judge Haynsworth remanded for a further hearing; Judges Sobeloff and Bell again dissented, referring to their dissents in Bradley. The same result, with the same opinions and the same dissent, on the same grounds, occurred the same day in *Bowditch* v. *Buncombe County Board of Education*, 345 F. 2d 329 (4th Cir. 1965). Why certiorari was not applied for in the Nesbit and Bowditch cases is unknown to me; in any event, the decisions are clearly wrong in light

of what the Supreme Court said in vacating Judge Haynsworth's order in Bradley.

Thus, four more decisions find Judge Haynsworth without a single opinion within the framework of the 14th amendment as the Supreme Court had, up to that time, unanimously construed it.

Nine out of nine.

Next came two cases in which Judge Haynsworth did, in fact, vote against a discriminatory practice, but in each instance only when the result was so absolutely clear and unavoidable that there was substantially nothing to decide.

The first of these two cases was *Brown* v. *County School Board*, 346 F. 2d 22 (4th Cir. 1965), in which Judge Haynsworth wrote for a unanimous court in remanding a segregation case for a further hearing, after counsel for both sides of the case had asked for such a remand. The decision, therefore, while not erroneous, was really nothing more than a stipulation and left no issue for the judge to decide.

And thereafter Judge Haynsworth decided *Hawkings* v. *North Carolina Dental Society*, 355 F. 2d 718 (4th Cir. 1966), in which the fourth circuit unanimously ruled that a State dental society, which had, in effect, been given the State's licensing power, was exercising sufficient "State action" to be subject to the nondiscrimination strictures of the 14th amendment. To decide otherwise would have extended Judge Haynsworth's twice-rejected "State action" misconception to permit discrimination in "private" activities which not only had State financial support but also those which carried with them the force of State law. To decide otherwise would have been to abandon equal protection altogether.

But as soon as the next segregation case was presented to Judge Haynsworth for opinion, he was wrong again, and was again reversed by the Supreme Court. In *Green v. County School Board of New Kent County*, 382 F. 2d 338 (4th Cir. 1967), reversed, 391 U.S. 430 (1967), and its companion case, *Bowman* v. *County School Board of Charles County, Va.*, 382 F. 2d 326 (4th Cir. 1963), Judge Haynsworth wrote his landmark "freedom of choice" opinion, holding that a "freedom of choice" plan satisfied the Constitution, whether it produced desegregation or not. Judges Sobeloff and Winter dissented—although agreeing to a remand to the district court on another point—and said that the plans "manifestly perpetuate discrimination." The Supreme Court reversed Judge Haynsworth, basing the decision on the dissents of Judges Sobeloff and Winter and holding that "freedom of choice" is not "an end in itself" and that if there are other plans promising a speedier end to segregation, freedom of choice would be unacceptable.

The Supreme Court's Green decision—that is the case in which Judge Haynsworth was reversed—was handed down on May 27, 1968, 14 years after the school desegregation decision in Brown against Board of Education. Four days later, on May 31, 1968, the Court of Appeals for the Fourth Circuit handed down its decision in *Brewer* v. *School Board of the City of Norfolk*, 397 F. 2d 37 (4th Cir. 1968). We know the fourth circuit opinion in Brewer was actually written before the Supreme Court's Green decision because of footnotes appearing in the published opinions. In Brewer, the school district had drawn geographical school zones and the court of appeals properly stated that the question was whether the plan produced desegregation, or whether discrimination in housing, and so forth, would result under the plan in continuation of unlawful segregation. But Judge Haynsworth again dissented, explicitly stating again his preference for a freedom-of-choice plan.

He could have withdrawn that decision before it was published, but instead, he filed it and let it stand in the teeth of the Supreme Court's Green opinion, thereby, in my judgment, confirming what I think is his general attitude—a gratuitous persistence in error, though only in the form of a dissent.

Last year, after a series of erroneous opinions, Judge Haynsworth finally wrote an opinion in favor of a black plaintiff in a school desegregation case, upholding a district court order to abandon a freedom-of-choice plan—but not because Judge Haynsworth had abandoned his preference for freedom of choice. On the contrary, he simply found that the choice would not be deemed free in this instance because of Ku Klux Klan bombings of those who chose to exercise their freedom. *Coppedge* v. *Franklin County Board of Education*, 394 F. 2d 410 (4th Cir. 1968). Short of a bombing, I know of no case where Judge Haynsworth has abandoned the so-called "freedom of choice" system to this day.

The most recent civil rights opinion Judge Haynsworth wrote was this year in *Felder* v. *Harnett County School Board*, 409 F. 2d 1070 (4th Cir. 1969)—15 years after the Supreme Court decision—in which Judge Haynsworth wrote a concurring opinion again—as he had in the Bell case—supporting the denial of counsel fees; Judges Sobeloff and Winter dissented. We do not know as yet what will happen to that case if it is taken up on appeal.

Those are the civil rights opinions of Judge Haynsworth—all of them, as far as I can tell. Their common thread, which is there for all to see, is an insensitivity to the real meaning of "equal protection" when it comes to racial segregation.

The $64 question, then, is whether that is a proper ground upon which to vote against confirmation of the nomination.

II. THE PROPRIETY OF CONSIDERING A NOMINEE'S JUDICIAL PHILOSOPHY

Mr. President, I will discuss that point because it will be hotly contested.

Many Senators seem to feel that the President has the right to appoint whomever he wants to the Supreme Court and that the only reason we ought to have for refusing to confirm is some overt breach of conduct or violation of ethics or other unlawful conduct or the fact that we do not feel the nominee has the intellectual capacity or the judicial temperament to be a judge.

This expressly excludes, and it has been excluded time and again in the argument, any conception of what a judge represents and what he would bring to the United States Supreme Court as a basic philosophy.

Mr. President, this is the point which I think is a very difficult one for me as a lawyer. I have voted for judges who are much more conservative than I am. And I will do so again.

I voted for Chief Justice Burger and for other justices in various of the courts. These men have a far different philosophy than mine.

I think there is a qualitative limit to this and that the qualitative limit has been reached in this particular case by what I would call the doctrine of "persistence in error."

I do not believe it is my duty to send a man as a judge to the U.S. Supreme Court bench who will make it his fundamental life philosophy to try to bring the Court back to a time which history has passed by for close to 2 decades now. I believe that my duty to advise and consent encompasses the consideration of an issue of that quality.

I do not vote to put a man on the Supreme Court bench—who may be a very facile and very clever and able man—if he is a man possessed of a philosophy so antipathetic to everything that history has established as correct that he would be nothing but a constant threat to drag the Court back to a period preceding that point in history.

I make a distinction in this respect between a judge holding office for life and a Member of the President's Cabinet or another high official of the Federal Government. Let us remember that the latter officials serve at the pleasure of the President, and if the President feels that he would like to have them serve, he ought to be allowed to choose his own agents. They are constantly questioned here. They are subject to being turned out with the President if the people turn out that President. The degree to which we can affect their decision by appropriations, by legislative oversight, and in many other ways is very direct. But when it comes to the Justices of the Supreme Court, very different considerations apply.

A Supreme Court Justice is not an agent of the President. He serves not at the pleasure of the President—indeed, not at the pleasure of Congress. And he serves for life. He is completely independent of both the executive and the legislative branches; and he has authority, as one of nine, to overrule us and to nullify our acts, notwithstanding that we may solemnly pass them. If the prevailing philosophy or the majority view of the people of the United States changes, or if the occupant of the White House or of any seat in Congress changes, the Supreme Court Justice's tenure will remain undisturbed.

You might just as well ask the people of my State not to pass on my philosophy as ask me to be blind to the legal concepts which a Justice of the U.S. Supreme Court has shown by his whole life's work.

In that context, it seems to me that the Senate has the right—and, indeed, the

obligation—to satisfy itself not only that the technical qualifications of the nominee merit confirmation but also that his views and philosophy, without regard to conservative or liberal, but nonetheless his views of philosophy, merit confirmation.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. JAVITS. Let me just finish this thought.

Notwithstanding the opposite view expressed in many quarters, there is a long and consistent history of considering the views of Supreme Court nominees and in fact of rejecting nominees whose views were not acceptable to the Senate.

I yield to the Senator from Indiana.

Mr. BAYH. I apologize for interrupting the Senator's trend of thought.

He has just been dealing with a matter which has been tugging at my thoughts ever since this matter came before us. Perhaps confession is good for the soul. I have on previous occasions—the Burger nomination was one example—felt that, under most circumstances, it would not be wise for me to deal with a nominee on the basis of philosophy.

I think the Senator makes a good distinction between a judicial appointment and an appointment to the executive branch. A member of the executive branch is an active member of the team of the administration.

I wonder if the Senator would care to comment on the fact that the degree of relevance of a given philosophical issue might change with the times. I recall very well a telling speech that Whitney Young made during the meeting this summer of the Urban League. He pointed out that there were a number of people in the black community, who were beginning to wonder if they could find redress for their grievances within the system, and this concerned him. If the nomination to the Court of a man who is less than enthusiastic in seeing that this system responds to the legitimate rights of Negroes is going to cause these citizens to try to solve their problems outside the system, I wonder if this does not give us not only the right but also the obligation to consider this whole problem of philosophy in the area of civil rights more seriously today than we might have, say, 10 years ago.

Mr. JAVITS. My opinion is that that is correct. But I am speaking of it in terms of quality. I think it has to be a really historic difference. I do not think I could have made this argument 10 years ago or that it would have been legitimate 10 years ago. But here we have an historic turn in the whole outlook of the Nation, as depicted by what has happened in the field of segregation since 1954; and we have such a landmark of history that Justices of such completely diverse opinions in all these years, in a continuous stream, are acting unanimously in the Supreme Court on a given question; and yet we have in this instance a consistent persistence in this error by an individual, notwithstanding this historic change which year by year has become more deeply imbedded in our system and accepted unanimously by the Supreme Court. Nonetheless, here is an irreconcilable judicial voice constantly reiterating a doctrine of the past. It seems to me that I do not have to vote to make a new center on the Supreme Court which will seek to reverse history.

If the President has the right to appoint whom he pleases, chosing whom he thinks he ought to choose, what does the right of advice and consent of the Senate mean? You might just as well send out a credit reporting agency or the FBI and get the evaluation of a highly professional group of the American Bar Association that this man knows the law and that he has studied the law, and let it go at that. What do they need us for? We are a hundred high-powered men who are supposed to have some brains and judiciousness. We often vote for things and do things which we may not like, such as appropriations for the Vietnam war. We do that all the time. But this is not limitless. There is a point; some question of degree is involved. That is an item which has been overlooked in the whole question of confirming the nomination of Judge Haynsworth.

I noted that, in the dissenting views, really only the Senator from Michigan (Mr. HART) picked up this point. I am not afraid to face it.

This is perhaps a new approach to this question, but I think it is high time; because, frankly, I think the other question of conflict of interest and ethics is pretty confused, and many of the parts of it are not big enough to warrant such a thing as turning down a President. But I do not think there is any question about this, if that is the way the Senator from Indiana thinks, and I, as an individual Senator, have a deep feeling that way; and I will not accept the rule of judgment that I can only turn down a Supreme Court nominee if I can prove he is guilty of some breach of ethics or if he is just a very bad lawyer or if he does not have judicial temperament and gets angry at lawyers on the bench. I do not feel that I want to be limited by this standard.

Mr. BAYH. I agree with the Senator's views. As the Senator knows, I have been concerned with the other aspect, but I am glad the Senator has made his position on this area of civil rights available for our consideration.

Mr. JAVITS. Mr. President (Mr. HUGHES in the chair), I yield to the Senator from Oregon.

Mr. HATFIELD. Mr. President, I wish to comment on the address of the Senator from New York up to this point and ask him a few questions because I feel his presentation this morning on these particular cases brings into very clear focus a point that has been made frequently to me when I am asked to support this confirmation of Judge Haynsworth.

Not being an attorney, I find some of these matters become a little confusing. I feel that this morning the Senator from New York has probably done much to clarify this point, but I do want to make sure I understand the matter clearly and therefore I wish to ask a series of questions.

As the Senator from New York knows, the statement has been made frequently that in the rulings on civil rights cases Judge Haynsworth was merely upholding the established precedent and that, therefore, when the Supreme Court reversed the rulings of Judge Haynsworth, they were, in effect, setting new precedent. As I understand the recitation of these cases this morning and the briefs presented pertaining to them, this argument seems to fall apart. As I understand it, starting on page 2, the cases cited in the first section of the presentation today indicate Judge Haynsworth was actually dissenting and, therefore, the words in his dissenting opinion were not so much against the established precedent but were trying to reverse established precedent. Is that correct?

Mr. JAVITS. The Senator is correct. The judge was really persisting in a judicial position—not a personal position, but a judicial position—which sought to reverse the Supreme Court. I could even accommodate that and still vote for a Judge. When a question is still in the area of debate and discussion I could, but when it is so deeply rooted in the history of the country then, it seems to me, it becomes an article of faith. That is the impression I got from Judge Haynsworth's opinion—he dissented and the circuit court was sustaining, and he wrote for the Court and was reversed.

It is an article of faith with him and I, as a Senator, have to decide if I want to send a man to the Supreme Court who has an article of faith to take the court back to the days before 1954 and to reinstate the separate but equal doctrine which obtained from the latter part of the 19th century until 1954.

It may be argued that there may have been other judges who had that kind of reservation in all those years. I would have a right to evaluate that if they came before us, just as we make an evaluation in this situation. I do not say I am denuded of any discretion except name, rank, and serial number, which is practically what the proponents of Judge Haynsworth are telling me. Hence, I am trying to use my head on this issue. I have voted for judges of a conservative nature and I am sure I will do so again, but this seems more to me than conservatism and liberalism. There is involved an article of faith which he seems to have clung to in all these 15 years. On the basis of that, I do not feel I can vote for the confirmation of the nomination.

Mr. HATFIELD. Mr. President, will the Senator agree that the then-established precedent, to which many of these comments have been addressed, related to Judge Haynsworth merely upholding the established precedent; that really the established precedent was in the Brown case—the landmark case of the Supreme Court—and that he really was going against the Supreme Court in these decisions he rendered.

Mr. JAVITS. The Senator is correct. As the Supreme Court strikes down "freedom of choice" and segregation by zoning ordinances, and so forth, he still persists in his view this was right, not wrong. I feel if he is a zealot on this subject—I am not trying to assail his convictions, his belief, or his character—I do not have to vote for confirmation.

Mr. HATFIELD. On page 4 the Senator cites the Hawkins case and others

where he was on the right side of these cases. It was more on the basis, as I understand it, that he had been twice reversed on similar points of law and did not want to make it three times.

Mr. JAVITS. In the Hawkins case the dentist could not practice unless he was in the society. One would have to be blind not to decide the case as he did.

Mr. HATFIELD. In the Brown case, which is just ahead of that case, was it primarily a procedural matter?

Mr. JAVITS. There was a stipulation between the lawyers. I have analyzed every case because I do not want to omit a case. If anyone can show that I have omitted a case I would be glad to acknowledge it. We have tried to show every case in which he expressed himself.

