for the Smithsonian Astrophysical Observatory for the purpose of furthering scientific knowledge, and for other purposes; to the Committee on House Administration.

By Mr. ECKHARDT (for himself, Mr. BOLAND, Mr. HALPERN, Mr. HARRINGTON, Mr. HATHAWAY, and Mr. ROYBAL):

H.J. Res. 985. Joint resolution to create a joint congressional committee to review, and recommend changes in, national priorities and resource allocation; to the Committee on Rules.

By Mr. KAZEN:

H. Con. Res. 450. Concurrent resolution urging the adoption of policies to offset the adverse effects of governmental monetary restrictions upon the housing industry; to the Comimttee on Ways and Means.

By Mr. WATSON:

H. Res. 709. Resolution to express the sense of the House of Representatives that the United States maintain its sovereignty and jurisdiction over the Panama Canal Zone; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 and rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BLANTON:

H.R. 14838. A bill for the relief of Dr. Pio Albert Pol y Zapata and his wife, Dolores S. Alvarez de Pol; to the Committee on the Judiciary.

By Mr. NEDZI:

H.R. 14839. A bill for the relief of Vito Serra; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

329. By the SPEAKER: Petition of Henry Stoner, York, Pa., relative to foreign policy; to the Committee on Foreign Affairs.

330. Also, petition of the City Council, Springfield, Ill., relative to preservation of the Lincoln Homesite within the National Park System; to the Committee on Interior and Insular Affairs.

331. Also, petition of the Palau Legislature, Koror, Palau, Western Caroline Islands, Trust Territory of the Pacific Islands, relative to the use of land in the Palau District by the U.S. Government for military purposes; to the Committee on Interior and Insular Affairs.

332. Also, petition of Mrs. H. L. Jordan, Bellevue, Wash., et al., relative to appointments to the U.S. Supreme Court; to the Committee on the Judiciary.

333. Also, petition of the Board of Supervisors, Kalamazoo County, Mich., relative to Federal revenue sharing; to the Committee on Ways and Means.

SENATE—*Monday, November 17, 1969*

The Senate met in executive session at 10:30 a.m., and was called to order by the Acting President pro tempore (Mr. METCALF).

The Reverend Dr. Julius Mark, rabbi emeritus of Temple Emanu-El, New York City, N.Y., offered the following prayer:

"Give me understanding and I shall live," cried the ancient psalmist.

Most fervently do we echo this prayer, O our Heavenly Father. We live in a time of turbulence, confusion, and violence. Our hearts yearn for peace, but there will be no peace unless there is first understanding, firmly founded on justice, in our cities and in the world.

We pray that Thou mayest inspire us, O Master of the universe, that we may be guided by the wisdom of the prophet who declared more than 2,500 years ago that "the work of righteousness shall be peace and the effect of righteousness quietness and confidence forever."

We ask Thy blessing upon the President of our country who bears the awesome burdens of the high office to which his fellow citizens have elected him, upon the Vice President who presides over this great legislative body, the Senate of the United States, and all who have been entrusted with the guardianship of our rights and liberties.

Give all of us understanding that our Nation and all nations may live in peace and tranquillity. Amen.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia (Mr. BYRD) is recognized.

Mr. MANSFIELD. Mr. President, will the Senator from West Virginia yield to me, without losing his right to the floor or having his time impinged upon?

Mr. BYRD of West Virginia. I yield.

THE JOURNAL

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, November 14, 1969, be dispensed with.

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

WAIVER OF CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the call of the calendar of unobjected to bills, under rule VIII, be waived.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that, after the remarks of the distinguished senior Senator from West Virginia, there be a period for the transaction of routine morning business, not to extend beyond 12 o'clock noon, unless asked for, with statements therein limited to 3 minutes.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

Mr. MANSFIELD. I thank the distinguished Senator from West Virginia for yielding.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

SUPREME COURT OF THE UNITED STATES

The Senate, as 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. BYRD of West Virginia. Mr. President, the Senate is now considering one of the most important matters that will come before it during this Congress. As Senators, we are charged with the responsibility of deciding whether the Senate should advise and consent to the nomination of Judge Clement F. Haynsworth, Jr., to be an Associate Justice of of the United States.

The decision we make may have profound effect upon our Federal judicial system and upon the Nation.

I have reviewed the record compiled by the Senate Judiciary Committee, of which I am a member, and I am persuaded that this nomination should be confirmed.

In my considered judgment, the opposition to this nomination does not rest on a sound basis.

Each Senator has the obligation to exercise his responsibility of deciding whether to advise and consent to this nomination according to his own best lights. I do not question or impugn the motives of any of the opponents of this nomination.

However, it is obvious to me that the real motive forces behind the opposition to this nomination are certain powerful economic and bloc pressure groups, and, in saying this, I do not speak critically of them. Specifically, I refer to the NAACP, certain organized labor groups, and the so-called liberal establishment which controls much of the news media of this Nation and which cannot reconcile itself to the results of the last presidential election.

The truly paramount issue involved in this nomination is whether these groups will be able to exercise a veto power over the appointments to the Supreme Court made by the President of the United States.

I hope that the Senate will consent to this nomination and let the people of the country and these groups know that the Supreme Court is not the privileged preserve of those of a certain ideological bent which was repudiated at the ballot box last fall.

Most of the public opposition to this nomination expressed by various Senators seems to be connected with charges

that Judge Haynsworth is guilty of a breach of judicial ethics and conflict of interest, and that he has not been candid with the Judiciary Committee.

The facts are all set out in the record compiled by the Judiciary Committee on this nomination. I urge my colleagues to judge these issues on the basis of the established facts—not rumors, innuendos, and insinuations.

Let us look at the record. If we do so, and if we will exercise an independent judgment—not influenced by pressure groups—I am satisfied that a majority of this body will share my conclusion that these charges, that these accusations, are without substance. To the contrary, they are merely being used to confuse the people. The real opposition is based on judicial philosophy, nothing more, nothing less; judicial philosophy, pure and simple.

Before we consider these charges and determine what the facts and the applicable law are as to each. I think it pertinent to make one further observation. It is quite easy for one person to demand that the conduct of another be above reproach. It is easy to determine that the one of whom this high standard is demanded does not measure up.

But I would remind my colleagues that the demanding of rigorous standards of conduct and the imputation of bad motives do not constitute a one-way street.

Before proceeding to consider each of the charges involving alleged improprieties or conflicts of interest made against Judge Haynsworth, we should first briefly consider the applicable statute, the applicable Canons of Ethics, and court decisions interpreting them.

Title 28, United States Code 455 provides:

> Any justice or judge of the United States shall disqualify himself in any case in which he has a *substantial* interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceedings therein.

Canon 29 of the Code of Judicial Ethics of the American Bar Association states:

> A judge should abstain from performing or taking part in any judicial act in which his *personal* interests are involved. If he has personal litigation in the court of which he is a judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

Under the statute, the question is quite clearly whether Judge Haynsworth had a "substantial" interest in the outcome of any litigation before him. Under canon 29, the question is whether Judge Haynsworth's "personal interests" were involved in any such litigation.

There is no escape from a careful analysis of each fact situation. The "substantial interest" referred to in the statute and the "personal interest" referred to the canon are in regard to a pecuniary, material interest in the outcome of the litigation.

In undertaking to determine the kind and degree of the "substantial interest" referred to in the statute and the "personal interest" referred to in the canon almost all of the decisions speak in terms of a "direct" or "immediate" interest, as opposed to a "remote" or "contingent" interest in the outcome of the litigation. A decision of a New York appellate court made this point as follows:

> The interest which will disqualify a judge to sit in a case need not be large, but it must be real. It must be certain, and not merely possible or contingent; it must be one which is visible, demonstrable, and capable of precise proof. *People* v. *Whitridge,* 129 in N.Y Supp. 300, 304.

The Federal courts of appeals have consistently stated the rule that a Federal judge is under as great a duty to participate in and decide a case when he is not disqualified by the provisions of 28 U.S.C. 455 as he is to rescue himself when he is disqualified by the provisions of that statute.

For instance, the First Circuit Court of Appeals stated in 1961, in the case of *In re Union Leader Corp.*, 292 F. 2d 381, 391:

> There is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.

The above statement was quoted with approval by the Second Circuit Court of Appeals in 1968 in the case of *Wolfson* v. *Palmieri*, 396 F. 2d 121.

Applying these principles of law to the various facts of the cases, let us first consider the case which the opponents of this nomination consider as a principal charge against Judge Haynsworth. This, of course, is the case of *Darlington Manufacturing Co.* v. *National Labor Relations Board,* 325 F. 2d 682.