Mr. HATFIELD. Does the Senator from New York agree with the general comment that has been used in the informal as well as the formal debate up to this point that, with regard to whether Judge Haynsworth was upheld in the Supreme Court was not an argument at all; that his dissenting opinions and other opinions that he rendered later showed a differing viewpoint and that the precedent, which was contrary to the Supreme Court, was because of the Brown case in 1954?

Mr. JAVITS. The Senator is correct.

Mr. HATFIELD. This has been very helpful to me as a nonlawyer. I commend the Senator from New York for placing this material in the debate. The presentation is in language which is most understandable. This has been one of the problems confronting me with respect to rulings he may have made at times upholding Supreme Court precedent.

The statement this morning by the Senator from New York (Mr. JAVITS) has certainly dispelled and crushed that kind of argument which has been injected into this debate at this point.

Mr. JAVITS. I am very grateful to my colleague.

Mr. BYRD of West Virginia. Mr. President, will the Senator from New York yield without losing his right to the floor?

Mr. JAVITS. I am happy to yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. I want to commend the Senator from New York on the statement he has made this morning. He has been very frank in stating that his opposition to the nomination is based upon what he considers to be the philosophy of the nominee.

I think that Senators certainly have a duty to consider the philosophy of the nominee in arriving at their decisions. There are those Senators who have indicated that it is not the prerogative of a Senator to make a decision on that basis. I disagree. While I voted for the confirmation of the nomination of Justice Abe Fortas in the first instance, I was opposed to his elevation to the role of Chief Justice, solely on the basis of his philosophy as I interpreted it from his record as an Associate Justice. Never at any time did I seek to cast any aspersions on his character a a man, his integrity as a Justice, or his ability as a lawyer, and I think I made that amply clear at the time in stating my opposition to his confirmation as Chief Justice.

Thus, here today, the Senator from New York is taking a forthright position in basing his decision in this matter on what he considers to be the philosophy of Judge Haynsworth as he interprets it from the record—the decisions, the opinions, and the rulings in which Judge Haynsworth has participated.

I do not say at this point exactly what my position will be. I am inclined to support the nomination. But I just want to say again that I admire the Senator from New York for making no bones about what his position is and how it was arrived at.

I wish that everyone would be as frank and candid in their approach as has been the Senator from New York.

I have no right to impute any motives to any Senator, but I have the feeling that much of the opposition to this nomination comes from groups and blocs who, like the Senator from New York, are opposed to the philosophy of Judge Haynsworth, so that the matter of conflict of interest, at least, may be considered a smokescreen by some groups and people.

Again, I thank the Senator for being so candid, and for yielding to me at this time.

Mr. JAVITS. Mr. President, I appreciate the Senator's comments. I point out to him that what I am saying today relieves anyone who wants to vote against Judge Haynsworth from the worry that he will destroy him, that he will make a finding against Judge Haynsworth that he is an immoral and an unethical man. We do not have to do that. I do not see any reason why any Senator should be placed in that spot. There is nothing discreditable about being rejected by the electorate—to wit, the Senate—for nomination to the Supreme Court. It depends on the grounds on which it is done.

The other thing I wish to comment on is that I hope the Senator appreciates the fact that the word "philosophy" alone is not the only reason to cause me to vote against confirmation; but I actually read the cases, thinking about them carefully. Mr. Cummings, my administrative assistant, an extremely competent lawyer, analyzed them even further and in greater depth, because I think it is a qualitative judgment for myself, and I would not allow myself the privilege of voting no just because I am a liberal and Judge Haynsworth is a conservative or even an ultraconservative.

But I did feel that this attitude on this particular, major constitutional question, was deeply rooted in Judge Haynsworth, as I said, as an article of faith, and that, I think, is something on order of magnitude beyond what people ordinarily understand when we say "philosophy."

Mr. BYRD of West Virginia. If the Senator will yield briefly further, I have no doubt that the Senator would vote against Judge Haynsworth, or any other nominee, if in the judgment of the Senator there was a real conflict of interest, a clear violation of the statutes, or of the canons of judicial ethics.

So would I. But in this case, as the Senator has so ably stated, the accusations are pretty confused, so that the Senator takes his stand on the basis of the record of Judge Haynsworth, and the opinions, rulings, decisions, and philosophy, if I may again use that word.

I intend to take my stand precisely on the same record and on the judicial philosophy of Judge Haynsworth as I interpret it.

I admire the Senator's candidness.

Mr. JAVITS. I would not wish to have the Senator characterize my views as being confined to ethical questions or other questions.

Mr. BYRD of West Virginia. I thought the Senator used the word "confused" earlier when he spoke. I believe the RECORD will show that.

Mr. JAVITS. I doubt the RECORD will show that. I should like to read to the Senator what I said. It is in writing, fortunately. I said:

> I do not pass on the questions of ethics—they have been studied by other Senators who are divided in their views—

Let me interject here that we heard presentations this morning from the Senator from Indiana (Mr. BAYH), the Senator from Kentucky (Mr. COOK), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from North Carolina (Mr. ERVIN)—

> and as this determination is not necessary to my decision, I do not make it here.

We often see courts do this. "It is unnecessary to decide it." That is how I feel about this question of ethics. I have made my decision on other grounds. I do not have to find reasonable doubt or anything else in respect to these other questions.

Mr. BYRD of West Virginia. If the Senator will yield further, I assure the Senator that I certainly did not intend to characterize him wrongly. I thought I heard him use the word "confused" when he spoke about accusations concerning ethics. I am having the transcript brought in, because if I am wrong, I am going to be ready to admit it, but I thought the Senator used the word "confused." If he did, I meant no offense in repeating it; and, if he did not, I shall be ready to stand corrected.

Anyhow, I was merely trying to say that the Senator is making a statement that is candid, frank, forthright, and that he is going directly to the point as to judicial philosophy, if I may again use the word "philosophy" as my own choice of verbiage. I admire him for it.

Mr. BYRD of West Virginia subsequently said: Mr. President, a little earlier today a question arose during a colloquy between the able senior Senator from New York and me as to whether he had used the word "confused" in an earlier statement. It was my feeling that he had used the word "confused." He was under the impression that he had not. He was speaking ad libitum of course, at the time.

Accordingly, I sent for the transcript. I will read into the RECORD the following sentence spoken by the Senator from New York, and I do not feel that I am taking an advantage of him in doing so:

This is perhaps a new approach to the question, but I think it is high time; because, frankly, I think the other question of conflict of interest and ethics is pretty confused, and many of the parts of it are not big enough to warrant such a thing as turning down a President.

I realize that the Senator did not seek to impute to me an intention to characterize him wrongly. But I just want the RECORD to show that I did not misunderstand or misrepresent the Senator when I said he had used the word "confused."

Mr. JAVITS. Mr. President, notwithstanding the opposite view expressed in some quarters, there is a long and consistent history of considering the views of Supreme Court nominees, and in fact of rejecting nominees whose views are not acceptable to the Senate.

Senator THURMOND, a year ago, asked Justice Fortas when he testified before the Judiciary Committee:

Don't you think the members of the Senate, of this Judiciary Committee, are entitled to know what your philosophy is if they are going to consider you for Chief Justice?

And Justice Fortas replied:

Absolutely.

(The colloquy appears on page 182 of Part I of the 1968 Fortas hearings).

Senator ERVIN, on page 107 of the same volume, stated at the Fortas hearings:

I think it is so important for Senators to know something about the constitutional philosophy of a Supreme Court Justice, particularly a Chief Justice.

And Senator STENNIS reviewed the history of the problem and stated in 1955 on the Senate floor:

Here in the Senate there has been a rather well established practice to the effect that if a President nominates a person of character, honor and ability for appointment, then there is no sound basis for withholding Senate confirmation. So far as appointments in the Executive Branch of the Government are concerned, this is certainly the general rule, and is one that I ordinarily follow. *However, as to judicial appointments, especially at the very top, it has no application whatsoever; and, further, it is dangerous to the Judiciary as an independent branch of the Government.* (101 Cong. Rec. 2830 (1955).)

The massive three-volume work by Charles Warren, "The Supreme Court in United States History," is replete with examples of Senate rejection of Supreme Court nominees, beginning with President Washington's first appointment of a Chief Justice to succeed John Jay—the rejection of John Rutledge in 1795—down through Lincoln's time and later. A classic example is Warren's account of President Tyler's nominee in 1844:

Finally, on March 13, 1844, Tyler sent to the Senate the name of Reuben H. Walworth, then Chancellor of the State of New York. The new appointee, though unquestionably of the highest legal ability, was not only personally unpopular but politically disliked by the Whigs . . . (Warren, *The Supreme Court in United States History*, vol. 2, p. 389).

In consequence, Walworth's confirmation was postponed on a rollcall vote, and ultimately withdrawn.

As Senator Norris put it when he successfully opposed confirmation of Judge Parker in 1930 solely on the ground of judicial philosophy:

So we are down to this one thing. When we are passing on a Judge, therefore, we not only ought to know whether he is a good lawyer, not only whether he is honest—and I admit that this nominee possesses both these qualifications—but we ought to know how he approaches these great questions of human liberty. (The full analysis appears in Joseph P. Harris, *The Advice and Consent of the Senate* (1953)).

I cite this example, not to compare the present nominee with any other, but simply to show that the Senate has generally gone beyond mere consideration of a Supreme Court nominee's legal ability and qualifications.

The whole matter is reviewed in more current context by an extensive article in volume 78 of the Yale Law Journal published this year. I will not recite the additional precedents now, but I ask unanimous consent that a brief article published in the New York Times on October 19 of this year, written by Anthony Lewis, a former Nieman fellow at Harvard Law School who for years covered the Supreme Court for the New York Times, be printed at this point in the RECORD.

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

THE SENATE AND THE SUPREME COURT

(By Anthony Lewis)

WASHINGTON.—In their irritation at the opponents of Clement Haynsworth, some Administration officials are now saying that the issue in the confirmation fight is nothing less than the President's right to appoint Supreme Court Justices. The Senate, they argue, is trying to undermine that prerogative; Senators should support a President's choice for the Court unless he can be shown to be corrupt or incompetent.

But history contradicts that narrow view of the Senate's role. In fact, over the years, the Senate in considering nominations to the Supreme Court has rejected "a proportion far higher than for any other Federal office." So says a leading study, Joseph P. Harris's "The Advice and Consent of the Senate."

In the nineteenth century, when senatorial scrutiny was at its most rigorous, 72 men were nominated to the Supreme Court and eighteen of them—one quarter—failed of confirmation. The eighteen does not include a few others who declined the honor.

Nominees were rejected for a variety of reasons, because of ability or temperament. Some lost in formal votes of the Senate; other nominations were withdrawn in the face of opposition.

President Madison, for example, nominated a Connecticut Collector of Customs, Alexander Wolcott, in 1811. Charles Warren, the great Supreme Court historian, said the general feeling was that Wolcott was a man of "somewhat mediocre legal ability." For that reason a Senate overwhelmingly of Madison's party rejected the nomination, 24 to 9.

GRANT'S NOMINATION

Grant tried three times before he could get a Chief Justice confirmed. His first choice—George H. Williams, his Attorney General—was criticized as a "second-rate" lawyer. His second, Caleb Cushing, a former Judge of the Supreme Judicial Court of Massachusetts, was eminently qualified. But Senators were uneasy at the fact that he had been successively a Whig, Democrat and Republican. The opposition eventually found that he had written an innocent letter to Jefferson Davis during the Civil War and used that to rally opinion against him. Both nominations were withdrawn.

Other nominees in the last century were defeated because they were partisan Whigs in Democratic times, or because they had offended Senators, or because in other offices they had followed objectionable policies. No one could read the record without concluding that Senators in those days felt quite free to make their own appraisal of any man chosen to say the last word in our constitutional system.

Today, most Senators would be more sophisticated and more restrained in the use of their confirmation power. Ironic exceptions are Senators Thurmond of South Carolina and Eastland of Mississippi, two of Judge Haynsworth's principal backers, who have not hesitated to oppose anyone suspected of liberal tendencies. They voted against the only three nominees to the Warren Court who were put to a record vote in the Senate, Justices Harlan, Stewart and Marshall.

The question for most members of the Senate in 1969 is not one dimensional. For example, the fact that a nominee is a so-called strict constructionist in constitutional matters would not necessarily make Senators of a different outlook oppose him; it is easy to think of judicial conservatives whose high intellectual qualifications would have smothered the thought of opposition on philosophical grounds.

The point about Judge Haynsworth is that he does not have such high intellectual or legal qualifications. Few could call it a distinguished appointment.

POLICY AND ETHICS

Along with that basic ground for opposition are doubts about policy and ethics. Those who feel the doubts might say that Judge Haynsworth is a man from a narrow background who has not altogether surmounted it in his view of life and the law, and that in his commercial dealings while on the bench he has at best shown insensitivity to the appearance demanded of judges.

In short, the argument against Clement Haynsworth is not that he is an evil man, or a corrupt one, or one consciously biased. It is that he is an inadequate man for a lifetime position of immense power and responsibility in our structure of government. And any Senator who reaches that conclusion is quite entitled, in precedent and in reason, to oppose his confirmation.

Mr. GRIFFIN. Mr. President, will the Senator yield to me, before he goes on to another point?

Mr. JAVITS. I yield.

Mr. GRIFFIN. I commend the Senator for the contribution he has just made concerning the appropriate role of the Senate in confirmation of appointments to the Supreme Court. I, too, have studied this important work of Mr. Warren concerning the Supreme Court, and I am familiar with the examples that he points out.

Would the Senator from New York agree with me that, although the language in the Constitution is the same with respect to both classes of nominations, the Senate's attitude toward a nomination, say, for appointment to a Cabinet post or position in the executive branch may well be different from its approach and attitude toward appointments to an independent, third branch of the Government, the judiciary?

Mr. JAVITS. Absolutely. I think the distinction is very basic and very real.

Mr. GRIFFIN. I thank the Senator.

Mr. JAVITS. I thank my colleague.

III. THE QUESTIONS STILL IN LITIGATION, AND THE IMPORTANCE OF THIS NOMINATION

To conclude, I have tried to explain why I believe this nominee's views as to the Constitution, particularly in segregation cases, are outside the framework of our time in history, and why I believe we, as Senators, have the right and obligation to base our decision also on this factor.

But need we decide on this basis, after the Supreme Court only a few weeks ago spoke unanimously and unequivocally on the subject of further delay in school desegregation? I ask myself: Will one man make that much difference?

This is my answer: In my judgment, the blight of segregation is still very much alive and of critical importance. Despite the unanimous 8–0 decision ending "all deliberate speed" and requiring immediate school desegregation, the litigation goes on, and there are questions in these cases which are of paramount importance and yet to be decided.

I am told that there are 14 cases now pending in the fifth circuit raising questions of school construction site selection and the breaking up of school administrative units, in each case involving an allegation that the action of the school board involves a device to avoid the Court's desegregation requirements.

What of these cases?

And what of the infinite variety of litigable stalling devices which have already delayed so much school desegregation for 15 years?