The facts of this case are well known. At the time Judge Haynsworth participated in the decision of this case he owned a one-seventh interest in Carolina Vend-A-Matic Co., Inc. This was a small closely held corporation engaged in the vending machine business which he and others had established in 1951. During 1963, the year in which the judge participated in the Darlington case, approximately 3 percent of Carolina Vend-A-Matic's business was with textile mills owned by Deering Milliken Corp., which owned the controlling stock interest in Darlington Manufacturing Co. During that year, Carolina Vend-A-Matic submitted bids on three contracts with textile mills owned by Deering Milliken, and was successful in obtaining only one contract. One of the two unsuccessful bids involved a contract much more lucrative than the one which was awarded.

It was firmly established by expert testimony given to the Judiciary Committee that it is not, and never has been, the rule that a judge should disqualify himself because he owns stock in a company which does business with a party litigant. Accordingly, it was clearly established that Judge Haynsworth not only did not act improperly in participating in the decision of the Darlington case, but that he was under a legal duty to sit as a judge on the case.

The Judiciary Committee was privileged to receive the testimony of the Honorable Lawrence E. Walsh, chairman of the American Bar Association's Standing Committee on the Federal Judiciary, concerning this precise matter. The distinguished lawyers who were members of the ABA committee exhaustively and painstakingly studied the detailed facts of Judge Haynsworth's participation in the Darlington case.

The findings of the ABA committee are summarized by the following quotation, at pages 138 and 139 of the hearings, from the testimony of Mr. Walsh, chairman of the ABA Standing Committee on the Federal Judiciary. He said:

> The Committee also considered the suggestion which has been circulated that Judge Haynsworth had, on one occasion, failed to disqualify himself in a case in which he was alleged to have had a conflict of interest. Our examination into that case (*Darlington Manufacturing Company* v. *NLRB*, 325 F. 2d. 682) satisfied us that there was no conflict of interest and that Judge Haynsworth acted properly in sitting as a judge participating in its decision
>
> Briefly stated, Judge Haynsworth held a one-seventh interest in Carolina Vend-A-Matic Company, an automatic vending machine company which had installed machines in a substantial number of industrial plants in South Carolina. Among the plants which it served were three of twenty-seven owned in whole or in part by the Deering-Milliken Company which was a party to the proceeding before Judge Haynsworth's court. The annual gross revenues from the sales in the Deering-Milliken plants were less than 3% of the total sales of Carolina Vend-A-Matic. The plant involved in the case before the court was not one serviced by Carolina Vend-A-Matic.

Continuing to quote from the testimony of Lawrence Walsh, representing the viewpoint of the ABA Standing Committee on the Federal Judiciary:

> Judge Haynsworth had no interest, direct or indirect, in the outcome of the case before his court. There was no basis for any claim of disqualification and it was his duty to sit as a member of his court.
>
> 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.

Of course the standing committee, at a later date, met to reconsider the accusations against Judge Haynsworth, and again it endorsed his nomination. That endorsement however, was not unanimous.

The committee also heard the testimony of Mr. John P. Frank, who is recognized as the leading authority on the subject of judicial disqualification. In addressing himself to the issues raised by the Darlington case, Mr. Frank testified:

> In the light of the overwhelming body of American law on this subject and indeed I think without exception law on this subject and indeed I think without exception, I have reviewed the cases comprehensively for this appearance, being aware of its gravity and have worked on the matter previously, and I cannot find a reported case in the United States in which any Federal judge has ever disqualified in circumstances in the remotest degree like those here. There was no legal ground for disqualification.

I remind Senators that the witness whose testimony is being quoted, John P. Frank, is one of the outstanding authorities on judicial disqualification. He said:

> It follows that under the standard Federal rule Judge Haynsworth had no alternative whatsoever. He was bound by the principle

of the cases. It is a judge's duty to refuse to sit when he was disqualified, but it is equally his duty to sit when there is no valid reason not to. It is possible that your committee may wish to change the rules of disqualification. It is possible that one of the committees, Senator Bayh's committee or another, may wish to make recommmendations for altering of 28 U.S.C., section 455. But under the law as it has clearly existed to this minute and as it existed on a given day in the fall of 1963, I do think that it is perfectly clear under the authorities that there was literally no choice whatsoever for Judge Haynsworth except to participate in that case and do his job as well as he could. (Hearings, pages 115–116).

This persuasive and compelling testimony should lay to rest the question of the propriety of the participation of Judge Haynsworth in the Darlington case.

In addition, on September 2, Senator HRUSKA requested the U.S. Attorney General to review the Darlington matter, and in response to that request, the Honorable William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, wrote a letter to the Senator which is a part of the record. Mr. Rehnquist came to the same conclusion as did Mr. Walsh and Mr. Frank, and advised that it was perfectly proper for Judge Haynsworth to sit on that case, and that, indeed, it would have been improper for him to fail to do so.

So, Mr. President, the American Bar Association's Standing Committee on the Federal Judiciary, as well as leading authorities on the subject of judicial disqualification, found no impropriety in Judge Haynsworth's conduct, and they supported his nomination.

However, there are those who fault the Rehnquist memorandum because it did not mention a decision of the Supreme Court of the United States entitled *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U.S. 145. The opposition to Judge Haynsworth says that the omission of any discussion of this case is a fatal flaw of the Rehnquist memorandum and renders it worthless. The opposition also claims that the decision of the Supreme Court in the Commonwealth Coatings case conclusively establishes that Judge Haynsworth was guilty of conflict of interest and other improprieties in the Darlington case and many other cases.

It is time for this contention to be thoroughly exploded.

In the first place, this decision overruled the decision below in the First Circuit Court of Appeals and gave a new interpretation of section 10 of the Arbitration Act, 9 United States Code, section 10. The decision was rendered by the Supreme Court on November 10, 1968. Any new principle of law which it announced was not in effect in 1963 when Judge Haynsworth participated in the Darlington decision. As a matter of fact the decision in Commonwealth Corporation was rendered after the decisions of each and every one of the cases as to which complaint is made about Judge Haynsworth.

How any judge could be expected to divine prior to November 18, 1968, what new rule the Supreme Court might announce and be guided thereby is beyond my comprehension or any other Senator's comprehension.

Elemental due process demands that the conduct of an ordinary citizen be judged by what is right and proper at the time of the commission of the act. Judges have a right to expect equally fair treatment.

The framers of our Constitution inserted the ex post facto clause in the Constitution to assure that no one be punished by operation of retroactive law. Unfortunately, this does not seem to deter those who indulge themselves in a lynching bee. And the Haynsworth nomination has become a lynching bee.

Second, even if it were given a retroactive application, the decision in Commonwealth Coatings does not condemn the conduct of Judge Haynsworth.

The Supreme Court was there discussing the duties of an arbitrator under the provisions of a specific act of Congress. The Court did not have before it the question of proper conduct of judges in our Federal judicial system. Any comparisons made by the Court between the proper conduct of arbitrators and the proper conduct of judges should only be given the weight of dicta. Dicta should never be construed as being the holding of the Court. Let us look at the facts of Commonwealth Coatings and see exactly what was there involved.

In the words of the Court:

The petitioner, Commonwealth Coatings Corporation, a subcontractor, sued the sureties on the prime contractor's bond to recover money alleged to be due for a painting job. The contract for painting contained an agreement to arbitrate such controversies. Pursuant to this agreement petitioner appointed one arbitrator, the prime contractor appointed a second, and these two together selected the third arbitrator. This third arbitrator, the supposedly neutral member of the panel, conducted a large business in Puerto Rico, in which he served as an engineering consultant for various people in connection with building construction projects. One of his regular customers in this business was the prime contractor that petitioner sued in this case. This relationship with the prime contractor was in a sense sporadic in that the arbitrator's services were used only from time to time at irregular intervals, and there had been no dealings between them for about a year immediately preceding the arbitration. Nevertheless, the prime contractor's patronage was repeated and significant, involving fees of about $12,000 over a period of four or five years, and the relationship even went so far as to include the rendering of services on the very projects involved in this lawsuit.

The conduct described in Justice Black's opinion would be analogous to Judge Haynsworth's receiving fees from Darlington Manufacturing Co. or Deering Milliken during the pendency of the Darlington litigation. Of course, it is not even charged that anything of the sort happened. The financial relationship between the party and the arbitrator was direct and substantial. Neither of these conditions existed as to Judge Haynsworth.

We are talking about apples and oranges when we try to compare the conduct of this nominee to that of the arbitrator under scrutiny in Commonwealth.

The Supreme Court shed further light on just what it was talking about when it made this statement in the Commonwealth opinion:

We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge. This is shown beyond doubt by *Tumey* v. *Ohio*, 273 U.S. 510 (1927), where this Court held that a conviction could not stand because a small part of the judge's income consisted of court fees collected from convicted defendants. Although in *Tumey* it appeared the amount of the judge's compensation actually depended on whether he decided for one side or the other, that is too small a distinction to allow this manifest violation of the strict morality and fairness Congress would have expected on the part of the arbitrator and the other party in this case.

The decision in the case of Tumey against Ohio cited in the above quotation held that it was unconstitutional for a judge to decide a case in which he would receive a fee if he held in favor of one party and no fee if he decided in favor of the other. Here, again, the judge had a direct financial interest in the outcome of the litigation.

The opponents of this nomination also charge that Judge Haynsworth sat on six other cases involving customers of Carolina Vend-A-Matic. These cases are:

Homelite v. *Trywilk Realty Co., Inc.*, 272 F. 2d 688 (1959);

Kent Mfg. Corp. v. *Commissioner of Internal Revenue* 288 F. 2d 812 (1961);

Textile Workers Union of America v. *Cone Mills Corporation* 268 F. 2d 920 (1959);

Leesona Corp. v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 315 F. 2d 895 (1963);

Leesona Corp. v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 308 F. 2d 895 (1962);

Textile Workers Union of America v. *Cone Mills* 290 F. 2d 921 (1961).

Insofar as these cases are concerned, it is clear that Judge Haynsworth was equally under a duty to participate in the decision of them as he was in the decision of the case involving Darlington Corp.

It is worthy of note that those who have made these charges now admit that the inclusion of the Kent Manufacturing Corp. case was an error. There is no connection between Kent Manufacturing Corp., a Maryland corporation which manufactures fireworks, and also the litigant in this case, and the Kent Manufacturing Co., a woolens manufacturer in Pennsylvania which operates the Runnymeade plant in Pickens, S.C.

The same principle of law, which holds that a judge is not disqualified from hearing a case involving a corporation which does business with a corporation in which he owns stock, applies to these six cases as well as to the Darlington case.

The opponents of the nomination claim that Judge Haynsworth participated in the decison of six other cases in which he held a financial interest in one of the litigants substantial enough to require disqualification under 28 U.S.C. 455. These cases are:

Brunswick Corp. v. *Long* 392 F. 2d 348 (1967);

Farrow v. *Grace Lines, Inc.* 381 F. 2d 380 (1967);

Merck v. *Olin Mathieson Chemical Corp.* 253 F. 2d 156 (1958);

Darter v. *Greenville Community Hotel Corp.* 301 F. 2d 70 (1962);

Donohue v. *Maryland Casualty Co.* 363 F. 2d 442 (1966);

Maryland Casualty Co. v. *Baldwin* 357 F. 2d 338 (1968).

In considering these charges we must be very careful to understand exactly what the Federal disqualification statute, section 455 of the Judicial Code, states. I have previously quoted from this statute in this speech, but I emphasize here that the law provides, in essence, that a judge shall disqualify himself "in any case in which he has a substantial—s-u-b-s-t-a-n-t-i-a-l—interest."

We must carefully examine the facts of each case in order to determine whether Judge Haynsworth had a substantial interest in the outcome of the case. If he did have such an interest, then he acted contrarily to the law, and this would call for the rejection of his nomination. On the other hand, if a careful examination of the facts shows that he did not have a substantial interest in the outcome of any of these cases, then he was under a legal duty to participate as a judge in their decision.

It would be an error for a judge to attempt to avoid hearing a case merely by pointing to some remote or insubstantial interest. If this were allowed, it would not only snarl the procedures of the courts, but it would also unfairly burden the other members of the judiciary.

In my judgment, a close study of the facts, divorced from innuendos and insinuations, demonstrates beyond a shadow of a doubt that Judge Haynsworth did not have a substantial interest in the outcome of any of these cases. His taking part in their decision was completely proper. These cases afford no legitimate reason for voting against the confirmation of the nominee.

We will first examine the facts of the Brunswick case. Judge Haynsworth was a member of the panel of the Fourth Circuit which heard arguments in the Brunswick case on November 10, 1967. At that time he owned no stock or other interests in Brunswick Corp. Immediately after the oral argument, the panel of judges, which consisted of Judge Haynsworth, Judge Harrison L. Winter, and District Judge Woodrow Wilson Jones, met in chambers to discuss the case. All three of the judges agreed that the case did not present any problem, and that the decision of the U.S. district court holding in favor of Brunswick Corp. should be affirmed. So, the decision was unanimous that the district court holding should be affirmed. It was agreed that Judge Winter would write the opinion for the court, and on December 27, 1967, he circulated his opinion to Judge Haynsworth and Judge Jones for their approval.

On December 26, prior to Judge Winter's circulation of his opinion, Judge Haynsworth's stock broker purchased for the Judge's account 1,000 shares of stock of Brunswick. This was one out of every 18,000 shares, or one eighteen-thousandth of the entire stock. This stock was purchased at the suggestion and recommendation of Mr. Arthur McCall, Judge Haynsworth's broker. Mr. McCall had previously recommended the stock for purchase to a large number of his other customers, and a number of them actually purchased the stock.

The opinion of the Fourth Circuit Court of Appeals was filed with the clerk of the court in Richmond on February 1, 1968, and was released to the public on the following day.

In his testimony to the committee, Judge Haynsworth freely acknowledged that his purchase of the Brunswick stock prior to the publication of the opinion was an error caused by his lapse of memory. He had put the Brunswick case out of his mind because as far as he was concerned the case had already been decided by the panel of judges. Judge Haynsworth stated to the committee that he would make certain that no such transaction would occur in the future as a result of a lapse of memory.

The question is, Does this one inadvertent error justify the Senate in rejecting this nomination? I do not think so. We should demand very high standards of nominees for judicial office and other public offices. However, perfectability is an impossible standard for any human to meet, even those who would make the Senate a playground for moral arrogance.

In considering whether Judge Haynsworth would have had a substantial interest in the outcome of the Brunswick case had he owned the stock at the time he rendered his decision thereon, it is significant that even if the other party had been granted the entire total judgment of $90,000 sought against Brunswick, the amount of this judgment would have been less than ½ cent per share on Brunswick's 18,479,969 shares of outstanding stock. The economic impact on Judge Haynsworth's 1,000 shares—out of 18½ million shares—would have been less than $5. Think of it. Less than $5. I suggest that this amount of money is de minimus. It certainly does not meet the substantial interest test for disqualification.

In the Grace Lines case, Judge Haynsworth did own 300 shares of stock of the parent corporation, W. R. Grace & Co. Grace Lines, Inc., was one of 53 subsidiary companies owned by W. R. Grace & Co., and it accounted for less than 7 percent of the parent company's 1967 revenue of $1,567,000,000. In the same year, W. R Grace & Co. had outstanding over 18 million shares of common stock. Judge Haynsworth's 300 shares gave him a .00001-percent interest in the common stock of this company. Even if Farrow's claim of $30,000 against Grace Lines, Inc., had been awarded, the effect of that judgment on a company with an annual revenue of over a billion and a half dollars would have been miniscule. The amount that a $30,000 judgment against Grace Lines could have reduced the value of Judge Haynsworth's W. R. Grace & Co. stock would have been about 48 cents—the price of a couple of fairly good cigars.

Likewise, Judge Haynsworth had no direct interest in either of the litigants in the Maryland Casualty Co. cases. He did own 67 shares of common stock and 200 shares of preferred stock in American General Insurance Co., a corporation in which Maryland Casualty was one of at least 12 subsidiaries. It is, of course, extremely difficult to measure the impact of a judgment against a subsidiary of a corporation such as American General Insurance Co., which has total assets of over $888,000,000, total income of over $356,000,000, and consolidated net profits of $26,672,196.

There is doubt if an adverse judgment could have had any significant effect on Judge Haynsworth's fractional interest in such a corporation. The judge owned 200 shares of preferred stock out of 3,279,559 shares of preferred stock; in other words, he owned six-thousandths of 1 percent—.006 percent. And he owned fifteen ten-thousandths of 1 percent—.0015 percent—of the 4½ million shares of common stock. As to the Olin Mathieson Chemical Corp. case, concerning which some of the opponents of this nomination have charged that Judge Haynsworth acted unethically in taking part in a case in which he had a "substantial interest" in one of the litigants, the fact is that Judge Haynsworth never owned any Merck stock and never owned any Olin Mathieson stock.

This charge, along with some of the others, is utterly baseless.

The last great conflict of interest case which the opponents charge Judge Haynsworth with participating in is the Greenville Community Hotel Corp. case. Judge Haynsworth owned no stock or other interests in that corporation in 1962 when he heard a case involving it.

On April 26, 1956, before the judge was on the court of appeals, one share of stock of the Greenville Community Hotel Corp. worth $21 was transferred to him so that he could be a director of that corporation. He held that position until he went on the bench in 1957. On January 1, 1958, he received a check for 15 cents for the 1957 dividend. Thinking that he no longer owned the one share of stock, Judge Haynsworth sent the check to Alester G. Furman, Jr., who had transferred the share of stock to him 2 years earlier. Furman then returned the $.15 check to Judge Haynsworth and the judge listed that $.15 dividend—think of it, 15 cents—as income on his tax return. That share was later transferred to Furman who sold it on August 1, 1959.