And what of the question of award of counsel fees for frivolous appeals for the purpose of delay—a question in which Judge Haynsworth has been unwilling to penalize the offending public authority, and has thereby forced black families to continue to bear the awesome financial burdens of unending litigation costs—as in Judge Haynsworth's Felder and Bell opinions?

That may be unwitting, but it results in black families having to bear the costs of litigation. I saw, myself, how the bar of Mississippi got lawyers in difficulty because of champerty, soliciting law cases, and so forth. So these families just do not have the means to prosecute the cases.

These are important cases yet to come because efforts to "skin" a law one does not like will go on ad infinitum.

And there are doubtless other types of cases in the context of fact situations we cannot now anticipate or even imagine.

In my judgment, the introduction of a judge into the Supreme Court not committed to applying the 14th amendment to the swift elimination of all vestiges of legal discrimination would be a staggering blow to the cause of civil rights. The delicate process of achieving unanimous per curiam decisions in the landmark civil rights cases—begun by Chief Justice Warren in 1954 and followed this year by Chief Justice Burger—would be made much more difficult if not impossible. Under Supreme Court Rules 18, 27, 50, and 51, each Justice of the Supreme Court, moreover, has individual jurisdiction to grant interim relief pending appeal to the Supreme Court in cases coming up from the circuit to which that justice is assigned; and so Judge Haynsworth would be in control, alone, of such relief in his circuit—a matter so often of critical importance in civil rights cases.

These are not minor matters—even for one justice among nine.

So, having reviewed the record and having analyzed the cases, I conclude by stating that I cannot vote to confirm this nomination.

I yield the floor.

U.S. AIR FORCE

Mr. MANSFIELD. Mr. President, there is a nomination at the desk, which was reported earlier today. I understand it has been cleared on both sides. There is a need for prompt action. I ask unanimous consent that the nomination be called up.

The PRESIDING OFFICER. The nomination will be stated.

The LEGISLATIVE CLERK. Maj. Gen. Royal B. Allison to be promoted to the grade of lieutenant general.

Mr. MANSFIELD. Mr. President, will the clerk read the explanation at the top of the sheet, so that the Senate will be aware of the need for action?

The legislative clerk read as follows:

General Allison will be the senior U.S. Military Representative at the United States-U.S.S.R. disarmament negotiations in Helsinki to begin this coming Monday, November 17. His Russian counterpart holds the rank of lieutenant general and General Allison's appointment as a lieutenant general will serve to place him in a more advantageous position if he were in the higher rank at the beginning of the negotiations.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to this nomination?

The nomination was confirmed.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

What is the pleasure of the Senate?

Mr. MANSFIELD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

(At 12 o'clock and 56 minutes p.m., the Senate took a recess subject to the call of the Chair.)

(At 1 o'clock and 8 minutes p.m., the Senate reassembled, when called to order by the Presiding Officer (Mr. BYRD of West Virginia in the chair).)

(By order of the Senate, the following proceedings occurred as in legislative session.)

PEACE DEMONSTRATIONS

Mr. McGOVERN. Mr. President, this week, tens of thousands of people from all parts of the country, young and old alike, are in Washington for the purpose of expressing their concern and their views with reference to our policy in Vietnam and with reference to other issues that are of concern to them—especially to the young people who comprise this large crowd of visitors in the Nation's Capital.

Mr. President, I wish to say how pleased I am that the first news reports on the activities of last night and again today indicate that these Americans who are visiting here in the Capital are conducting themselves as I fully expected they would, in a climate of dignity, good taste, and genuine conviction. These people come in an atmosphere of peace. They come here for the purpose of expressing their opposition to violence, not to perpetuate it.

I wish to read just a few of the observations that were made to newsmen last night and during the afternoon by young people visiting the Capital. For example, in today's Washington Post Mr. Tom Schiele, of Haverford College, is quoted as follows:

If this comes off poorly it's going to have a very bad effect for the peace movement.

So it is my responsibility to try and make it come off peacefully—and to try to keep the kind of dignity the October demonstrations had. And I really think the U.S. has no business being in Vietnam, and that's why I'm involved in the peace movement.

He went on to say:

I suppose this may be the largest demonstration ever assembled in Washington. It's sort of the climax of everything that's been going on in the peace movement the last three years.

Mr. President, to me that represents the tone, not only of the young man dedicated to peace, but of a mature and dignified citizen who is entitled to the respect and confidence of all of us; and beyond that he is entitled to be heard in what he has to say about the policies of our country.

Mr. David Hawk, whose name is known to us as one of the four principal directors of the October moratorium as well as the November moratorium, who is participating now as a member of the steering committee of the mobilization, referred in his conversations with the Washington Post reporter to what he called a new youth culture. He calls it a youth culture, a culture that believes in love, peace, joy, not war, death, and destruction.

Then, another young man, Mr. Albert Winn, of Philadelphia, is quoted as saying:

They're the ones that are being sucked into a machine they don't believe in. They don't believe in the draft. They don't believe in Vietnam, but they have to go.

He went on to say:

There's a different scale of values that's beginning to evolve. I think basically we are beginning to evaluate things on a more humanistic side. A lot of us don't seem so technically oriented, though granted we live in a highly technical world.

Then still another young person from Penn State is quoted as saying:

There's just one thing I would like to say. I would like to live for my country, not die for it.

Mr. President, those sentiments really express more eloquenty than I can what I also feel about issues that are at stake, the policies that are under question, and what the objectives are of the people who are walking, speaking, and demonstrating in our city this week.

I would like to add a special note of commendation to the mayor of this city, Mayor Walter Washington, and his chief of police, Jerry V. Wilson. Mayor Washington came to my office the day before yesterday and met with a group of Senators to explore what we might do together to insure that the events of this week were handled with maximum effectiveness. I think he deserves the appreciation and admiration of all of us for the kind of leadership he has provided in opening up this city and these facilities and providing its services, not only for the protection of the citizens who live here, but also for the protection and comfort of those who come here from other States to visit in our Capital. This Capital, after all, belongs to no one of us but to all the people of this country, including those who are here this week.

I wish to quote from the instructions that Chief of Police Jerry V. Wilson gave to the 3,000 members of his force. This is what he had to say:

Members of the force, in handling the many unusual circumstances that arise, shall be patient, discreet and solicitous of the citizens of our own city, as well as the multitude of visitors here during this demonstration . . . Arrests for minor infractions shall be held to an absolute minimum.

It is imperative that every man and every official do his utmost to see that . . . when the demonstration is over . . . the participants . . . may look back on this day with pleasure and that there will linger in their hearts a genuine esteem for our department.

Mr. President, that is the kind of law enforcement officer I endorse; that is the kind of law enforcement, based on justice, compassion, good taste, and a sense of proportion that could have avoided much of the anguish and violence we have seen elsewhere in the country. I cannot praise too highly this fine young law officer, Chief Jerry V. Wilson, for the leadership he has shown, or the mayor of this city.

There is one final note I wish to add for the RECORD. I refer to the meeting in my office Wednesday with a group of Senators. That meeting was attended by the Senator from Idaho (Mr. CHURCH), the Senator from Maine (Mr. MUSKIE), the Senator from Oregon (Mr. HATFIELD), and the Senator from Iowa (Mr. HUGHES). In the course of those discussions we worked out a statement which was later signed by some 19 other Senators. I shall read the statement first and then list the names of Senators who signed it. The statement reads as follows:

BIPARTISAN STATEMENT BY U.S. SENATORS, NOVEMBER 12, 1969

This week thousands of Americans of all ages, concerned about the future of our country, are coming to their Nation's Capital to express their views. The numbers may be unprecedented. Whether or not all citizens agree with their position, we can agree that they have a right to come here peaceably to express what is in their hearts and on their minds.

In order to insure that their stay here in Washington will be peaceful, constructive, and useful, there is a responsibility upon all of us in the Washington area to welcome them and extend our hospitality.

There are some very practical human needs involved in the assembling of this number of people, including sanitation, food and lodging. Mayor Washington has taken the lead in meeting these requirements, to better insure good order in the City and to make these Americans feel welcome.

We appeal to the universities of the area, to the churches and schools and residents, to open their facilities, their hearts, and their homes to their fellow Americans who come in peace to their capital.

The leaders who have organized this week's activities are pledged to a peaceful, constructive assemblage.

It is a matter of the utmost urgency that the people of the Washington area respond in the same spirit.

Because of limited housing and feeding facilities, we strongly urge all persons coming to Washington for the Saturday events not to arrive before Saturday morning and to leave by Saturday evening.

That is, as distinguished from the march and activities of last night and today, and because of the difficulty of housing people overnight and because of the chilly, damp weather.

We further urge that participants bring box lunches and their water supply with them. Persons wishing to offer lodging or other assistance should call 737–8605 (area code 202).

Mr. President, the statement was signed by the following Senators, including the Senator from Ohio (Mr. YOUNG) and the Senator from California (Mr. CRANSTON), who are now in the Chamber: BIRCH BAYH, Democrat, of Indiana; FRANK CHURCH, Democrat, of Idaho; ALAN CRANSTON, Democrat, of California; CHARLES E. GOODELL, Republican, of New York; MIKE GRAVEL, Democrat, of Alaska; FRED R. HARRIS, Democrat, of Oklahoma; PHIL HART, Democrat, of Michigan; HAROLD E. HUGHES, Democrat, of Iowa; EUGENE J. MCCARTHY, Democrat, of Minnesota; GEORGE MCGOVERN, Democrat, of South Dakota; J. W. FULBRIGHT, Democrat, of Arkansas; and WILLIAM B. SAXBE, Republican, of Ohio.

THOMAS J. MCINTYRE, Democrat, of New Hampshire; LEE METCALF, Democrat, of Montana; WALTER F. MONDALE, Democrat, of Minnesota; EDMUND S. MUSKIE, Democrat, of Maine; GAYLORD NELSON, Democrat, of Wisconsin; CLAIBORNE PELL, Democrat, of Rhode Island; WILLIAM PROXMIRE, Democrat, of Wisconsin; ABRAHAM RIBICOFF, Democrat, of Connecticut; RALPH YARBOROUGH, Democrat, of Texas; STEPHEN M. YOUNG, Democrat, of Ohio; and DANIEL K. INOUYE, Democrat, of Hawaii.

Mr. YOUNG of Ohio. Mr. President, will the Senator from South Dakota yield?

Mr. McGOVERN. I yield.

Mr. YOUNG of Ohio. I congratulate and compliment the distinguished Senator from South Dakota on the fine statement he has made today.

I wish to associate myself with the position he has taken. I know that the distinguished Senator from South Dakota has received many scurrilous letters and telegrams denouncing him as a Communist sympathizer, and appeaser, and other vicious epithets.

I think perhaps it is fitting for me at this time to say that the Senator from South Dakota was one of the earliest, if not the earliest, speakers in this Chamber opposing our involvement in the civil war in Vietnam and denouncing the sending of hundreds of thousands of American soldiers there approximately 50,000 of whom have now lost their lives. In addition, some 256,000 have been wounded in combat, many of them miraculously saved because of the advances in medical science, but, nevertheless, many will be mained as long as they live.

The Senator from South Dakota who has been a courageous leader in this fight, and I associate myself with everything he has said today.

Mr. President, it happens that on two occasions, in 1965 and again last year, I spent nearly a month in South Vietnam on a fact-finding mission. I know that he speaks truthfully. Yet, the distinguished South Dakota Senator, who was the recipient of the Distinguished Flying Cross for his heroic services in World War II as a valiant pilot who challenged death in death's own domain above the clouds over a foreign land, has been vilified by many right-wing extremists who question his integrity, none of whom, I am sure, has ever worn the uniform of his country in time of war.

I not only compliment him, but I shall also be glad to be with him on the platform tomorrow in the ceremonies to be attended by so many people from throughout the Nation. Once more, I congratulate this great American who has just spoken here.

Mr. McGOVERN. Mr. President, let me thank the Senator from Ohio for what he has had to say.

It is a fact that, like other Senators, I have received some scrurrilous mail.

It occurred to me that I should confer with the Senator from Ohio as to the proper kind of reply to make to those letters. I know something about his eloquence and imagination in handling that kind of letter the way it should be handled. Perhaps he and I can get together on that question later on today.

I thank the Senator from Ohio very much for his kind words.

COMMUNIST CHINA: AN ASSESSMENT

Mr. DOMINICK. Mr. President, in view of our preoccupation with the problems in Asia, the recent assessment of Communist China by the Committee of One Million, on which I serve as a member of its steering committee, is particularly valuable.

In April of 1969, Lin Piao quoted

Chairman Mao as saying that the Chinese People's Liberation Army is the main component of the state which must do all in its power to engage in all types of revolution around the globe.

After naming the United States and the Soviet Union as its prime enemies, he stated that he and Mao, after Vietnam, would direct their attention to the export of violent revolution throughout Southeast Asia.

Mr. President, he applauded the violent dissenters in this country and called for peoples' wars in Africa, Asia, and Latin America.

I do not believe that this recent statement of the policy of the leaders of Red China should give us any encouragement over its willingness to abide by the United Nations Charter, or to live in peace with its neighbors.

Mr. President, I ask unanimous consent that the text of the statement, "Communist China: An Assessment," be printed in the RECORD.

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

COMMUNIST CHINA: AN ASSESSMENT

Twenty years have elapsed since Mao Tse-tung and his Communist followers completed the subversion and conquest of the China mainland.

For the estimated 650 to 700 million Chinese people the past two decades have been marked by a turbulence and tyranny seldom, if ever, paralleled in 4,000 years of recorded Chinese history.

It is both timely and proper that an assessment be made of Red China today. This report will attempt, as briefly as possible, to provide such an assessment.

On April 1, 1969, 1,512 delegates, handpicked by the supporters of Mao Tse-tung after repeated delays and much difficulty, convened the Ninth Congress of the Chinese Communist Party in Peking's "People's Hall."

Though the Party Constitution adopted by the Eighth Congress in 1956 ordered that a session of the National Party Congress be held annually, none had been called since the end of the second session of the 8th Congress in May, 1958—a span of 11 years.

Why?

Largely because Mao Tse-tung embarked on programs that were to send mainland China into severe convulsions during those eleven years, beginning with his Great Leap Forward and ending with his Great Proletarian Cultural Revolution.

The principal result of the Great Leap was to set back China's economy by uprooting its agricultural plant through the institution of rural communes and by dislocating the small but promising industrial plant the Reds had captured from the Chiang Kai-shek period.

The principal result of the Cultural Revolution has been to unravel the entire fabric of traditional Chinese life, close down its schools, create near-anarchy in cities, towns and countryside and submit an entire nation to the stifling memorization of the Thoughts of Mao Tse-tung, the wisdom of Mao Tse-tung, the omniscience of Mao Tse-tung and the idolatry of Mao Tse-tung.

Between what amounted to a Great Leap Backward and a Revolution Against Culture, the most heavily populated nation in the world has been placed in limbo, literally going nowhere fast in a century when social, economic and political progress are mankind's most urgent business.

According to testimony from the endless procession of refugees from Communist China and by the admission of some of Mao's ardent Western supporters who have been permitted to visit Red China in recent years, most of Mao's much heralded "agrarian reform" programs have been failures. Food grain production alone dropped by five million tons in 1968.

China's industry is still woefully miniscule for a nation with such a vast labor pool. It is particularly retarded in providing consumer goods that would be considered commonplace in any other land—even in other Communist countries.

The simple hoe is still the primary agricultural tool. The bicycle is the most cherished and popular available mode of transportation. Not a single mile of sorely needed new railroad track has been built in the past ten years. Matches, soap, most meats, many vegetables, tobacco and other everyday consumer goods are strictly rationed. Cloth is so hard to obtain that relatives living outside Communist China are urged by their loved ones within to send pieces of yard-goods rather than money in order to provide new patches for worn out clothing.

Even in the field of education where the Communists initially continued the great strides made before the Japanese invasion in reducing illiteracy and expanding the number of schools and teachers in China, Mao's personal campaigns of "leaps" and "anti-culture" have slowed development to a virtual standstill.

During the "cultural revolution," largely as a means of making available large numbers of young people for the Red Guards and the resultant riots and demonstrations, Peking ordered schools closed, colleges and universities shut down, and faculties purged.

It is estimated that since 1966 the stifling effect of limiting all reading, discussion and thinking to the "thoughts" and "works" of Mao Tse-tung, coupled with the closing of schools and the sending of 160,000 competent teachers to work in the countryside in order to learn the "wisdom of the peasants," may have set mainland China's future back more than a decade.

Even the People's Liberation Army newspaper "Red Flag" recently had the courage to admit that the young people of Communist China were becoming bored with reading nothing but Mao's words and suggested, editorially, that perhaps it would be healthier if Red China's youth was exposed to outside writings even though these might, of course, convey "dangerous" ideas.

Only in the field of nuclear weapons where Peking has fanatically concentrated its economic and scientific resources has Communism managed to produce any significant advancements.

By ignoring the needs of the Chinese people, Mao Tse-tung's followers have been able to saturate vast reaches of the world with propaganda, subversion and—in the case of Southeast Asia—outright promotion of terrorism and violent revolution in the name of so-called wars of national liberation.

It is little wonder, therefore, that it took so long to call a Party Congress, particularly after Mao's costly "leaps" and "revolution" led to sharp schisms within the Party hierarchy and forced him to turn to the mob rule of the youthful Red Guards in order to stay in power at all.

Like everything else Mao has tried in China, the Red Guards got completely out of hand. Today Peking rules uneasily over a strife-torn, anti-Maoist and increasingly anti-Communist population of restive peasants, workers and intellectuals only by virtue of the PLA—the misnamed People's Liberation Army.

To keep that army on his side, Mao has paid a tremendous price. He forced the Ninth Party Congress to officially designate his trusted comrade, Defense Minister Lin Piao, as his successor. He gave PLA commanders a disproportionate share of the seats in the Party Central Committee. He has also turned over control of key regions and provinces of mainland China to Lin's generals. Although a dedicated Marxist-Leninist whose famous "thoughts" include an admonition that the Party must always be master of the army—never the reverse—Mao now relies almost entirely on the military to maintain his dictatorship over the Chinese masses.

Aside from Mao and Lin, who runs China today?

First, consider the composition of the new Central Committee elected by the Ninth Congress.

Of the 170 full members, 58 are Communist revolutionary cadres including Mao himself, Seventy-three are PLA military chiefs, including Lin Piao. Thirty-nine appear to represent so-called organizations of the masses—peasant unions, workers groups, etc.

The Ninth Congress was in secret session for 24 days—the longest meeting of a Chinese Communist Party Congress in history This tends to confirm reports that even with handpicked delegates Mao and his closest aides had difficulty in arranging their new Constitution and the composition of the Central Committee.

On April 28, the Committee elected a new Politburo chaired by Mao with Lin Piao as Vice Chairman. The Standing Committee of the Politburo, which formerly consisted of eleven members, was reduced to five to give Mao absolute control of the decision-making process. Aside from Mao and Lin, the others are Chou En-lai, Mao's long-time Premier, Chen Po-Ta and Kang Sheng, both of whom are old-line regulars in Mao's camp.

Of the 21 Politburo members—including the five on the Standing Committee—eleven are from the army—assuring the PLA control of Red China's political affairs in the future.

Since the Ninth Party Congress, two important internal developments have occurred. One is that official Peking publications are suddenly listing Mao—for the first time since he gained control of the mainland in October, 1949—as a co-equal commander with Lin Piao of the Peoples' Liberation Army. This is being interpreted by Hong Kong observers as an indication that Lin's health may be sufficiently in doubt to force Mao to assume a title he so long frowned upon simply to protect the continuity of his grip on the army.

The other development is the emergence of Finance Minister Li Hsien-nien as acting (if not actual) Foreign Minister amid strong indications that he may become Premier if another strong indication becomes a fact: Premier Chou En-lai may be named the figurehead President of the Chinese People's Republic. Peking has become sensitive to the fact that since the purge of President Liu Shao-chi no one has replaced him. When Chou led the delegation to the funeral of North Vietnam's Ho Chi Minh, Cambodian Premier Sihanouk noted that no head of state except himself paid homage to the deceased dictator of Hanoi—not even a "President of the Chinese People's Republic."

In the eyes of Asians—even Communist Asians—this is almost unforgiveable.

Such is the hierarchy which rules China today.

Since it is obvious the military now governs Communist China, what is its strength and composition?

At the present time, Comunist China presents an overall picture of military weakness rather than strength. The People's Liberation Army (PLA) can, of course, draw upon an enormous population base, amounting to perhaps 150 million men of military age. The Chinese Communists themselves claimed in 1958 that there were 170 million people in the "People's Militia." But it is obvious that the economic and technological base of mainland China is capable of supporting only a fraction of such numbers in terms

of all-important equipment and logistics. Fighting on their own territory, the Chinese masses would constitute a formidable problem to any invader. But in terms of offensive capability, Peking is still in no position to take on any first class military power.

The numerical strength of the PLA is estimated to have been between 2,150,000 and 2,540,000 before the outbreak of the Cultural Revolution in 1966. It may be slightly higher at the present time. Most of the estimated 110 to 130 divisions still consist of lightly equipped infantry. There are only seven or eight completely motorized divisions. Tanks number about 3,500 and artillery pieces 6,500. Modernization of heavy equipment is lagging, but there has been a thorough modernization of light weapons since the early 1960's, so that by now nearly all units of the army should have received new rifles and light machine guns.

During the early and middle Fifties, the Chinese Communists received a great deal of assistance from the Soviet Union in building an Air Force. In 1958 the numerical strength of the Air Force reached 3,332 aircraft, including 2,614 jets. The development of the Sino-Soviet dispute, however, brought an end to Soviet aid and throughout much of the 1960's both the quantity and the quality of the Chinese air forces has declined. In December, 1966, the overall strength of the Air Force had dropped to 2,792 aircraft, according to intelligence sources. This figure included 2,354 jets, of which 1,844 were fighters. Only 290 of these had been manufactured after 1960, and nearly 1,200 were more than 8 years old.

The Chinese Communist Navy is still the weakest part of Peking's military establishment, although the adapability of missiles to small surface ships and submarines may soon increase its effectiveness.

The Navy is designed primarily for coastal defense. In addition to an assortment of old destroyers, frigates, escorts and minesweepers, the Chinese surface navy is built primarily around high speed patrol boats of the Osa and Komar classes, which are armed with short-range surface-to-surface missiles. The effectiveness of such vessels—designed by the Russians—was demonstrated in 1967 when one was used to sink the Israeli destroyer *Eilat*. The Chinese are continuing to build these types of ships as well as gunboats and torpedo boats.

The Chinese have perhaps 40 to 50 submarines—all of them diesel-powered. Secretary of Defense Laird reported in May, 1969, that the Chinese Communists do have one Soviet-type diesel-powered G-class missile-launching submarine, although there was at that time no evidence that they had as yet developed a missile for it.

Red China's major military threat to the United States (or the Soviet Union) will come into being when, and if, she develops an ICBM capability. Through September 30, 1969, Red China has detonated nine nuclear devices, including six with thermonuclear materials. It is probable that she now has a limited stockpile of nuclear bombs, and her nuclear capabilities can be expected to grow gradually over the next few years.

The ICBM development program has not, however, progressed as rapidly as had been estimated. The first flight test was expected before the end of 1967, but has not been confirmed. And although tests have been conducted with medium range ballistic missiles (MRBM), no actual deployment has as yet been discovered. Inasmuch as this deployment is now two years behind schedule, either technical or political problems must be the cause of the delay. In any event, testing is continuing, according to Secretary Laird, up to ranges of about 1,000 miles. The intelligence community continues to believe that the Chinese intend to deploy a MRBM system. But even if they were to do so soon they could not have an operational MRBM force until late in 1970. By the mid-1970's they could have a force of 80–100 operational MRBMs, which would pose a direct threat to Red China's Asian neighbors.

A serious military weakness of Communist China is that purely military training has often been sacrificed at the expense of political indoctrination.

Until the Cultural Revolution showdown and the Red Guards convulsion, the military avoided direct intervention in what was developing into a civil war between pro- and anti-Mao factions. When Mao finally ordered the army to support him with force if necessary, many of the local military commanders sided with the anti-Maoists. Consequently, there is considerable speculation that PLA morale is currently at a low ebb.

The current Sino-Soviet dispute dates from about 1956–57. Peking reacted negatively to Khrushchev's "de-Stalinization" speech in 1956, while the Soviets opposed the economic misadventures of the Great Leap Forward. At the 12-nation conference of Communist parties in November, 1957, the Chinese Communists challenged the thesis that there could be a "peaceful transition" to socialism in the capitalist world. A further sharp conflict erupted at the World Communist Conference in November, 1960. Relations were also exacerbated by the Soviet failure to support Communist China militarily during the Quemoy Crisis of 1958, and by what the Chinese called Soviet "capitulationism" at the time of the Cuban missile crisis in 1962.

During 1964–65, Communist China sought to organize an Afro-Asian Conference which would exclude all whites, including the Soviet Union, which it branded a "colonial power" in Asia. The attempt to ban the U.S.S.R. failed, and the Conference had to be abandoned.

This and other Chinese foreign policy reversals almost certainly played a part in the initiation of the Great Cultural Revolution in 1966. The Cultural Revolution adopted an extremely virulent anti-Soviet tone, resulting in the purging of all those elements in Communist China which might be at all favorable to the Soviet Union. For example, there is some evidence that the purged military Chief of Staff, Lo Jui-ching, wished rapprochement with Moscow for the purpose of making common cause in the Vietnam war. And such Party opposition leaders as Liu Shao-shi and Ten Hsiao-ping may have wished better relations with the U.S.S.R. for the purpose of achieving economic assistance for China's internal development.

The Sino-Soviet conflict approached the explosion point in the summer of 1969, following military clashes along their border which were probably provoked by the Chinese. The ostensible reason for the border trouble was Peking's claim to territories which were seized by Tsarist Russia a century ago. The leaders of both Communist giants have now formally warned their peoples of the danger of war with the other. In July and August of this year the Soviet Union substantially increased its military forces along the Chinese border and conducted a series of military maneuvers. Rumors have been circulated concerning a possible preemptive Soviet strike against China. It was in this charged climate that Soviet Premier Kosygin met with China's Chou En-lai in early September, following the death of North Vietnam's Ho Chi-Minh. Since then Peking has agreed to further talks and a Soviet delegation arrived in Peking for preliminary discussions in October.

Communist China's Ninth Party Congress was shrouded in mystery. Only three official releases were distributed and the number of delegates present fell far short of the original plan of the Maoists which called for a "mass rally of 10,000 people" with seven to eight thousand delegates and about 2,000 foreign guests.

Unlike previous meetings of the Party high command, the Congress came forth with more theory than practical planning although they did reaffirm their devotion to Mao and his "thoughts."

Lin Piao's political report received the most attention and the Congress adopted the new constitution. The constitution also gave co-equal status to the Soviet Union and the United States as Red China's number one enemies: the first because of alleged revisionism, "social imperialism" and opposition to Mao, the second because Peking views the U.S. as the leader of capitalist imperialism.

Lin's speech was significant because it amplified Mao's famous statement of October, 1968, in which he declared:

"Therefore, we cannot speak of final victory, not even for decades. We must not lose our vigilance. The final victory of a socialist country not only requires the efforts of the proletariat and the great masses of the people at home but also depends on the victory of the world revolution and the abolition of the system of exploitation of man by man over the whole world. . . ."

Mao also stated at that time, and Lin repeated it during the Congress:

"With regard to the question of world war, there are but two possibilities. One is that the war will give rise to revolution and the other is that revolution will prevent the war."

Lin's political report sounded forth most strongly on two fronts. First, he denounced foes of Mao Tse-tung as "heretics" who must be obliterated from the China scene. He insisted that Mao is both the founder and leader of the international Communist movement following Marx and Lenin. (In the 24,000 words of his message to the Congress, Lin mentioned "Chairman Mao" and "Mao Tse-tung's thought" a total of 148 times.)

Second, Lin discussed revolution at home and abroad. Internally, he declared that the Cultural Revolution must continue to weed out class opponents of Mao. He admitted there are deep divisions within mainland China that make the so-called class struggle between "the socialist road and the capitalist road" so touch-and-go that Communist China is faced with "the danger of capitalist restoration."

Lin asserted that the only hope for Mao's regime is to "exercise all-round dictatorship of the proletariat in the superstructure including all spheres of culture, and strengthen and consolidate the economic base of socialism."

With respect to the outside world, Lin added that Maoists are convinced that the only way to preserve and consolidate political power is to strengthen their rule by internal violence and speed up the export of external revolution.

Lin also quoted Mao as saying that the PLA is "the main component of the state" which must do all in its power "to engage in all types of revolution around the globe."

He specified—in no uncertain terms—that winning the war in Vietnam by forcing America's withdrawal is of prime concern to Peking and that Red China intends to step up its efforts to promote "revolutionary struggle" in Laos, Thailand, Burma, Malaysia, Indonesia, India, Palestine and regions in Asia, Africa and Latin America.

He hailed the "just struggle" of the "proletariat, students and youth, and the masses of black people of the United States" and "all the just struggles of resistance against aggression and oppression by U.S. imperialism and Soviet revisionism."

He even called for a revolution in the Soviet Union but he said after Vietnam, Mao and he would direct their attention to the export of violent revolution throughout southeast Asia.

It is because of this virtual declaration of war against what remains of free Asia by Lin Piao—and Communist China's aggres-

sions against Tibet, India, South Korea, etc.—that so many free Asian leaders are now speaking openly of their fears for the future of their countries.

Finally, Lin reminded his audience at the Ninth Congress of his September, 1965, declaration in favor of so-called "People's Wars." He likened the less developed regions of Africa, Asia and Latin America to the "countryside" in which Communist revolutionaries could launch violence, terrorism and subversion on so many fronts that eventually they would encircle and engulf the advanced countries of Western Europe, North America and Japan, which he described as the "cities." It is just this strategy that succeeded in the conquest of China itself and which has been applied to Communism's aggressive subversion in Vietnam.