These are all of the cases which have been dug up in a frenetic effort to convince the public through the news media that Judge Haynsworth has been guilty of unethical or illegal conduct. Upon examination, the accusations amount to nothing.

In weighing our responsibilities in this matter, we should deeply ponder our duty to the nominee, our duty to the Federal judicial system, our duty to the American people, and our duty under the Constitution as Members of this body. To reject this nomination on the basis of such unproved and unprovable charges and such distortions would mean that in the eyes of his fellow citizens Judge Clement F. Haynsworth, Jr., has been weighed in

the scales by the Senate and found ethically wanting. The wholly unfounded stigma that would be thus unjustly placed upon Judge Haynsworth would last for his lifetime.

In such a situation as this, Shakespeare might have said:

Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed.

That would not be the greatest tragedy to result from such an action by the Senate, because in so acting the Senate would not dishonor Judge Haynsworth; it would dishonor itself.

Any nominee who might be chosen in the future to hold high judicial office would realize that he, too, might unjustly be subjected to a campaign of rumor, misrepresentation, distortion, and fabrication fueled by those political power blocs and pressure groups which cannot bear the thought that their stranglehold on the Federal judiciary might be broken. I think it fair to state that few eminently qualified men would, in the future, want to run the risk of vilification and abuse in having their names placed in nomination to fill a U.S. Supreme Court vacancy.

Each of us will have to decide this issue on the basis of his own judgment and conscience.

A classic example of the sort of distortions and misrepresentations which have been made concerning Judge Haynsworth's relationship with Carolina Vend-A-Matic and other instances of alleged unethical conduct and conflict of interest is afforded by the testimony of Mr. Stephen I. Schlossberg, general counsel, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. Mr. Schlossberg is opposed to the nomination of Judge Haynsworth. Senator HRUSKA questioned Mr. Schlossberg about his contentions as to Judge Haynsworth's relationships with Carolina Vend-A-Matic and Deering-Milliken Co. The following testimony is found on pages 367–68 of the hearings:

Senator HRUSKA. What is this weekly board meeting?

Mr. SCHLOSSBERG. He said that they had weekly board meetings at lunch, and that he attended many more after he came to the bench than before he was on the bench. I am talking about the vending machine company. Indeed he told us that during the year 1963, which was not a full year with the vending machine company, he drew $2,600 in directors' fees. That is insubstantial to a millionaire southern judge like Judge Haynsworth, but very substantial to me, a union lawyer: $2,600, from the casual board of directors' meetings.

Are we to believe that the salesmen who went to these various textile industries and tried to place these vending machines in their places did not say to these textile industries, "This is Judge Haynsworth's company"?

I can hear it right now just like the cowboy on television says when he rides over the horizon, "This is Marlboro country."

Yes, we are to believe that the Vend-A-Matic salesmen did not tell representatives of the textile companies that "this is Judge Haynsworth's company." Judge Haynsworth gave sworn testimony in the hearings that he instructed Mr. Wade Dennis, the general manager of Carolina Vend-A-Matic, not to permit his name to be used in any connection with getting business for the company.

There is not one scintilla of evidence in the hearing record to contradict or bring into question the truthfulness of this testimony.

It is valid to assume that the organization Mr. Schlossberg represents and many other powerful and wealthy groups have sent investigators all over South Carolina in an effort to try to prove just such an allegation. The fact that we have not heard from them leads me to the conclusion that they were unsuccessful.

The testimony resumes as follows:

Senator HRUSKA. And then there were two others. Now, if he had the position of dominance that you describe, why didn't he get more than $100,000 worth of gross sales in those companies?

Mr. SCHLOSSBERG. Senator, it is hard for me to speculate, and this is a terrible thing to say and I do not make it as a charge, but if I have to speculate I am going to speculate. Maybe Deering, Milliken decided that there comes a point when you draw the line, and that $100,000 is all we can afford to give this guy while he is sitting judge hearing our cases. Now, I am speculating, Senator.

Senator HRUSKA. You take it that Deering, Milliken gave him $100,000?

Mr. SCHLOSSBERG. I did not say that.

Senator HRUSKA. You just said so.

Mr. SCHLOSSBERG. No, I did not, Senator.

Senator HRUSKRA. Do you change that language?

Mr. SCHLOSSBERG. I said maybe they said, "This is all the business we can give this guy's company while he is a sitting judge." I did not want to speculate, but you forced me into it.

Senator HRUSKA. I did not force you into it, and if you were here sitting at these hearings and considered the record, which is sworn testimony——

Mr. SCHLOSSBERG. Right.

Senator HRUSKA. And if you had had any desire to inform yourself you would not have to speculate, and when facts are available under sworn testimony, speculation is out of order in my judgment. The record will show that whatever contracts they got were acquired by reason of competition bids; and in three instances, the last three times, they were not the prevailing party. I just cannot quite square that result with an officer who has such an omnipotence that he can say anything and he gets paid off. Isn't that what you are saying?

Mr. SCHLOSSBERG. You do not understand. I am going to try once more to make myself clear and then I am really at a loss about how to do it. No. 1, I do not make the charge that Deerling-Milliken paid off Judge Haynsworth.

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make that charge.

Senator HRUSKA. That is good.

Likewise, there is absolutely no evidence in the record that Wade Dennis bragged or otherwise told anyone that Judge Haynsworth was the first vice president of the company. If that is the interpretation that Mr. Schlossberg wants to place upon the fact that the Dun & Bradstreet report, which counsel for the Textile Workers Union received, reflects that Judge Haynsworth was carried on the books of the company as first vice president, then he is skating on thin ice.

This testimony is a classic because interwoven throughout it are the two fraudulently intellectual gimmicks of those who attack Judge Haynsworth on the basis of unethical conduct and conflict of interest; that is, the disclaimer of the making of scurrilous, libelous, and preposterous charges against Judge Haynsworth in conjunction with the making of direct charges which are totally false.

There are a number of persons, including Senators, who frankly base their opposition to this nomination on the fact that, in their judgment, the philosophy of Judge Haynsworth as evidenced by his opinions as a judge of the U.S. Court of Appeals for the Fourth Circuit would be harmful if adopted by the U.S. Supreme Court.

I want to make it very clear that although I disagree with the judgment of Senators who take that position, I applaud their forthrightness, candor, and frankness. They do not use the issue of ethics to hide the real reason for their opposition. I think every Senator has a perfect right to object to any nomination to the Supreme Court on a philosophical basis. I admire those Senators who plainly state, and make no bones about it, that their opposition to this nominee is based on his judicial philosophy. At the same time, I reserve the right to support the nominee on the basis of his judicial philosophy as I interpret it.

My support for the nomination of Judge Haynsworth is based in large measure upon my approval of his judicial philosophy as embodied in his opinions as a judge. I do not necessarily agree with all of his decisions or opinions—and I doubt that any of us has been able to read them all—but I believe that the main body of his judicial philosophy is that which is desired by, and is desirable for, the vast majority of the American people.

The most objective, dispassionate, and concise analysis of the opinions of Judge Haynsworth was set out in the hearings during the testimony of Judge Walsh, chairman of the American Bar Association's Standing Committee on the Federal Judiciary.

I have already quoted Judge Walsh's testimony with respect to the accusations. Judge Walsh's committee made a survey of all of the opinions written by Judge Haynsworth. Judge Walsh summed up the opinions in this testimony found on pages 138–141, and 145–146 of the hearings:

I think I can summarize the investigation this way. As far as Judge Haynsworth's opinions are concerned, he has written more than 300. Probably 90 percent of them are not controversial in any way. He has participated in many, many more, probably well over 1,000, but looking to the 10 percent of his opinions which were in areas which inevitably would invite controversy, we can see that in those areas where the Supreme Court is perhaps moving the most rapidly in breaking new ground he has tended to favor allowing time to pass in following up or in any way expanding these new precedents.

The areas in which you might notice this would be in the areas of civil rights but also in the areas perhaps of labor law and in the areas of rights of, for example, seamen and longshoremen. The Supreme Court has greatly expanded the old definitions of sea-

worthiness and things like that. In all of these areas, whether they are politically sensitive or not, you see the same intellectual approach.

It was our conclusion—

Said Judge Walsh, speaking on behalf of the American Bar Association's Standing Committee on the Federal Judiciary—

after looking through these cases, that this was in no way a reflection of bias. This was a reflection of a man who had a concept of deliberateness in the judicial process and that his opinions were scholarly, well written, and that he was, therefore, professionally qualified for this post for which he is being considered.

* * * * *

Now, I do not mean in any way to suggest that I thought Judge Haynsworth was running against the stream of the law. I think he was punctilious in following that stream as the Supreme Court laid it out and in some fields he has run ahead and broken new grounds. For example, in the expansion of the doctrine of the utility of habeas corpus, he broke away from an old restraint in earlier Supreme Court opinions and was complimented by the present Supreme Court for doing so. He has moved over into, as I recall it, more modern tests on insanity, things like that. So, he is in no sense running against the stream of the law. If I were going to characterize it, I would say where new ground is being broken by the Supreme Court, he believes in moving deliberately rather than rapidly, and particularly where an interpretation of the Constitution which has stood for many years is reversed or turned around he would perhaps give more time than other judges to adjust to the new state of affairs."