Thus, it is appropriate to recall a speech delivered by North Vietnamese General Nguyen Van Vinh in 1966 to the fourth Vietcong Supreme Headquarters Congress:

"China holds that conditions for negotiations are not yet ripe, not until a few years from now, and—even possibly—seven years from now. In the meantime, we should continue fighting to bog down the enemy, and should wait until a number of socialist countries acquire adequate conditions for strengthening their main force troops to launch a strong, all-out, and rapid offensive, using all types of weapons and heeding no borders. What we should do in the South (Vietnam) today is try to restrain the enemy and make him bog down, waiting until China has built strong forces to launch an all-out offensive."

There is nothing in either the words or the actions of the Mao-Lin groups to suggest that any moderation of past policies is in store. The Peking regime indicated at the Ninth Party Congress this year that it feels free to pursue its external revolutionary goals with even greater diligence and virulence.

Behind this conclusion is the Mao-Lin hierarchy's stated objective of "leading" the international Communist movement while spreading the gospel of Mao to the far corners of the world.

Unstated is Peking's undoubted aim of distracting the restless, rebellious populace at home by embarking on "foreign adventures" that may also hold some appeal for China's jingoists.

Regardless of motivation, as the Prime Minister of Malaysia stated so clearly in a recent interview, it is clear that Communist China is dedicated to the subversion of "first, southeast Asia . . . then all of Asia," and thus free Asian leaders approach the future with fear and uncertainty.

In the light of its record and stated objectives, does Red China qualify for membership in the United Nations? Would its admission make the United Nations more united—and more effective? Or less united—and less effective?

MSG—IT SHOULD NOT BE A CONTINUING CONTROVERSY

Mr. DOMINICK. Mr. President, the safety of the food we eat concerns every American. The recent ban on cyclamate sweeteners and the furor surrounding that decision are evidence of the interest of the consuming public, industry, and the Federal Government. This concern, however, is magnified when the goods or products in question are fed to babies.

The recent hearings on baby foods and infant nutrition held by the Select Committee on Nutrition and Human Needs, of which I am a member, pointed up the progress being made in the production of prepared baby foods. The continuing research and efforts made by industry in this area are commendable.

However, the use of certain additives was called into question. In particular, the use of monosodium glutamate—MSG—salt, sugar, and modified starches was criticized. The question was raised whether MSG could be detrimental to the health of infants. Dr. John Olney of Washington University in St. Louis presented evidence that MSG causes brain damage in certain test animals injected with the substance. Conflicting testimony was presented that extensive tests produced no such results and the product was safe for human consumption.

I am not a scientist, but when well qualified scientists categorically disagree, I feel the question has hardly been resolved. Dr. Olney has since stated it is up to the users to disprove his results. Industrial scientists state their experiments do refute those results. The hearings caused great alarm and doubt among mothers and many doctors. The Nutrition Committee has an obligation to see that these questions are answered and the doubt is dispelled one way or the other.

Baby food manufacturers recently announced the discontinuance of use of MSG in the few prepared foods to which it was added. MSG like salt, sugar, and other common substances in general use has been rated by FDA as "generally regarded as safe."

A recent article in the Wall Street Journal of October 27, 1969, quotes Dr. Bernard Oser, head of the private laboratories whose studies resulted in the cyclamate ban. Dr. Oser noted that MSG is a substance the body produces naturally in the normal course of digesting almost any protein. The amounts added are small. He was highly critical of Dr. Olney's experiments.

The article in the Wall Street Journal is an excellent analysis of this scientific dispute and I ask that it be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. CRANSTON in the chair). Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOMINICK. Mr. President, clearly there is a need to answer, as quickly as possible, the conflicting evidence and make an impartial judgment which will put people's minds at ease about MSG. It is unfair to the mothers, doctors and industry to have this controversy continue.

As a member of the Select Committee on Nutrition and Human Needs, I have a particular interest in resolving this issue fairly. During the hearings I specifically requested a scientific panel be set up to resolve the conflicting reports. The chairman, Senator MCGOVERN of South Dakota, requested the Food and Drug Administration to set up special committees to study the evidence and make recommendations. The FDA responded that the proper forum for such work is the National Academy of Science/National Research Council. I believe it is incumbent upon the National Academy to move much more quickly than it has to resolve the MSG controversy and any other similar cases where doubt about safety of products exists, by creating appropriate panels of experts who can make impartial, informed judgments on behalf of the public interest. I certainly feel Dr. Olney, Dr. Oser, and research scientists employed by the respective companies, who have conducted experiments, should be included. If the National Academy cannot move more quickly then, as I suggested at the hearings, I feel the Nutrition Committee must set up such a scientific panel to resolve this and other questions raised concerning additives.

Mr. President, I feel the Nutrition Committee has a responsibility to the consuming mother, doctors, and the industry to help resolve the conflicting testimony. The committee should include any such study in its next report so the record is fair.

EXHIBIT 1

[From the Wall Street Journal, Oct. 27, 1969]

MONOSODIUM GLUTAMATE REMOVAL SPARKS SCIENTIFIC CONTROVERSY ON FOOD TESTING

(By Jerry E. Bishop)

NEW YORK.—A scientific controversy suddenly broke out over the food-flavor-enhancing substance, monosodium glutamate, or MSG.

The three major producers of baby foods said over the weekend they will voluntarily stop using MSG in their products because of publicity about experiments by a St. Louis psychiatrist. In the experiments, mice injected with large doses of MSG were found to have brain damage.

However, in New York, the scientist who heads the same laboratories that did the research that led to the banning of the cyclamate artificial sweeteners defended MSG. Bernard L. Oser, biochemist and toxicologist who heads Food & Drug Research Laboratories in Maspeth, N.Y., said MSG is a substance the body produces naturally in the normal course of digesting almost any protein. The amounts added to food to replace that lost during processing is only a fraction of what the body produces naturally from foods, he said.

The St. Louis experiments, Mr. Oser charged, were "absurd" studies from which to draw conclusions about MSG's safety in foods. He accused the food processors, particularly the baby-food makers, of "panic" and causing a "great deal of unnecessary alarm" in eliminating MSG from foods.

The Food and Drug Administration has asked the National Academy of Sciences to take a look at MSG research.

USED FOR CENTURIES

MSG has been used as a commercial flavor-enhancer for decades and the Chinese are believed to have used it in the form of fermented soybeans for centuries. It was first identified as monosodium glutamate in 1908 in Japan. The Japanese produced and exported it to the U.S. for years under the brand name Ajinomoto.

An estimated 47 million pounds annually are used in the U.S., two-thirds of which is used in processed food. The largest producer is International Minerals & Chemicals Inc., Skokie, Ill. Other producers include Merck & Co., Commercial Solvents Corp. and Great Western Sugar. International Minerals sells a consumer brand of the substance under the name Accent.

Only a small fraction of production apparently goes into baby foods where it is used primarily in the meat-vegetable mixtures. Recently, International Minerals said that only 0.7% of its output is sold to baby-food makers.

The substance is derived from glutamic acid, one of the amino acids that are the

building blocks of all proteins. Whenever a protein is digested it is broken down into its basic amino acids. Some of the glutamic acid is converted naturally into monosodium glutamate during digestion.

The substance is produced commercially by breaking down or hydrolizing proteins that are high in glutamic acid, notably soybeans, wheat or corn gluten, or protein wastes from sugar-beet processing.

The MSG controversy has been brewing for several months. The groundwork was laid last year by the "discovery" of the so-called Chinese Restaurant Syndrome. A physician of Chinese ancestry had asked readers of the New England Journal of Medicine if they, like he, had ever experienced a temporary flushing and headache following a meal in a Chinese restaurant. The medical journal received and published several replies from readers relating similar experiences.

RECEIVED WIDE PUBLICITY

The replies were picked up by news media and given wide publicity, which, in turn, helped trigger research on the syndrome. Some researchers traced the syndrome to excessive amounts of MSG in Chinese restaurant food. The flushing and headaches apparently are experienced by only a few people who eat MSG-laden food.

The current controversy centers over experiments by Dr. J. W. Olney, assistant professor of psychiatry at Washington University in St. Louis In May Dr. Olney published in the weekly journal, Science, a report that infant mice injected under the skin with large amounts of MSG developed brain damage. He raised questions then as to whether there was any risk to the fetus by a pregnant woman eating food containing MSG.

Dr. Olney's conclusion was challenged in a letter to Science, published early last month, by Mr. Oser, Frank R. Blood, a biochemist at Vanderbilt University and Philip L. White. secretary of the American Medical Association's Council on Foods and Nutrition. Mr Oser, in addition to heading his own research concern, is a member of the National Academy of Science Committee on Food Protection.

The three claimed that Dr. Olney's "observations don't have any relevance to the question of the safety of MSG as a food-seasoning agent," largely because the MSG was injected under the skin of the mice.

The critical experiments, the three scientists said, would involve feeding MSG orally to the animals and this had been done using doses far in excess of what is normally used. They conceded such huge amounts fed orally might produce some effects that should be studied further "but in this respect, MSG is no different from common salt, sugar or vinegar."

Dr. Olney replied that his interest was in determining how much MSG had to be in the blood to cause brain damage and it didn't matter how the MSG got into the blood, by injection or orally. He said it was up to "anyone who advocates the use of MSG as a food additive" to prove whether his experiments had any relevance to humans.

Several days ago, Dr. Olney published a second report in which he found a newborn monkey developed brain damage after under-the-skin injections of MSG. The study received wide publicity at the weekend after Dr. Jean Mayer, a Harvard nutritionist, told newsmen during a press conference that he thought MSG should be removed from baby foods if there was any question at all about its safety.

Dr. Olney then told reporters he had conducted experiments but hadn't yet published them in which newborn mice had developed brain damage after being tube-fed MSG in amounts several times that found in a jar of baby food.

CONVINCED OF ITS SAFETY

The three baby-food makers, Gerber Products Co., H. J. Heinz Co. and Squibb-Beech Nut Inc., all said over the weekend that they were removing MSG from baby foods because of the publicity. The substance is used in only a few baby foods, notably the vegetable-meat mixtures. The companies said they were convinced of the safety of the product, however.

Mr. Oser, in an interview, charged that Dr. Olney's experiments of injecting the MSG involved a technique that was completely new and unproven as a method of testing food safety. The proven method, he said, is to administer the substance in the same way that it's taken normally—that is, oral feeding. "Women aren't injected with MSG under the skin and neither are infants," he said. "The route of administration is highly critical" in food testing as any substance can cause damage if given in a certain way, at a certain time and in certain amounts, he added.

The scientist said that officially MSG is in the same class as salt, vinegar and sugar in being recognized as safe, although all three substances can cause damage in animals if given in certain ways and amounts. The lethal effects of massive amounts of salt are well known, he added.

Mr. Oser argued that it's up to Dr. Olney to prove that his method of testing is relevant to MSG use in humans, rather than being up to others to disprove it.

As for the safety of MSG, Mr. Oser said that most people produce more MSG during normal digestion of proteins than they ever receive in processed foods.

Mr. Oser said he agreed that more research has to be done on Dr. Olney's findings and that oral feeding experiments on several species should be done with MSG.

The elimination of MSG from baby foods, he said, "suggests to the public that this is an imminent hazard—but it isn't."

Mr. Oser said his laboratory hasn't any contracts or monetary connections with MSG producers or with the baby food makers; that he was just angered by the "unwarranted" uproar over MSG.

The laboratory is a private concern that does research and consulting on food and drug safety for indsutry and government. Its experiments in which cyclamates caused bladder cancer in rats led to the banning of the sweeteners.

VICE PRESIDENT AGNEW

Mr. YOUNG of Ohio. Mr. President, some millions of Americans must have been astonished and saddened Thursday night listening to and viewing Vice President AGNEW delivering a most dangerous speech or tirade evidently prepared by the more reckless speech writers in the executive branch of our Government. It was startling to view the Vice President of our Nation denounce, threaten, and attempt to intimidate some radio and television commentators appearing on television networks which must be licensed by our Government in order to operate. Then, not satisfied with denunciations of television and radio commenators and questioning their integrity, the Vice President charged up the hill assailing one of the very great and distinguished Americans of our time, Averell Harriman, renowned and respected as a statesman and diplomat of great achievement who has served our Nation and the cause of world peace with patience and dedication and achievement unmatched by any living diplomat of any nation. Let us hope that the owners, officers, and stockholders of the television networks so assailed by Vice President AGNEW will be neither intimidated nor frightened.

There may be many who would say it is best for a Member of the Congress to ignore such ranting and such an uncalled for assault upon Averell Harriman, for example, whose character, reputation, and record of achievement is impeccable. I think, however, that this should not be ignored. We live in a world that has seen the rise of fascism, nazism, and communism. Sometimes those who advocated these vicious "ism's" and made ludicrous, uncalled for statements were either jeered or ignored. I will not give to this uncalled for speech of Vice President AGNEW the charity of my silence.

It seems obvious that Vice President AGNEW has become a major spokesman for the President in the attempt to further subvert public opinion. This sort of intemperate verbal assault is unfortunate, and would set American against American, and is apparently aimed to discredit all those who would question or oppose administration policy in Vietnam.

President Nixon last January stated that the theme of his administration would be to "bring us together." The set speeches prepared for and delivered by the Vice President have been carefully designed to create antagonism and separate Americans.

There must be and there is room in our democracy for legitimate criticism of the press and of radio and television reporting. Let us hope there always will be. However, the Vice President's remarks Thursday night went beyond mere criticism. They were a blatant attempt to discredit and stifle free and open coverage of the news and analyses of news events. Far from being mere criticism, it was an effort to suppress criticism.

His speech was an outright bid to monitor public opinion in favor of subjugating news reporting and making it a tool of whatever political party might occupy the White House. It officially leads us as a nation into an ugly era of suppression and intimidation.

In his harangue the Vice President denounced a great American, Ambassador Averell Harriman. In my considered judgment Averell Harriman is one of the truly great Americans of our time. There is not even one blemish in his long career of public service. As Ambassador-at-Large, his great achievements have been recognized not only in the United States but by the chiefs of state of all of our allies.

Ambassador Harriman has given distinguished and faithful service to the Nation as have few men in our history. He has served as Ambassador to the Soviet Union, Ambassador to Great Britain, Secretary of Commerce, Governor of New York, Under Secretary of State, and chief American negotiator for the Limited Nuclear Test Ban Treaty, to name a few of the high offices which he has held and in which he has performed outstanding public service.

The fact is that Governor Harriman requires no defense from me or from anyone else. In fact, if a man can be judged by his detractors, it is to his

credit that he has been chosen as the latest victim for the Vice President's vituperation.

The fact is that while Ambassador Harriman was patiently negotiating the Limited Nuclear Test Ban Treaty, the now Vice President of the United States was serving as county executive of Baltimore County, Md.