In other words, the chief attribute of Judge Haynsworth as a Federal judge has been judicial self-restraint. As to Judge Haynsworth's record on civil rights, he has voted to enforce the 1954 school desegregation decision. Yet, he has also supported freedom-of-choice attendance plans. In other words, he is against State-enforced segregation, but he is also against forced integration. I subscribe to the same principle. Freedom of choice is all that any fair-minded interpreter of the Federal Constitution could possibly require. Perhaps Judge Haynsworth believes, as I do, that no integration can ever be meaningful and lasting unless it is purely voluntary, and the sooner the courts, the Government bureaucrats, the politicians, and the ultraliberal "establishment" realize this the sooner the Nation's schoolchildren—black and white—will be relieved of their role as guinea pigs in a senseless social experiment and as pawns in a political chess game played by politicians and judges who vote for forced integration while sending their own children and grandchildren to all-white private schools or to public schools in white suburbia.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD a news story entitled "Parents Hit Prince Georges School Plan," published in the Washington Post on Sunday, November 16, 1969, which was written by Douglas Watson, Washington Post staff writer.

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

PARENTS HIT PRINCE GEORGES SCHOOL PLAN

(By Douglas Watson)

A group of white parents from the Bladensburg area opened fire yesterday on the Prince Georges County Board of Education and the school desegregation plan it adopted Tuesday by a bare majority.

In the first group reaction to the controversial desegregation action, the Citizens for Action, Inc. (CFA), called it "a tragic subversion of the rights and will of the people" and urged that the appointed school board be replaced by an elected one.

The recently organized group has only about 100 members but claims it represents the feeling of a majority of county residents.

In a prepared statement released by its directors, it charged that the school board's action has "given erroneous dignity and acceptance" to a Department of Health, Education and Welfare "accusation of a dual school system." It said it agreed with W. Carroll Beatty, school board president, in favoring a court test of the HEW directive.

ALL-NEGRO SCHOOLS

Confronted with a federal order to desegregate all-Negro Fairmont Heights Senior High and Bethune Junior High or lose $12 million in federal aid, the board approved a plan to divide 4,500 of the county's secondary students next fall among 18 schools. Fairmont Heights and Bethune would become half white and racial proportions would be altered in many of the other schools.

Citizens for Action said the adopted plan fails to consider "the economic differences of the communities involved and the safety of the children being forcibly assigned to areas foreign to their environment without due consideration of police protection needs."

The group charged the desegregation plan is "very poorly constructed" and tries to offset segregated housing patterns through busing. "Are we to accept a major upheaval of our children and communities each time a housing pattern within a defined school district creates the illusion of segregation?" the group asked.

Mr. BYRD of West Virginia. Mr. President, I have inserted this news story in the RECORD because it indicates some of the problems that have been visited upon children, their parents, and communities as a result of regulations and policies enunciated and promulgated largely by Government bureaucrats—in an effort to bring about a certain salt and pepper mix, a certain racial mix—which force students to go to schools not of their own choice, and I am speaking of both black students and white students. I think the article is pertinent to the whole problem we are discussing.

Judge Haynsworth's decisions and opinions reflect an acute feeling that the proper function of the Federal judiciary is to interpret the laws and that it is outside the scope of constitutional authority for the members of the Federal judiciary to substitute their notion of public policy for those of Congress and the State legislatures. He clearly believes that the courts should be the interpreters of the law not lawmakers.

Unfortunately, a number of recent decisions of the Warren Supreme Court and some of the lower Federal courts show a complete disregard for this fundamental constitutional principle. The Warren Court and some of the lower Federal courts rendered judgments that were legislative, not judicial, in character in such areas as criminal law and procedure, residency requirements for welfare, civil rights, and pornography.

The American people have had enough of this misuse and abuse of judicial authority. It would be a reassurance to these millions of concerned citizens to place on the Supreme Court a judge who has evidenced proper respect for the virtue of judicial self-restraint and for the constitutional line of demarcation between legislative and judicial functions.

Some opponents of Judge Haynsworth maintain that the Senate should reject this nomination in order to restore confidence in the Supreme Court.

Do these opponents not know that public disrespect for the Court has been brought about by the Court itself, largely through certain doctrinaire, activist decisions in recent years favoring Communists, criminals, atheists, and civil rights demonstrators?

For too long, the people have had to put up with an activist, libertarian court which has arrogated to itself the power to rewrite the Constitution and usurp the functions of the legislative branch.

The appointment to the Court of conservative judges—judges who will exercise judicial restraint and respect for constitutional construction, so as to restore a philosophical balance—will do more than anything else to bring about a recrudescence of public faith in and respect for the Court.

Public confidence in the Court will not be restored until the Court is reconstructed to reflect judicial restraint and strict constitutional construction.

Confirmation of Judge Haynsworth will be a step in that direction, and this is precisely why I shall vote for him.

The nomination of Judge Haynsworth to be an Associate Justice of the Supreme Court merely reflects the election returns of last November. The trend of decisions of the Supreme Court was a paramount issue in the presidential election campaign of last year. The more than 57 percent of the American voters who supported President Nixon and Governor Wallace certainly did not vote to continue the course of decisions for which the Warren Court was justly criticized.

To be brutally frank, President Nixon was elected because his political position appeared to be less liberal than that of the candidate of my own party, a fact which apparently is not yet fully understood even by some Members of the President's own party here in the Senate. Now Mr. Nixon is apparently expected to adopt the political ideology of the losers in appointing Supreme Court judges. Haynsworth has a conservative image, admittedly, but that, after all, is what our Nation voted for.

President Nixon won the election, and he is entitled to nominate persons to the Supreme Court to reflect this change in national philosophy.

I did not vote for Mr. Nixon but he won the election, and in appointing Judge Haynsworth he is reflecting the judgment of the American people as they expressed it at the polls last November.

Yet, many people who enthusiastically supported the nominations of Supreme Court judges with a distinctly ultraliberal, leftwing philosophy in the past two administrations now want to block

this appointment on the basis, really, of judicial philosophy but under the camouflage of a conflict-of-interest smokescreen. These opponents are being less than candid.

These persons should fault the American people—not Judge Haynsworth, President Nixon, or Attorney General Mitchell—for a trend toward conservatism in the appointment of judges.

Many persons who supported the evaluation of Associate Justice Abe Fortas to the role of Chief Justice of the United States, did so on the basis of their approval of his judicial philosophy as reflected by his opinions and decisions while serving as an Associate Justice. These persons were certainly entitled to their views. I voted for the confirmation originally of Mr. Fortas to serve on the Court. But I frankly opposed the nomination of Justice Fortas subsequently, for the office of Chief Justice on the basis of his judicial philosophy, and on that basis alone.

In a Senate floor speech on September 30, 1968, I stated, on page S11656 of the CONGRESSIONAL RECORD, as follows:

I voted for Mr. Fortas when he was appointed to the Court in 1965, but the words and votes of Mr. Fortas put him among the judicial activists, who toy with the Constitution as though it were their personal plaything instead of the organic law which is the priceless legacy of all Americans. . . .

Moreover, Justice Fortas has, in some of his public utterances, enthusiastically endorsed the doctrine of mass civil disobedience. I cannot, in compliance with my constitutional duty, reward the utterer of these dangerous sophistries, by elevating him to the role of Chief Justice of the United States. . . .

I have no objections to Mr. Fortas, personally, or to his qualifications as an able lawyer. I have heard nothing which would reflect against his good character and conduct as a citizen. My objections go solely to his judicial philosophy as manifested by his words and actions while serving on the Court.

So, Mr. President, to repeat for emphasis, I voted to confirm the original appointment of Mr. Fortas to serve on the U.S. Supreme Court, but I was opposed to elevating him to the role of Chief Justice, and my opposition was based entirely and solely on his judicial philosophy as manifested by his public record while serving as an Associate Justice on the Court. I was not influenced by the rumors and insinuations against him. Many of those persons who today object to the decisions and opinions of Judge Haynsworth expressed support for those of Justice Fortas.

There is certainly considerable difference in the judicial philosophies of the two nominees. Generally speaking, I think that Justice Fortas could be fairly characterized as a "judicial activist" and that he frequently did not use judicial self-restraint, which I think is a most important quality of a Federal judge. On the other hand, I would classify Judge Haynsworth as a conservative jurist, a "strict constructionist" of the Constitution.

One of the areas of difference in their philosophies is in the field of pornography and obscenity. One of the reasons I opposed the nomination of Justice Fortas was that he consistently voted to overturn the criminal convictions of the peddlers of filth and slime who are preying on the American people, especially our youth. It was documented that Justice Fortas voted for these pornographers in 34 out of 38 cases while he was an Associate Justice. Supporters of his nomination made the argument that one could not draw any conclusion from these decisions because the legal and constitutional issues in many of those cases were complex. However, I felt that the fact that he had consistently followed a course of decisions in favor of the purveyors of filth clearly indicated where his feelings and sympathies lay.

In sharp contrast to the stand of Justice Fortas on the issue of pornography, Judge Haynsworth has shown that he is willing to find that obscene and pornographic material is actually obscene and pornographic. Furthermore, he is able and willing to permit the competent law enforcement authorities to suppress this evil traffic.

I would like to see more judges of Judge Haynsworth's judicial and constitutional philosophy on our Supreme Court. If he and others of his philosophy were on the Court, it would have a much better grasp of the issue of obscenity and pornography. I know that millions of average American citizens are deeply concerned and troubled about this awful problem. I have received hundreds and perhaps thousands of letters on this subject. The people are demanding that our courts permit the law enforcement agencies to suppress and destroy this vicious and insidious material which is debasing and destroying our people, especially our young people. This cancer must be cut out of our society. It cannot be done with an extremist, permissive, libertarian Supreme Court.

Those who were able to enthusiastically support the Fortas nomination to the office of Chief Justice in light of his record in the area of obscenity should carefully consider the message they will be giving the American people by opposing Judge Haynsworth.

Justice Fortas did not voluntarily furnish to the Judiciary Committee any papers, documents, or other materials pertaining to his personal financial condition and transactions.

He was not requested to furnish any such information even though, as we all remember, the testimony of Mr. B. J. Tennery, dean of the American University School of Law, revealed that in the summer of 1968, while he was serving as an Associate Justice of the Supreme Court, Justice Fortas received the sum of $15,000 for giving eight lectures at the Law School on the subject of "Law and Social Environment." Mr. Tennery further testified that this money was raised by Mr. Paul Porter, a former law partner of Justice Fortas, and that the donors to the fund were five wealthy individuals, at least one of whom was involved in litigation in the lower Federal courts which might have come before the Supreme Court for decision.

Conversely, Judge Haynsworth was available at all times to the Judiciary Committee for the purpose of answering any questions that anyone might have. He manifested a willingness to do so when called upon. When Senator EASTLAND, the chairman of the Judiciary Committee, closed the Haynsworth hearings, the last statement he made, found on page 591 of the hearings, was: "Gentlemen, this closes the hearings unless Judge Haynsworth is called back."

Senator EASTLAND made a statement to the press at that time he would ask Judge Haynsworth to return to testify if any member of the Judiciary Committee so requested. This statement was widely printed in the public press, and Senator EASTLAND notified the members of the committee of his position.

No member of the committee asked that Judge Haynsworth be recalled.

As a result, in sharp contrast to the allegations made about the conduct of Justice Fortas from the standpoint of ethics, candor with the committee, and conflict of interest, there was absolutely nothing withheld regarding the facts in the Haynsworth matter. Judge Haynsworth placed the whole record in full view on top of the table. The only dispute is as to the meaning or significance to be given those facts.

After all of the witnesses had testified at the hearings on the Fortas nomination, the Judiciary Committee invited the Associate Justice to reappear before it in order to give answers or clarifications to the testimony concerning the American University lecture fee.

There were also those on the committee who desired that Justice Fortas clarify testimony he had previously given that the only occasions upon which he had given advice to the executive branch of the Government subsequent to his appointment as Associate Justice pertained to the Vietnam war and the Detroit riots.

After Justice Fortas gave this testimony, Senator ALLOTT appeared before the committee and testified that Mr. Joseph W. Barr, then Under Secretary of the Treasury, had advised him that Mr. Fortas had been at the White House and had approved certain draft language of a proposed amendment to the law concerning the protection of presidential candidates.

Senator ALLOTT's testimony cast serious doubt upon the candor of Justice Fortas.

However, for reasons best known to himself, the Justice declined to reappear before the committee in order to clear up these and other questions.

As a result, the Judiciary Committee and the Senate and the American people were left to speculate upon the facts.

On the Haynsworth nomination, there is no speculation about the facts. They have been thoroughly presented by the nominee and developed and discussed.

Still another great difference between the Fortas nomination and this nomination is that the unresolved facts in the Fortas case previously mentioned gave rise to an inference that Justice Fortas might have been guilty of criminal conduct.

When I state that the unresolved facts in the Fortas case gave rise to a possible inference that he had been guilty of criminal conduct, I want to emphasize that this is not based on his alleged

dealings with the Wolfson Foundation which caused the resignation of Justice Fortas from the Supreme Court. These facts were not developed until several months after his nomination as Chief Justice had been withdrawn. The facts pertaining to the Wolfson Foundation were not before the Senate when his nomination was considered.

But the opponents of the Haynsworth nomination have gone to great pains to emphasize that they do not even remotely hint or insinuate that the judge has done anything dishonest or illegal. Even though these opponents usually make this disclaimer as a predicate for the unfounded charge that Judge Haynsworth has committed acts which are improper or unethical or at least give the appearance of being improper or unethical, we must take them at their word in offering this disclaimer.

In light of all of these differences and distinctions between the two nominations, it is simply unfair and unrealistic to compare the Fortas and Haynsworth nominations. There is virtually no comparison between the two.

Some representatives of organized labor appeared as witnesses at the hearing in opposition to the nomination of Judge Haynsworth. They expressed their opinion that the decisions and opinions of Judge Haynsworth indicated that he was an "antilabor" judge. For that reason, among others, they opposed his elevation to the Supreme Court.

However, a careful study of Judge Haynsworth's record shows that it is not fair or accurate to characterize him as either an "antilabor judge" or a prolabor judge." He seems to decide each case on the basis of the law and the facts, and not on the basis of his personal views or notions. I wish we could say the same for all other judges.

Some of the witnesses from certain organized labor groups made distorted and unrealistic appraisals of Judge Haynsworth's record on labor relations. For instance, they chose to completely overlook the fact that Judge Haynsworth wrote at least eight opinions for his court deciding cases favorably to organized labor. These were:

NLRB v. *Electro Motive Manufacturing Company*, 389 F2d 61 (1968); *United Steel Workers of America* v. *Bagwell*, 338 F2d 492 (1967); *Chatham Mfg. Co.* v. *NLRB*, 404 F2d 1116 (1968); *Intertype* v. *NLRB*, 371 F2d (1967).

NLRB v. *Carter Towing*, 307 F2d 835 (1962); *NLRB* v. *Community Motor Bus Co.*, 335 F2d 120 (1964); *NLRB* v. *Empire Mfg. Co.*, 260 F2d 528 (1958); *NLRB* v. *Webb Furniture Corp.*, 366 F2d 314 (1966).

Judge Haynsworth also voted with other members of his court in at least 37 other prolabor decisions. These cases are:

Rosedale Coal Co. v. *Director U.S. Bur. Mines*, 247 F2d 299 (1957); *Textile Workers v. Cone Mills*, 268 F2d 920 (1959) *Wirtz v. Charleston Coca Cola Bottling Co.*, 346 F2d 428 (1966).

Wirtz v. *DuMont*, 309 F2d 152 (1962); *Williams* v. *United Mine Workers*, 316 F2d 475 (1963); *NLRB* v. *Edinburg Mfg. Co.* 394 F2d 1 (1968); *NLRB* v. *Marion Mfg. Co.* 388 F2d 306 (1968); *NLRB* v. *Baldwin Supply Co.*, 384 F2d 999 (1967).

NLRB v. *Weston Brocker Co.* 373 F2d 741 (1967); *Don Swart Trucking Co.* v. *NLRB*, 359 F2d 528 (1966); *Galis Electric & Machine Co.* v. *NLRB*, 323 F2d 588 (1963); *NLRB* v. *Marvel Poultry Co.*, 292 F2d 454 (1961); *NLRB* v. *Threads, Inc.*, 289 F2d 483 (1961).

NLRB v. *Roadway Express, Inc.* 257 F2d 948 (1958); *NLRB* v. *Superior Cable Corp.*, 246 F2d 539 (1957); *NLRB* v. *Kotarides Baking Co.*, 340 F2d 587 (1965); *Dubin-Haskell Lining Corp.* v. *NLRB*, 386 F2d 306 (1967); *Florence Printing Co.* v. *NLRB*, 333 F2d 289 (1964).

General Instrument Corp. v. *NLRB*, 319 F2d 420 (1963); *Great Lakes Carbon Corp.* v. *NLRB*, 360 F2d 19 (1966); *Greensboro Hosiery Mills, Inc.* v. *Johnson*, 377 F2d 38 (1967); *Henderson* v. *Eastern Gas & Fuel Associates*, 290 F2d 677 (1961); *JNO McCall Coal Co.* v. *U.S.*, 374 F2d 689 (1967).