Those dim-witted, unscrupulous, reckless speechwriters in the White House presented the Vice President with a vicious, irresponsible, and untruthful assault on Averell Harriman which he recited perfectly. Averell Harriman as Ambassador at Large for the late President John F. Kennedy achieved the Limited Nuclear Test Ban Treaty with the Soviet Union, which ambassadors for preceding Presidents had been unable to accomplish.

Incidentally, in passing, may I mention that since that achievement, neither the Soviet Union nor the United States has violated any part of that treaty.

It was a grave mistake on the part of President Nixon at the outset of his administration to replace him—and with whom? Of all Republican leaders, Henry Cabot Lodge was the worst choice.

Those White House speechwriters making contemptible reference to Averell Harriman should be challenged to name even one accomplishment of negotiator Henry Cabot Lodge during the more than 10 months that have elapsed with him as chief negotiator in Paris.

The President made a bad appointment if for no other reason than that Henry Cabot Lodge has stated on numerous occasions his affection for Vice President Ky, the flamboyant Air Marshal who fought against his own fellow countrymen seeking national liberation from the French. This fact is well known to representatives of North Vietnam and of the National Liberation Front and is a roadblock toward any possible effectiveness of Lodge as a negotiator.

The fact is well known to representatives of North Vietnam and the National Liberation Front that Henry Cabot Lodge said he regarded Vice President Ky with the affection of a father toward a son. That was the statement of our present Ambassador at the Paris conference, and there has been no accomplishment forthcoming from him.

The Vice President compared network analyses of President Nixon's November 3 speech with reaction of news media to Winston Churchill's efforts to rally his countrymen against Nazi Germany and the efforts of the late, great President John F. Kennedy to rally Americans in the Cuban crises. The fact is that there was criticism by high public officials and press and in media analyses at that time of the positions taken by both of these great leaders, unjustified as it might have been.

Furthermore, Winston Churchill was rallying the British people against the most ruthless aggressor of all time, not in support of a tinhorn corrupt militarist regime such as we are supporting in Saigon—a regime to which the administration has now given a blank check for the lives of thousands of young Americans and for a great part of our national resources. This regime was formed first by 10 generals, nine of whom, including Thieu and Ky, came from North Vietnam. Most of them, including Ky, fought with the French against the forces of liberation at the time the French Government was seeking to reimpose its lush Indo-Chinese empire upon the Vietnamese people.

Reference has been made by me to our late great President Kennedy, when he was rallying the Nation in support of his efforts to protect the Republic from the threat of nuclear weapons positioned less than 90 miles from our shores. That is a far cry indeed from our fighting an immoral, undeclared war in a little faraway country 10,000 miles distant from our shores and of no strategic or economic importance whatever to the defense of the United States.

On the day that President John F. Kennedy was assassinated, the United States did not have one combat soldier fighting in Vietnam. It is true we had approximately 16,000 to 20,000 military advisers, but it was after his assassination that we intervened with hundreds of thousands of our troops in that civil war.

It is obvious that this administration is even more uncomfortable with criticism than preceding ones. Although all of us in public life are subjected to criticism, we had better learn to take it, and not do what was perpetrated Thursday night in the speech of the Vice President.

Rather than to attack the ills afflicting our society that are reported to the people through the radio and television, the administration chooses to attack the media themselves.

Now, more than ever before, there is a need for a reawakening of sound judgment and courageous action to preserve American institutions and American ideals. If the President is sincere in his desire to unite Americans, to bring us together—and I hope he is; he is, after all, my President—he should immediately and forcefully repudiate the divisive remarks of his Vice President.

(This marks the end of the proceedings which, by order of the Senate, were conducted as in legislative session.)

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. JORDAN of Idaho. Mr. President, it has never been a policy of mine to speak ill of any man, and I have no wish now to indict Judge Haynsworth. I have concluded, however, that he does not in my judgment meet the high standards the American people have a right to expect of a Justice of the U.S. Supreme Court.

Many charges have been made against Judge Haynsworth, some of questionable validity and some of no validity whatever. I should like to say at the outset that I have no quarrel with Judge Haynsworth's judicial philosophy, which has been labeled by many as that of a strict constructionist. I believe that a balance of judicial philosophies on the Supreme Court is highly desirable, and on the basis of that belief I was particularly pleased to support the nomination of Warren Burger to be Chief Justice. However, after carefully studying the Judiciary Committee hearings on the nomination, grave doubts arose in my mind as to the wisdom of elevating Judge Haynsworth to the Supreme Court. These doubts are based on my belief in the importance of maintaining public confidence in our judiciary, and my judgment that Judge Haynsworth has failed to appreciate how easily this confidence can be undermined by even the appearance of impropriety on the part of our judges.

Much of the criticism of Judge Haynsworth has centered around his connections with Carolina Vend-A-Matic, a vending machine corporation that he and other members of his law firm founded in 1950. Upon assuming the bench in 1957, Judge Haynsworth resigned from most of the corporate directorships he held, but chose to continue his active participation in this vending firm because, he explained in September to the Judiciary Committee, his connection with this company was not public knowledge. He reasoned that by keeping his involvement with Vend-A-Matic secret, no outside party would be tempted to play upon it in order to improperly affect the outcome of a decision. I believe that this decision is an example of the poor judgment Judge Haynsworth has shown in the handling of his business activities since he went on the bench. He failed to realize that while secrecy might seem to preclude impropriety, it would ultimately make the appearance of impropriety all the more likely.

On June 2, 1969, before his nomination to the Supreme Court, Judge Haynsworth testified before a Senate Subcommittee on Judicial Ethics. He said then:

> Of course, when I went on the bench I resigned from all such business associations I had, directorships and things of that sort.

The President announced the nomination of Judge Haynsworth to the Supreme Court in August. Then in September, this time under oath at his nomination hearings, Judge Haynsworth tells quite a different story about his business activities while on the bench. Some committee members were surprised to hear him admit freely that after going on the bench in 1957, Judge Haynsworth continued to serve as a vice president and director of Carolina Vend-A-Matic until 1963, regularly attending weekly meetings of the board of directors and voting for slates of officers through the years. He received director's fees in amounts as high as $2,600 per year, and his wife served as secretary of the corporation for 2 years while he was on the bench. From an original investment of less than $3,000 in 1950 Judge Haynsworth realized $437,000 in 1963 as his share of the sale proceeds. It may be sheer coincidence that Vend-A-Matic sales showed a sharp acceleration each year that he was serving in the dual

role as vice president and director of Vend-A-Matic and as chief judge of the fourth circuit. This combination of business and judicial duties continued for nearly 7 years.

It is hard to believe that Judge Haynsworth could have forgotten in June the weekly board meetings, the fees he received, and the duties he performed as director of this unusually successful business which had been more lucrative for him than his judge's salary. By this discrepancy in his testimony, Judge Haynsworth set up, in my opinion, his own credibility gap. I do not claim that he deliberately lied to the committee for some ulterior motive. But I believe we have a right to expect of those we elevate to the highest tribunal in the country a forthrightness and mental acuity that would preclude such a discrepancy, even as the result of a lapse of memory.

Judge Haynsworth participated in decisions involving customers of Carolina Vend-A-Matic with no apparent recognition of the doubts his connections could raise in litigants' minds as to the fairness of the decision being handed down. In addition, he sat on several cases in which he had a small, but direct, stock interest. He acknowledges that his participation in one of these cases, involving the Brunswick Corp. was an error, due to a lapse of memory on his part in purchasing Brunswick stock while the case was before his court. He has defended his action in the other cases on the grounds that his interest was not substantial. In all these instances I believe Judge Haynsworth showed poor judgment in not taking the utmost precaution to insure that no connection between his judicial duties and his business activities could be construed.

I have given this matter more than ordinary attention. On October 10 I wrote to the Attorney General stating my belief that this nomination was not a wise one; however, the administration did not see fit to reconsider the choice. On October 20, with great reluctance I reached the conclusion that I could not in good conscience vote to confirm the nomination of Judge Haynsworth. I thought it only fair to notify the administration of my decision, and I did so in a letter of that date to the Attorney General.

I have made no public statement on this matter up to now because I do not intend to try to influence the vote of any other Senator. Each Senator should resolve this issue by his own research of the record and then follow the dictates of his own conscience.

This is not a responsibility a Senator can shrug off lightly. The Constitution divides the responsibility for selecting Justices of the Supreme Court between the executive and legislative branches, and I regard each of these responsibilities as having equal weight. Justices of the Supreme Court serve for life. Thus it is imperative that Senators exercise their constitutional responsibility to investigate and scrutinize the record of Presidential nominees in order to prevent the elevation of unworthy men to the highest judicial tribunal in the world.

Nor do I believe a Senator should be bound by party loyalty on an issue of this magnitude. The selection of Supreme Court Justices should transcend politics. If we fail in this, we shall fail to restore the Court to the position of public esteem which it lost somewhat in recent years.

During my more than 7 years of service in the U.S. Senate few issues have generated more pressure on my office than has the confirmation of Judge Haynsworth's nomination. Support of the President is urged as if it were a personal matter rather than an issue of grave constitutional importance. The only way I can account for this unprecedented wave of interest is the fact that I decided that I could not support Haynsworth and so notified the Attorney General. This notification was sent by letter on October 20.

Since that date administration calls to my State have been legion. Some of my friends have been persuaded to call me even though they have not been provided copies of the hearing record from which they might make an independent judgment as I have done.

I have supported President Nixon on nearly every issue of note thus far in his administration, and I expect that I shall continue to do so. It is most difficult, therefore, to conclude that I would be doing my country a disservice if I concurred in this nomination, against the dictates of my conscience, simply on the grounds of party loyalty. The responsibility of all Senators on this issue is too great to simply make the easy choice of supporting whatever nominee the administration puts forward. So, with a heavy heart, but with a clear conscience, I shall oppose this nomination.

Mr. BAYH. Mr. President, will the Senator from Idaho yield briefly?

Mr. JORDAN of Idaho. I yield.

Mr. BAYH. I have read and listened to the statement of the Senator from Idaho with more than passing interest and with a real feeling of understanding of what he must have gone through over the past few weeks.

Mr. President, I found several of the thoughts expressed in the statement of the Senator are similar to the thoughts I have had over the past 5 or 6 weeks.

I joined the Senator from Idaho and most other Senators in supporting Chief Justice Warren Burger, although there may have been philosophical differences here and there between Judge Burger and me. I share the assessment of this matter made by the Senator in his statement.

I suggest also that I concur in the Senator's assessment that some of the charges made against Judge Haynsworth were questionable and had no validity. I deeply regret that during the hearings a mistake was made, to which I was a party. Two instances that were erroneous regarding the judge's connections were disclosed. I have publicly apologized for that and regret the mistake very deeply.

We are dealing with a sensitive matter, a man's qualifications to sit on the Supreme Court. One might differ as to whether the facts stated in the minority report are grievous enough to disqualify the judge. However, the statements are accurate as I know them.

I salute the distinguished Senator from Idaho. I feel a great deal of camaraderie with him. We do not agree on all issues, but, I think I have some idea of the turmoil the Senator has gone through in reaching this decision.

In the last sentence of the Senator's statement, the Senator spoke for most, if not all of us, who join him in opposition to the nominee when he said:

> The responsibility of all Senators on this issue is too great to simply make the easy choice of supporting whatever nominee the administration puts forward.

This has not been an easy choice for me. I have the feeling that perhaps it has been an even more difficult choice for my friend, the Senator from Idaho. I salute the Senator for the courage he has demonstrated.

Mr. JORDAN of Idaho. Mr. President, I thank my friend, the Senator from Indiana.

Mr. President, I yield the floor.

Mr. BAKER. Mr. President, recently a privately commissioned poll with regard to the attitude of the American people on the nomination of Judge Clement Haynsworth has been brought to my attention. This poll was conducted by the Chilton Research Center, a division of the Chilton Co. of Philadelphia, Pa., a highly reputable organization.

The results of this poll indicate that the American people favor confirmation of this nomination by a vote of approximately 2 to 1. While I do not advocate government by poll, I do believe that it is most important, in fact imperative, that the Senate be aware of the feelings of the American people on this issue.

I ask unanimous consent that the results of this poll be printed in the RECORD.

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

CHILTON POLL

1. Are you aware that Judge Clement Haynsworth has been nominated by President Nixon to be a Justice of the U.S. Supreme Court?

There were a total of 1,063 interviews, 704 or 66% were aware of the Haynsworth nomination.

2. As you know, President Nixon has strongly defended this nomination. Do you believe the Senate should approve or disapprove President Nixon's nomination of Judge Clement Haynsworth to the U.S. Supreme Court?

[In percent]

	Approve	Disapprove	No opinion
Total	44	24	32
Male	46	31	23
Female	42	18	39
Republican	60	13	27
Democrat	33	35	32
Independent	35	24	41
White	46	22	32
Negro	21	44	35
Under $5,000	43	18	39
$5,000 to $15,000	44	25	31
$15,000 and above	49	35	16
East	43	28	29
Midwest	37	29	34
South	51	21	28
West	50	16	34

RECESS UNTIL 2:30 P.M.

Mr. BYRD of West Virginia. Mr. President, if no Senator wishes to speak at the present time, I move that the Senate stand in recess until 2:30 p.m. today.

The motion was agreed to; and (at 1

o'clock and 53 minutes p.m.) the Senate took a recess until 2:30 p.m. the same day.

On the expiration of the recess, the Senate reconvened, when called to order by the Presiding Officer (Mr. HANSEN in the chair).

CONTINUATION OF AUTHORITY FOR REGULATION OF EXPORTS—CONFERENCE REPORT

Mr. MONDALE. Mr. President, as in legislative session, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4293) to provide for continuation of authority for regulation of exports. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The bill clerk read the report, as follows:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4293) to provide for continuation of authority for regulation of exports, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows.

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1969".

FINDINGS

SEC. 2. The Congress finds that—

(1) the availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States;

(2) the unrestricted export of materials, information, and technology without regard to whether they make a significant contribution to the military potential of any other nation or nations may adversely affect the national security of the United States;

(3) the unwarranted restriction of exports from the United States has a serious adverse effect on our balance of payments; and

(4) the uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States both (A) to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and (B) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

(2) It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of abnormal foreign demand, (B) to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities, and (C) to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(3) It is the policy of the United States (A) to formulate, reformulate, and apply any necessary controls to the maximum extent possible in cooperation with all nations with which the United States has defense treaty commitments, and (B) to formulate a unified trade control policy to be observed by all such nations.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information of the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.

AUTHORITY

SEC. 4. (a)(1) The Secretary of Commerce shall institute such organizational and procedural changes in any office or division of the Department of Commerce which has heretofore exercised functions relating to the control of exports and continues to exercise such controls under this Act as he determines are necessary to facilitate and effectuate the fullest implementation of the policy set forth in this Act with a view to promoting trade with all nations with which the United States is engaged in trade, including trade with (A) those countries or groups of countries with which other countries or groups of countries having defense treaty commitments with the United States have a significantly larger percentage of volume of trade than does the United States, and (B) other countries eligible for trade with the United States but not significantly engaged in trade with the United States. In addition, the Secretary shall review any list of articles, materials, or supplies, including technical data or other information, the exportation of which from the United States, its territories and possessions, was heretofore prohibited or curtailed with a view to making promptly such changes and revisions in such list as may be necessary or desirable in furtherance of the policy, purposes, and provisions of this Act. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in the second quarterly report (and in any subsequent report with respect to actions taken during the preceding quarters) made by him to the Congress after the date of enactment of this Act pursuant to section 10.