Link v. *NLRB*, 330 F2d 437 (1964); *Mitchell* v. *Emala & Associates, Inc.*, 274 F2d 781 (1960); *Mitchell* v. *Sherry Corine Corp.*, 264 F2d 831 (1959); *NLRB* v. *Atkinson Dredging Co.*, 329 F2d 158 (1964); *NLRB* v. *Baltimore Paint & Chemical*, 308 F2d 75 (1962).

NLRB v. *Cross*, 346 F2d 165 (1965); *NLRB* v. *Haynes Hosiery Div.*, 384 F2d 188 (1967); *NLRB* v. *Jesse Jones Sausage Co.*, 309 F2d 664 (1962); *NLRB* v. *Jones Sausage Co.*, 257 F2d 878 (1958); *NLRB* v. *Lester Bros., Inc.*, 301 F2d 62 (1962).

NLRB v. *Randolph Electric Membership Corp.*, 343 F2d (1965); *NLRB* v. *Winn-Dixie Greenville, Inc.*, 379 F2d 958 (1967); *Ostrofsky* v. *United Steelworkers of America*, 273 F2d (1960); *Overnite Transportation Co.* v. *NLRB*, 327 F2d 36 (1963).

Some of the cases cited by hostile witnesses indicating an antilabor bias on the part of Judge Haynsworth turn out not to support that charge. For instance, three of the prime cases cited by these opponents of the nomination are the three cases involving Darlington Mills.

These cases involved the basic question of whether the owners of the mill had a right to close it down and permanently go out of business, even though the motive for so doing was to chill union activity.

In Darlington I, which is cited as *Deering Milliken* v. *Johnson*, 295 F2d 856 (1961) the question before the court of appeals was the issuance of an injunction by the U.S. District Court for the Middle District of North Carolina against agents of the NLRB prohibiting them from taking new evidence in a case involving a labor dispute. Judge Haynsworth wrote the opinion for the fourth circuit which practically reversed a decision of the district court and held that the Labor Board could take new evidence pertaining to certain matters. The new evidence which was subsequently received by the NLRB was crucial to the subsequent victory of the Textile Workers Union of America.

I do not see how anyone can complain that this decision was antilabor.

Darlington II, which is cited as *Darlington Manufacturing Company* v. *N.L.R.B.*, 325 F2d 682 (1963) involved the direct question of whether the company had the right to permanently go out of business for antiunion reasons. Judge Haynsworth joined in the majority opinion, written by Judge Bryan, which held that under the circumstances of the case, the company had such a right. This decision was in harmony with decisions of other Courts of Appeals dealing with this subject. For instance, the Sixth Circuit Court of Appeals had recently stated in the case of *N.L.R.B.* v. *R. C. Mahon Company*, 269 F2d 44, 47 (1959):

> We find nothing in the National Labor Relations Act which forbids a company, in line with its plans for operation, to eliminate some division of its work.

The Fifth Circuit Court of Appeals had held in *N.L.R.B.* v. *Tupelo Garment Company*, 122 F2d 603, 696 (1941):

> The stockholders of Tupelo Garment Company (the employer) had the absolute right to dissolve their corporation and the Board was without authority to prevent this.

The Seventh and Eighth Circuits had rendered similar decisions.

So, the decision of Judge Bryan in which Judge Haynsworth joined was in accordance of the law.

When Darlington II was appealed to the Supreme Court, the case was reversed and sent back to the Labor Board for further hearing as to the question of whether Deering Milliken was a single integrated employer. The Supreme Court, speaking through Justice Harlan, indicated strong agreement with the principles of law enunciated by the court of appeals, but held that more facts were needed in order to properly resolve the issue. The Supreme Court stated:

> We hold that so far as the Labor Relations Act is concerned, an employer has the absolute right to terminate his entire business for any reason he pleases, but disagree with the Court of Appeals that such right included the ability to close part of a business no matter what the reason. We conclude that the case must be remanded to the Board for further proceedings.

Darlington III, which is cited as *Darlington Manufacturing Company* v. *N.L.R.B.*, 397 F2d 760 (1968), involved an appeal from the proceedings of the Labor Board after the remand of Darlington II. The Labor Board found that the persons controlling Darlington Manufacturing Co. had such interests and relationships with Deering Milliken and other affiliated corporations as would establish a single enterprise, and that Darlington's closing was accomplished under circumstances that established the factors of "purpose" and "effect" with respect to chilling unionism in other mills of the Deering Milliken group. Consequently, the Board held that the closing of the Darlington Manufacturing Co. was a partial closing of a business in violation of the laws and ordered Darlington and Deering and Milliken to pay back wages to some of their employees. The court of appeals, in an en banc hearing participated in by all seven of its judges, affirmed the order of the Labor Board. Judge Haynsworth voted with the majority of the court in this case and wrote a concurring opinion in which he expressed concern over the financial bur-

den which might be placed on the individual owners of the Darlington Manufacturing Co. who were in no way connected or affiliated with Darlington Manufacturing or its president, Roger Milliken. Judge Bryan issued a strong dissenting opinion which was joined in by Judge Boreman, which held that the court should completely reverse and overturn the order entered by the Labor Board, and that the evidence showed that those in control of the Darlington Manufacturing Co. had a perfect right to close it. Judge Haynsworth's vote in Darlington III certainly seems to be prolabor. If one wishes to categorize votes in such a fashion, it is reasonable to say that the votes of Judges Bryan and Boreman were the only antilabor votes on the court. I assume they would be even more objectionable to the witnesses who testified against Judge Haynsworth than Judge Haynsworth himself. I hope that Judge Haynsworth's mere expression of concern about the economic impact on the individual minority stockholders of Darlington Manufacturing, who had no relationship whatever to the so-called wrongdoer in the case, Roger Milliken, does not make Judge Haynsworth an "antilabor" judge.

The only other opinion written by Judge Haynsworth on labor relations which was subsequently reversed by the Supreme Court was in the case of *N.L.R.B.* v. *Giessel Packing Company*, 398 F. 2d 336 (1968). This case involved the use of union authorization cards in recognition proceedings. The Fourth Circuit held, in an opinion written by Judge Haynsworth, that under the circumstances involved in that case the use of such authorization cards, rather than an election by secret ballot, was not authorized by the law. This decision was in accordance with decisions by the Fourth Circuit as well as decisions of the First, Second, Fifth, Sixth, Seventh, Tenth, and District of Columbia Courts.

In reversing the *Giessel Packing Company* case, 89 S. Ct. 1918 (1969), the Supreme Court indicated that its view of the law was not much different from that expressed by Judge Haynsworth in his opinion for the Fourth Circuit. The Supreme Court said:

> The actual area of disagreement between our position here and that of the Fourth Circuit is not large as a practical matter.

The opponents complain of Judge Haynsworth's vote in *N.L.R.B.* v. *United Rubber, Linoleum and Plastic Workers*, 269 F. 2d 694 (1959) which was reversed by the Supreme Court at 362 U.S. 329. Judge Haynsworth did not write the opinion in this case, but only voted to adopt the opinion written by Judge Soper. Judge Soper accepted the position urged by NLRB, which held that picketing which does not represent a majority of the employees is an unfair labor practice. The objective of this opinion was to protect employees in their right to refrain from bargaining through representatives without coercion. The question presented to the Fourth Circuit in the United Rubber case had never been decided by the Supreme Court, and the circuits were divided on the issue. The Ninth Circuit had previously decided the issue in accordance with Judge Soper's opinion, but the District of Columbia Circuit had resolved the question the other way is a divided opinion.

Judge Haynsworth's vote in the United Rubber case was certainly not contrary to the then existing law, and cannot be construed as being antilabor.

When one examines these and the other cases involving labor relations, the conclusion is inescapable that the charge that Judge Haynsworth has been antilabor in his decisions is without foundation.

There are some who say it would be bad for us to confirm Judge Haynsworth by a close vote. These persons seem to feel that such an action would in some way impair his effectiveness as an Associate Justice of the Supreme Court. I do not subscribe to the theory that a nomination which engenders public controversy and which results in a confirmation by a close vote is a reason for voting against confirmation. The same argument was advanced in the ABM controversy. The ABM won by a cliff-hanger vote. But how many people today remember the closeness of that vote or even care to remember it?

Louis D. Brandeis served ably and brilliantly as an Associate Justice of the Supreme Court; yet, when his name was submitted by President Wilson, a storm of public controversy broke. Powerful elements of American society representing great financial wealth fiercely fought that nomination. The Judiciary Committee favorably reported his nomination by the close vote of 10 to 8. When it was finally brought to a vote on June 1, 1916, the Senate voted 47 to 22 to confirm. However, there were 27 abstentions on that vote. Ergo, less than half of the Membership of the Senate voted to confirm Mr. Brandeis. Yet, this circumstance did not operate to diminish his stature in the history of the judiciary, nor did it operate to disable him from being a great Justice.

The same happy results could follow from our confirmation of Judge Haynsworth, regardless of the margin of the vote.