(2) The Secretary of Commerce shall use all practicable means available to him to keep the business sector of the Nation fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging the widest possible trade.

(b) To effectuate the policies set forth in section 3, the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, such rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. Rules and regulations prescribed in the interest of the national security shall provide that express permission and authority must be sought and obtained to export articles, materials, or supplies, including technical data or other information, from the United States, its territories and possessions, to any nation or combination of nations, if the President determines that (1) such articles, materials, supplies, data, or information would make a significant contribution to the military potential of such nation or nations which would prove detrimental to the national security of the United States, and (2) articles, materials, supplies, data, or information of comparable quality and technology to that sought to be exported are not readily available to such nation or nations from other sources: *Provided*, That express permission and authority shall be required to be sought and obtained, in accordance with such rules and regulations, in order to export to any nation or nations articles, materials, supplies, data, or information with respect to which the President has not made the determination referred to in clause (2), if the President (A) determines such action to be necessary in the interest of national security, and (B) includes in the first quarterly report submitted, pursuant to section 10, after taking such action a full and detailed statement with respect to such action setting forth the pertinent articles, materials, supplies, data, or information; the nation or nations affected thereby; and the reasons therefor. Rules and regulations prescribed under this subsection shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in such section must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of such section.

(c) Nothing in this Act, or in the rules and regulations authorized by it, shall in any way be construed to require authority and permission to export articles, materials, supplies, data, or information except where the national security, the foreign policy of the United States, or the need to protect the domestic economy from the excessive drain of scarce materials makes such requirement necessary.

(d) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(e) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy, except to the extent required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act.

CONSULTATION AND STANDARDS

SEC. 5. (a) In determining what shall be controlled hereunder, and in determining the extent to which exports shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports. Consistent with considerations of national security, the President shall from time to time seek information and advice from various segments of private industry in connection with the making of these determinations.

(b) In authorizing exports, full utilization of private competitive trade channels shall

be encouraged insofar as practicable, giving consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provision shall be made for representative trade consultation to that end. In addition, there may be applied such other standards as criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

VIOLATIONS

SEC. 6. (a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than $10,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or $20,000, whichever is greater, or imprisoned not more than five years, or both.

(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any Communist-dominated nation, shall be fined not more than five times the value of the exports involved or $20,000, whichever is greater, or imprisoned not more than five years, or both.

(c) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed $1,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(d) The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.

(e) Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition. Notwithstanding section 1346(a) of title 28 of the United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Nothing in subsection (c), (d), or (f) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 7. (a) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. 46) shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

(d) In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology. A detailed statement with respect to any action taken in compliance with this subsection shall be included in the first quarterly report made pursuant to section 10 after such action is taken.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 8. The functions exercised under this Act are excluded from the operation of sections 551, 553–559, and 701–706, of title 5 United States Code.

INFORMATION TO EXPORTERS

SEC. 9. In order to enable United States exporters to coordinate their business activities with the export control policies of the United States Government, the agencies, departments, and officials responsible for implementing the rules and regulations authorized under this Act shall, if requested, and insofar as it is consistent with the national security, the foreign policy of the United States, the effective administration of this Act, and requirements of confidentiality contained in this Act—

(1) inform each exporter of the considerations which may cause his export license request to be denied or to be the subject of lengthy examination;

(2) in the event of undue delay, inform each exporter of the circumstances arising during the Government's consideration of his export license application which are cause for denial or for further examination;

(3) give each exporter the opportunity to present evidence and information which he believes will help the agencies, departments, and officials concerned to resolve any problems or questions which are, or may be, connected with his request for a license; and

(4) inform each exporter of the reasons for a denial of an export license request.

QUARTERLY REPORT

SEC. 10. The head of any department or agency, or other official exercising any functions under this Act, shall make a quarterly report, within 45 days after each quarter, to the President and to the Congress of his operations hereunder.

DEFINITION

SEC. 11. The term "person" as used in this Act includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

EFFECTS ON OTHER ACTS

SEC. 12. (a) The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinplate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934).

EFFECTIVE DATE

SEC. 13. (a) This Act takes effect upon the expiration of the Export Control Act of 1949.

(b) All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or section 6 of the Act of July 2, 1940 (54 Stat. 714), shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

TERMINATION DATE

SEC. 14. The authority granted by this Act terminates on June 30, 1971, or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.

And the Senate agree to the same.

EDMUND S. MUSKIE,
HARRISON A. WILLIAMS,
WALTER F. MONDALE,
HAROLD E. HUGHES,
JOHN G. TOWER,
WALLACE F. BENNETT,
EDWARD W. BROOKE,
Managers on the Part of the Senate.
WRIGHT PATMAN,
LEONOR K. SULLIVAN,
HENRY S. REUSS,
THOMAS L. ASHLEY,
Managers on the Part of the House.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. MONDALE. Mr. President, this measure is one which the Senate sent to conference and which liberalizes the export control policy of this Government. It represents the agreement of a majority of the conferees.

I understand the Senator from Utah

(Mr. BENNETT) has some questions concerning the measure.

Mr. BENNETT. I thank the Senator.

Mr. President, I was a member of the conference committee, and I signed the report, so this is not an attempt to upset that report, and I hope it will be approved. But, as is frequently the case, some questions have arisen as to the meaning of some aspects of the report; and, with the cooperation of my friend from Minnesota, I would like to make a legislative record to clear up those questions.

I have four questions.

The first is a question about the proposed act's ability to detect and subject to appropriate control new items and emerging technology of strategic importance.

Under the existing law, to protect against the export, either inadvertent or otherwise, of strategic items not previously identified as such by Commerce, the Office of Export Control controls certain "categories of products not elsewhere classified" called basket categories. These cover groups of similar products rather than individual items and require that before exporting such products the shipper must apply for an export license thereby enabling Commerce to determine whether or not the product is strategic.

Certainly, the new bill does not abolish the basket categories which the President thinks are so important.

I would like to ask my friend whether his opinion is the same as mine.

Mr. MONDALE. Mr. President, obviously the Export Control Office has to have the authority to review items of new commodities and new technology to determine whether or not a license should be required, and to determine in what way the item is related to the export control policy. It is certainly my belief that it was the intention that the office should continue to have that authority.

Mr. BENNETT. Under the present situation, when a new product or a new system or technology originates, it is probably fair to say that it is automatically subject to control, until they have had a chance to review it.

Mr. MONDALE. I do not see how they can pass judgment on it unless they are given the right to look at it. I am sure that is the intent of Congress.

Mr. BENNETT. That would probably mean that, until a question is raised, it will remain under their control.

Mr. MONDALE. That is right.

Mr. BENNETT. And at that time, when an application for a license is filed, they will have to decide whether to——

Mr. MONDALE. I am answering on the basis of first impression, because I do not recall this issue being specifically heard or discussed at the time. But it seems to me to be commonsense that they have to have a right to look at these items to know whether or not a license is to be required. Of course, it has to be done in the context and spirit of the legislation, but it would seem to me that power must necessarily exist in the Export Control Office.

Mr. BENNETT. I am sure that, in the spirit of the legislation, the agency would be expected to look at new programs as soon as possible or as soon as there is any question raised about their exportability.

Mr. MONDALE. As the Senator knows, the legislation clearly prohibits items of significant military status, and surely the export control licensor has to have authority to look at these items under the other provisions of the act.

Mr. BENNETT. Just to nail it down, I have an example here, and it might help make the legislative record.

The Office of Export Control list includes a basket category called "other machines and equipment for treatment of materials by a process involving a change in temperature."

At one time it was thought that perhaps no items of a strategic character were left in this basket. However, Commerce recently received an export application for helium liquefaction equipment to East Germany which the company filled because it was considered to fall only in this basket. A study indicated that the preponderance of this type of equipment is used in research sponsored by DOD and AEC. Had this basket been required to be removed from the Commerce list, the exporter would have been free to ship his equipment without a license and Commerce would not have had the occasion to study it. One of the more important new uses of liquid helium is to cool masers which are used in supersensitive microwave and radar receivers for satellite communication and missile detection. The application for exportation of this item was denied and the equipment was placed under full control.

I am sure the Senator agrees that that is a proper exercise of the responsibility of the Department.

Mr. MONDALE. I agree with the Senator. I do not know anything about this item. I would not know how I could pass judgment on it, and I am sure that that is not what the Senator is asking. However, this is the sort of authority that must remain in the Export Control Office in order to enable it to make its determination as to whether an item within the terms of the act is to be controlled by license or not.

Mr. BENNETT. I have another example I would like to have in the RECORD.

A few years ago a device called the isostatic press first came into commercial production. This has been found to be of great significance in the fabrication of nuclear weapon components, nuclear reactor parts, missile nose cones, and rocket nozzle inserts. Before the existence of this press and its strategic uses could come to the knowledge of the Office of Export Control, such presses and the technology to make them would have been exportable freely, but for the fact that the Office has a basket category on its list called "other machines and mechanical appliances, not elsewhere classified." Such presses could not be otherwise controlled because they were not specifically known and, therefore, could not be named as such on the list.

Today such presses are in a specific entry on the U.S. list and also controlled by Cocom at our instigation.

Since the experience with isostatic presses, other relatively new or hitherto unknown strategic items have been found in this basket and pulled out. Examples are numerically controlled filament winding equipment for solid rocket motor cases and other military items, and batch-type solid rocket propellant mixers.

I thank the Senator, and I shall move on to another question.

In the authority section of the bill, I think some clarification is needed about one of the new, main thrusts of the legislation. This is the matter requiring that the President take into consideration the availability from other countries of articles comparable to U.S. goods, to determine whether the U.S. goods require export licenses. The language of the bill states: "available to such nation or nations from other sources." There is no further explanation as to whether the other sources are limited to nations with which we have defense treaties, or whether they may also include all the free world countries and even Communist nations such as Russia and China, and the rest.

If Czechoslovakia or even Sweden might offer to the Soviet Union some strategic machine-tool or electrical equipment that is reasonably comparable or similar to equipment of ours, would it be necessary for us to make our similar equipment, which might be considered strategic, available to a country behind the Iron Curtain?

Mr. MONDALE. I refer the Senator to the report of the Senate committee on that language, as it appears on the bottom of page 13, which speaks of items available from free-world sources. The language of the statute is silent, I think, on the question which the Senator asked.

Mr. BENNETT. That is why the question was raised.

Mr. MONDALE. The committee language speaks primarily of focusing on the question of free-world alternative sources. I would include Sweden within that definition.

Mr. BENNETT. Yes.

Mr. MONDALE. But a question arises: Suppose an item is available from an alternative source, an item produced in Eastern Europe, but not in one of the so-called free-world countries. I find it difficult to answer this question, although I think the thrust or focus of the bill is on the availability of such items, say from England, West Germany, France, Italy, and Japan.

Mr. BENNETT. The free world.

Mr. MONDALE. Yes; including the Scandinavian countries and other sources of supply that are increasingly capable of producing the same kind of items as the United States. It was the feeling of the committee that it was desired not to deny U.S. businessmen the opportunity to sell such items when the same item could be freely purchased by Eastern European countries from those other sources.

I think that is the focus. We did not deal with this problem in the committee. It is hard for me to answer the question directly.

Mr. BENNETT. Let me turn it around. If the controller or administrator discovered that a certain process was available in Czechoslovakia or Poland, and the Soviet Union, Russia, wanted to pur-

chase it, would the Senator feel that under this law, its availability in another Iron Curtain country would mandate us to permit export of an article manufactured in this country of a similar nature, or for a similar purpose, automatically because it was available behind the Iron Curtain?

Mr. MONDALE. Mr. President (Mr. COOK in the chair), my difficulty in answering that is that I do not think the committee or the Senate considered it, except that our committee language and most of the data we developed before the hearings was directed at sources of supply in the free world.

In addition, it is difficult to answer the question because I suppose we should know something about the kind of item involved. Suppose, for example, that East Germany was producing an early generation of video tape that was similar to video tape produced by U.S. businessmen, and it was simply a question of buying it there or from us. I frankly do not know what the result would be under this statute, because I do not think we focused on it except as the language of the report reflects, and I do not know how large a problem that is. Frankly, I was not under the impression that this was a very significant problem. If it is, it never arose in the hearings or in the debate.

Mr. BENNETT. Apparently the Department of Commerce is concerned about it, and apparently they fear that this bill might take away from them their power to interdict the export of something from the United States that might have military significance to the buyer, because it is available in another country, and that other country might be another Iron Curtain country.

Mr. MONDALE. I think it is very clear that the Export Control Office retains clear authority, indeed a responsibility, to prohibit the sale of American items of military significance. The exact language of the statute appears——

Mr. BENNETT. I have it here; let me read it. It is section 4(b), about half way down.

Mr. MONDALE. Yes. The standard is a significant contribution to the military potential of such nation or nations.

Mr. BENNETT. Yes; and articles, materials, and so on which are not readily available to such nation from other sources.

Mr. MONDALE. Yes. One of the difficulties in this area, of course, is that there are several other statutes that bear upon matters of military significance as well.

Mr. BENNETT. Yes.

Mr. MONDALE. I am not completely familiar with the operation of those statutes, but those are to be read in context with this legislation in dealing with matters of military significance.

Mr. BENNETT. Therefore, the Senator does not feel that the use of the word "and" to connect (1) and (2) would take away from the administrator any power he needs to control the export of articles with military significance?

Mr. MONDALE. When an item is sold for the purpose of making a significant military contribution, it was the intention of the committee, in my view, that it would be restricted by the Export Control Office, under this and other acts.

Mr. BENNETT. Regardless of whether or not it was available from any other source?

Mr. MONDALE. Yes. If that is the intent and the purpose for which it is being sold. But if it is for a peaceful use, then the alternative source consideration would come into play.

Mr. BENNETT. And it would be the responsibility of the Department of Commerce to decide whether or not it had enough significant military application to warrant its being put on the list?

Mr. MONDALE. They would have to determine whether it was for the purpose of contributing significantly to the military potential.

Mr. BENNETT. But they would have the responsibility and the authority to make that determination?

Mr. MONDALE. Yes.

Mr. BENNETT. I thank the Senator.

My third question goes to the meaning of section 4(c). I want to make sure that this provision will not preclude the export administrator from dealing effectively with an exporter who has demonstrated his lack of trustworthiness to handle strategic exports. They can now deal with him by barring him from making any exports whatever, strategic or nonstrategic. Otherwise, such an untrustworthy exporter cannot practically be prevented from evading controls over strategic goods.

Let me turn that around. As the Senator knows, at the present time the Department of Commerce issues general licenses for goods being shipped to free world destinations. These general licenses minimize the paper work and requirements. Once an exporter has a general license, he can go on exporting that particular product or those products without getting a specific license every time.

It seems to me that in our effort to assist businessmen in their exports, we do not want to interfere in any way with the ability of the Department of Commerce to issue these general licenses, because I think the alternative might be more onerous on the business community, and, as indicated, might take away from the Department its chance to protect itself against the unscrupulous exporter. I should like to have the Senator's opinion on this particular problem.

Mr. MONDALE. The violation section of the export control bill before us gives several remedies to deal with exporters who operate fraudulently and in other unlawful ways, in the form of fines, and criminal penalties for aggravated violations. It is my opinion of this measure that the Export Control Office, nevertheless, would retain the authority to refuse to grant a license to an applicant who has proved time and time again his untrustworthiness, to the point where they just cannot deal with him with any faith and confidence whatsoever.

The spirit of the bill, however, is so designed in cases where that does not exist to encourage and facilitate U.S. businessmen involved in nonstrategic items coming within the control of this act.

Mr. President, I read from the committee report on page 15, which says:

> The committee wishes to underscore its belief that the American exports are an inherent part of the economic foundations and wellbeing of this country. The right of American businessmen to freely export its products should not abridge except where necessary to fulfill some overriding national interest.

I do not want my answer to be construed in a way that would frustrate the spirit of what we are trying to accomplish. We had abundant testimony from some of the most responsible business leaders in this country, men from responsible, patriotic corporations, who testified about the extended delays and uncertainties and bureaucratic redtape and the vagueness and the frustrations involved in dealing with the Export Control Office.

This is not the case of an untrustworthy businessman. This is the case of a reluctant and timid bureaucracy that would not encourage the businessmen to become actively engaged in trading in nonstrategic items. And it is the hope and spirit behind the legislation not only to passively permit them to engage in the trade of items not of military significance, but also to administer the act in such a way that they are encouraged to become involved where the national interests of this country are concerned.

Having said that, if there is a businessman who has proved his utter untrustworthiness, whose applications cannot be believed, and whose words cannot be believed, I think it would be the intent of the legislation that the Export Control Office could refuse to do business with him.

Mr. BENNETT. With respect to exporters who, on the contrary, have exhibited trustworthiness and dependability, as I understand it, under the present setup they issue him a general license to export certain things, and he does not have to keep coming back for a special license. Would the Senator see any reason to change that provision?

Mr. MONDALE. That particular policy, I think, is based more on the item than on the morality of the applicant.

Some licenses are granted on general licenses and others on special licenses. It is not my understanding of the testimony that that was related to the trustworthiness of the applicant.

As I understand the question, it goes to the matter of whether the Export Control Office can refuse to grant a license to a businessman who has manifestly demonstrated his untrustworthiness. I think that power must reside in them.

Mr. BENNETT. Perhaps two questions are involved here. The other refers to the pattern of using a general license on items that have been released from any control.

Does the Senator see any reason for changing that pattern?

Mr. MONDALE. We did not in this legislation rule in favor of a special license as against a general license or in favor of a general license against a special license. That was not the intent of the legislation.

What we did want to do was, first of all, change the standards so that they

did not include economic significance, because obviously any commercial bargain has economic significance. So, we wanted to change the standards so that it would be limited to significant military application, and we wanted to deal with the area within which items are freely available elsewhere and only the U.S. businessman is prevented from participating because of our unilateral restrictions.

I do not think we intended to draw any conclusions about what device is utilized by the Export Control Office, to effectuate the intent of whether they use a general or special license, or devise some new method of controls, so long as they give effect to the purposes and intent of the new law.

Mr. BENNETT. Mr. President, in reading the new law, there is some question whether it did not require the Control Office to allow people to export nonstrategic material without a license and just allow them to go free. This, I think, should be cleared up.

Mr. MONDALE. Mr. President, I understand that a general license is the equivalent of no license. A special license is one issued pursuant to a specific application requirement. The only way I can answer is to refer the Senator to the language of the bill which, I think, tries to draw a distinction, which obviously will change depending on the facts in each case, to determine in which case there should be free availability to the markets and in which cases it is determined that the item is of sufficient military application—a fact that the Export Control Office must determine.

I would point out in making this clear that one of the compromises made in the bill was to provide in this standard that the President still retained the power to control any item he deems necessary to control.

Mr. BENNETT. Mr. President, I think the question is an administrative one. And I think the Senator has answered it, at least to my satisfaction.

As I understand the answer, if the administration wants to use a general license for items that are generally available in order to get some information out of the issuing of the license, the bill would not prevent it.

Mr. MONDALE. The Senator is correct. And my answer must be given in the context of the bill we are now dealing with and the hope for a relaxation of the bureaucratic restrictions and a relaxation of the export control restrictions where items not of significant military application are freely available elsewhere.

That is the basic thrust. However, this is not only a passive determination by the Senate, but also an affirmative hope that we are encouraging a support of the U.S. businessmen. This is not only a technical act, but also a symbolic step made by the U.S. Congress to tell the American businessmen that we support them in their efforts to become involved in this market.

Mr. BENNETT. Mr. President, I thank my friend, the Senator from Minnesota.

My last question refers to another practical problem. Under section 4(a)(1), the Secretary is required to review the commodity control list in order promptly to make such changes in provisions as may be necessary or desirable. He is further required to report to Congress the action he has taken in the second quarterly report after the date of the enactment of this act.

In other words, he has roughly 6 months within which he must make his first report. It is my understanding that in addition to the commodities under international control, the United States maintains unilateral control of approximately 1,200 categories in which are grouped many thousands of separate commodities.

The administration wants to be perfectly clear that the bill does not require them to report on every one of these 1,200 categories within 6 months.

Mr. MONDALE. Mr. President, I think the language seeks to achieve, by referring to the second quarter, as full a response as possible. In other words, I believe it is the spirit and desire of the act that the changed policy called for by the bill will be substantially implemented with a 6-month period. It does not require and tie them down to a terminal date that cannot be, for reasonable grounds, avoided.

What it asks for after the 6-month period is that they continue to make subsequent reports to us with respect to the actions they have taken following that quarter.

Mr. BENNETT. Mr. President, I think the Senator from Utah agrees with the Senator from Minnesota. It is all deliberate speed or all reasonable speed.

Mr. MONDALE. I do not like that phrase too much. It took 16 years, as I recall, to achieve all deliberate speed.

Mr. BENNETT. But the Secretary of Commerce would not be considered to have violated the law if in the first report he had not succeeded in making a report on all the commodities.

Mr. MONDALE. That is correct, with this caution: We were anxious not to tie the Secretary down to a terminal date that could not be accomplished in reasonable terms under the statute; but we did state the second quarter because we were hoping that, to the extent reasonably possible, he could adjust export control policies consistent with this bill by then. But we are not tying him down to that. We just ask him to continue and report in later quarters the subsequent actions he takes.

Mr. BENNETT. My contact with the representatives of the Department indicates that, being a new broom, they are anxious to sweep clean and to get that job done as quickly as possible. I am sure that there will be no question of lack of cooperation on that point of view.

Mr. MONDALE. I hope the Senator is right. What we hope to do here, in part, is to take part of the responsibility off their shoulders. Too often, we leave administrators in a no-man's land. They are damned if they do, and they are damned if they do not. They have to sit there and try to judge not only what the law might provide but also what the congressional reaction is going to be. In this bill we try to take some responsibility for this revised policy.

They have a clear mandate under this bill to get the job done in 6 months, if it is possible. But we are not in a position to know whether that is reasonable. We do not know enough about the office. So, in effect, it is an appeal for quick action but, accompanying it, an expression on our part that it might not be possible within that time.

Mr. BENNETT. I am sure there is a problem of budget here and a problem of the size of staff. I hope, as does the Senator from Minnesota, that they will move as quickly as possible and be able to report as much progress as possible in the 6 months.

Mr. President, I wish to express my appreciation to the Senator from Minnesota, the manager of this bill, and to join him in suggesting that the report be agreed to.

Mr. MONDALE. May I respond to the Senator by stating how much those of us on the majority side appreciate his thoughtful and deep concern in the consideration of this bill and in the conference. All of us on this side of the aisle are deeply impressed by his thoughtfulness and his fairness. This is a much stronger and a much sounder bill because of the contribution of the Senator from Utah. I wish to express my appreciation.

Mr. BENNETT. I appreciate the Senator's remarks.

Mr. MONDALE. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to.

Mr. MONDALE and Mr. BYRD of West Virginia moved to reconsider the vote by which the conference report was agreed to.

Mr. BENNETT moved to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

RANDOM SYSTEM OF DRAFT INDUCTION

Mr. STENNIS. Mr. President, as in legislative session, I announce, for the information of the Senate, that the Committee on Armed Services received testimony this morning from Secretary of Defense Melvin R. Laird, Assistant Secretary of Defense for Manpower Roger T. Kelley, and Gen. Lewis B. Hershey, Director of Selective Service, on H.R. 14001, which would permit the President to initiate a random system of selection to determine the order of induction. The bill would repeal one sentence of the Selective Service Act of 1967 which prohibits this discretionary authority on the part of the President.

Subsequently, after receiving the testimony, the committee voted unanimously to report H.R. 14001 without amendment, with all members being recorded in favor.

The committee report will be filed with the Senate today. It is anticipated that the bill will be considered on the floor of the Senate at an early date.

Mr. President, as of now, I think the feeling and the atmosphere of the Senate concerning this bill is that it will be passed, after discussion of some points that would otherwise be offered as amendments. I do not believe they will be offered.

The committee has planned and announced comprehensive hearings on the entire subject of the Selective Service Act, beginning near February 1, 1970. That seems to be acceptable, under the circumstances, for this year, and I hope the bill can be passed following the discussion on the question of the nomination of Judge Haynsworth. Of course, it is up to the leadership as to when the bill will be considered on the floor of the Senate. It needs to be passed and sent to the President so that plans can be made for its operation.

ORDER FOR ADJOURNMENT TO 10:30 A.M., MONDAY, NOVEMBER 17, 1969

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:30 a.m. on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR BYRD OF WEST VIRGINIA ON MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, immediately following the prayer and the disposition of the reading of the Journal, the junior Senator from West Virginia (Mr. BYRD) be recognized for not to exceed 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the speech by the Senator from West Virginia (Mr. BYRD) on Monday next, there be a period for the transaction of routine morning business as in legislative session, to extend until 12 o'clock noon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Will the speech of the Senator from West Virginia be as in legislative session or in executive session?

Mr. BYRD of West Virginia. The speech of the Senator from West Virginia will be in executive session. It will be with reference to the nominee on the Executive Calendar.

ADJOURNMENT TO 10:30 A.M., MONDAY, NOVEMBER 17, 1969

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in executive session, in accordance with the previous order, that the Senate stand in adjournment until 10:30 a.m. on Monday next.

The motion was agreed to; and (at 3 o'clock and 7 minutes p.m.) the Senate adjourned until Monday, November 17, 1969, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 14, 1969:

U.S. MARSHAL

Harry Connolly of Oklahoma to be U.S. marshal for the northern district of Oklahoma for the term of 4 years, vice Doyle W. Foreman.

PUBLIC HEALTH SERVICE

Dr. Jesse Leonard Steinfeld, of California, to be medical director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 14, 1969:

IN THE AIR FORCE

Maj. Gen. Royal B. Allison, [redacted] FR, Regular Air Force, to be assigned to positions of importance and responsibility designated by the President, in the grade of lieutenant general, under the provisions of section 8066, title 10, of the United States Code.

EXTENSIONS OF REMARKS

PLYMOUTH, IND., PILOT NEWS ENDORSES FULL FUNDING OF CLEAN WATER ACT

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 13, 1969

Mr. BRADEMAS. Mr. Speaker, under unanimous consent. I insert in the RECORD an excellent editorial from the October 6, 1969, issue of the Plymouth, Ind., Pilot News strongly endorsing full funding of the $1 billion authorized under the Clean Water Restoration Act of the current fiscal year for programs to help support State and local pollution control programs:

LET'S HEAR IT FOR CLEAN WATER

Striking while the iron is hot is a maxim that has political as much as, if not more than, any other application.

In American politics, this would appear to be a vintage year for striking on some long-standing and basic issues.

Currently we have the drive to abolish the Electoral College in favor of direct popular election of the president. With the near-disaster of the 1968 election still reasonably fresh in the public mind and the political climate therefore favorable as perhaps never before, the House has passed and President Nixon has now come out in favor of the proposed constitutional amendment. There is now just the faintest chance that the procedure for electing the American president may be rescued from the 18th century and brought into the 20th by 1972.

Earlier we had taxes, the rare spectacle of congressmen in numbers exercising themselves not, as usual, over raising more but over simplifying, even easing, the citizen's burden. With the signals of an imminent taxpayers' revolt flashing all over the horizon, it was clear that the time for tax reform had clearly come. The final results aren't in yet, but both Congress and the administration have taken advantage of the mood of the moment to tackle the most far-reaching overhaul of the tax system in recent history.

In this grab bag of issues, there is yet another item, not as exciting perhaps but probably even more important in the long run, where, hopefully, Washington will show itself equally willing to follow where pubic opinion leads.

For a long time now pollution has rivaled the weather as a subject generating a great deal of talk but precious little action. We all know by now what we are doing to our environment, the dire predictions for the near future and how far we are falling short in taking the steps necessary to prevent them from coming to pass.

The public is clearly in favor of action. A recent Gallup Poll reported 85 per cent of the population concerned about water pollution and 73 per cent ready to spend money—i.e., taxes—to combat it. Washington also seemed to be in step with the passage of the Clean Water Act back in 1966, which was supposed to channel a steady flow of federal funds into state and local pollution-control programs.

Unfortunately, the flow has been more of a trickle. Actual fund appropriations have consistently fallen short of clean-water authorizations. In 1968, $450 million was authorized and $203 million finally appropriated. In 1969, it was $214 million appropriated against $700 million authorized. In the current budget, the administration has again asked for $214 million, while Congress authorized a round billion.

It appears, however, that public sentiment, as expressed through a Crusade for Clean Water waged by a coalition of national organizations ranging from the League of Women Voters to the United Steel Workers and the Izaak Walton League, instead of the administration may have its way on this one.

It is sorely needed. Without the promised federal funds, the cleanup program would eventually collapse despite efforts by local governments, which have passed bond issues to raise their share of needed funds, and even, increasingly, industry. And that, with the consequent accelerated deterioration of our water resources, is something we can much less afford.

RARICK REPORTS ON SUPREME COURT'S "NEVER-NEVER" STANDARD

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 13, 1969

Mr. RARICK. Mr. Speaker, today I reported to the people of my district, explaining to them the "never-never" standard of freedom which the Supreme Court has imposed in our country. The Americans are never right; and the Communists are never wrong.

I submit the following report:

I'm John Rarick, your Representative with another report to you from your nation's capital.

As we Americans watch what is taking place in our country, many wonder who or what is in control—and responsible.

I've had the opportunity to make several trips to Louisiana recently. It is always refreshing to get back home where people