After all, the late John F. Kennedy was elected President by a scant margin of 118,000 votes in 1960. But who bothered to remember this. He was fully as much a President as if his majority had been a hundredfold.

As I have already stated, a distinguishing feature between the cases of Judge Haynsworth and Associate Justice Fortas is evidenced by the fact that Judge Haynsworth has been completely cooperative with the committee and its members in agreeing to appear to testify. Mr. Justice Fortas was not. Judge Haynsworth has made a complete disclosure of his financial affairs to the committee. Mr. Justice Fortas made no such complete disclosure.

So far as I know, no nominee for judicial office has voluntarily made such sweeping disclosures about his personal financial condition and transactions as has Judge Haynsworth. He has been completely forthright and candid with the committee. He responded to all reasonable requests made of him to produce documents.

For example, even prior to the beginning of the hearings of the Judiciary Committee, Judge Haynsworth made available to the committee copies of income tax returns for himself and his wife from the year he went on the Federal bench, 1957 to date. He also made available a complete financial statement at that time. Judge Haynsworth voluntarily requested that the entire Justice Department file on the charges made against him by the attorneys for the Textile Workers Union regarding his participation in the Darlington case be made available to the committee and the public.

After the hearings were commenced, Judge Haynsworth furnished to the committee certified copies of all real estate transactions with which he was involved from 1957 to date. He also furnished copies of all deeds involving real estate transactions concerning the Carolina Vend-A-Matic Co. and the Carolina Vend-A-Matic profit-sharing and retirement plan.

He also supplied to the committee a listing of all of the Carolina Vend-A-Matic's major customers as of December 1963, and all other information in his possession or knowledge pertaining to his investments in Carolina Vend-A-Matic Co.

Judge Haynsworth also furnished a chronological listing of all his stock transactions from 1957 to date which set out his complete stock holdings during that time.

Automatic Retailers of America, Inc., the company into which Carolina Vend-A-Matic was merged in 1964, gave the committee unprecedented cooperation in furnishing information pertaining to Carolina Vend-A-Matic Co. For instance, immediately upon request of the committee, ARA had the minutes book of Carolina Vend-A-Matic flown to Washington at its own expense. In addition, they had all of their records pertaining to sales and customers of Carolina Vend-A-Matic, as well as copies of all tax returns and audited statements in their possession flown to Washington and made available to the committee.

The records pertaining to the sales and customers of Carolina Vend-A-Matic covered the period from the date of its incorporation to the date of its merger with ARA. From these records a list of customers and income of each customer from Carolina Vend-A-Matic during its entire existence can be computed.

ARA also furnished to the committee copies of its audited statements for Carolina Vend-A-Matic Co. and its subsidiaries for the years ending December 31, 1961, 1962, and 1963. These were the only annual reports ever prepared for the Carolina Vend-A-Matic Co.

Furthermore, ARA supplied all of the Carolina Vend-A-Matic records, including tax returns pertaining to the Carolina Vend-A-Matic profit-sharing and retirement plan.

I believe that ARA, Inc., and its officers and employees should be given a vote of thanks by the Senate for voluntarily furnishing voluminous papers and documents constituting its private busi-

ness records to the committee. I certainly do not think it is fair or just to characterize ARA or any of its officers or employees as having been obstructive in this matter or of hiding anything.

Sometimes when one does not find what one seeks, one makes charges about concealment and suppression of the facts.

As I indicated earlier, the facts and circumstances of this nomination are somewhat similar to those surrounding the nomination of Louis D. Brandeis to be an Associate Justice of the Supreme Court in 1916. It might be enlightening and instructive to recall the facts and issues of the Brandeis nomination.

As is the case with the Haynsworth nomination, many powerful forces in society vigorously opposed the nomination of Brandeis. We all know that certain elements of organized labor and the NAACP are the central forces opposing this nomination. In the Brandeis case, six former presidents of the American Bar Association, William H. Taft, Simeon E. Baldwin, Francis Rawle, Joseph H. Choate, Elihu Root, and Moorfield Storey, signed the following letter which was sent to the Senate Judiciary Committee:

The undersigned feel under the painful duty to say to you 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.

Mr. President, how different is the testimony submitted by representatives of the American Bar Association in the two cases. In the case 50 years ago, involving Louis Brandeis, six former presidents of the American Bar Association jointly signed a letter charging that Brandeis was not a fit person to be a member of the Supreme Court of the United States. However, the American Bar Association's standing committee on judiciary selection has in the instant case found no impropriety and has endorsed the nomination.

In the Brandeis case, as in the instant case, the powerful interests opposing the nomination camouflaged their true reasons for opposition by raising the question of ethics. The hearings held by the subcommittee of the Judiciary Committee to which the Brandeis nomination was referred are filled with testimony concerning Mr. Brandeis' alleged unethical conduct and violations of the code of ethics. In the minority report of the Judiciary Committee on the Brandeis nomination, submitted by Senator Clarence D. Clark of Wyoming, there were listed 12 alleged acts of unethical conduct charged against the nominee. There was the Glavis-Ballinger case, the Illinois Central Railroad case, the New England Railroad case, the Equitable Life Assurance Society case, the United Drug Co. case, and a number of others. This sounds very familiar to us today in light of the Vend-A-Matic case, the Brunswick case, the W. R. Grace Co. case, and alleged association with Bobby Baker.

As in the case of this nomination, both sides agreed there was very little dispute as to the facts involved. There was great disagreement as to the interpretation of the facts. Both sides agreed that there was no evidence that Mr. Brandeis was corrupt or dishonest, just as in the case of the Haynsworth nomination.

The opponents of the Brandeis nomination took the position that, even if the charges against him were not true, he should not be confirmed because to do so would damage the reputation of the Supreme Court. We hear the same argument against Haynsworth. The friends of the nomination of Brandeis refuted this notion.

In order to demonstrate how history does indeed repeat itself, it is in order to quote from the various views of the members of the Subcommittee of the Senate Judiciary Committee which considered the Brandeis nomination.

First, here is what the opponents of the nomination of speaking through Senator John D. Works of California had to say:

He has resorted to concealments and deception when a frank and open course would have been much better and have saved him and his profession from suspicion and criticism.

How much like what is being said today against Judge Haynsworth.

He has defied the plain ethics of the profession and in some instances has violated the rights of his clients and abused their confidence. There is nothing in the evidence that leads me to think he has done these things corruptly or with the hope of reward. His course may have been the result of a desire to make large fees, but even this is not clear. He seems to like to do startling things and to work under cover. He has disregarded or defied the proprieties. It has been such courses as he has pursued that have given him the reputation that has been testified to, and it is not undeserved. It is just such a reputation as his course of dealing and conduct would establish in the minds of men. This reputation must stand as a strong barrier against his confirmation.

Mr. President, had the ABA's standing committee, or had the opponents of Haynsworth, spoken today in those terms, the Haynsworth nomination would have been defeated a long time ago.

Quoting further from the opponents of Mr. Brandeis:

If it were Mr. Brandeis alone that is to be concerned, and it should be believed that this reputation is undeserved and unjust, it should have no weight; but the effect of such an appointment on the court is of much greater importance.

Have we heard that before?

To place a man on the Supreme Court Bench who rests under a cloud would be a grievous mistake. As I said in the beginning, a man to be appointed to the exalted and responsible position of Justice of the Supreme Court should be free from suspicion and above reproach. Whether suspicion rests upon him unjustly or not his confirmation would be a mistake.

Speaking further about the confirmation of the appointment of Justice Brandeis, Senator Works said:

It is argued against him that he is not possessed of the judicial temperament. There is just ground for this objection. As some of his friends said, he is radical, and for that reason he has offended the conservatives. That may be no cause of reproach; but the temperament that has made him many enemies and brought him under condemnation in the minds of so many people would detract from his usefulness as a judge.

The friends of the nomination strongly disagreed with the views expressed by Senator Works. The following are excerpts from the views of Senator Thomas J. Walsh:

The testimony taken by the committee is voluminous. In the infinite multiplicity of the duties devolving upon Senators it is quite vain to hope that any considerable number, except those upon whom the burden of investigation has been directly imposed, will read it all or read any of it.

Outside of the Senate, opinion will be based in very small part upon anything more trustworthy than a résumé of the evidence collected by the committee.

"It is not charged," said Senator Walsh, "that he," Mr. Brandeis, "is corrupt, at least by anyone not moved by wreckless valevolence."

He continued:

The accusations, if they may be so called, relate entirely to alleged disregard of ethical standards in his professional relations. Singularly enough, there is very little opportunity for dispute in respect to the facts constituting the incidents which the committee deemed worthy of its notice.

There is wide divergence of view touching the significance of the facts disclosed. Interpreted by those bent on finding something to criticize or ready by repossession to attribute discreditable motives to Mr. Brandeis, they assume a sinister aspect. Men of the highest character, frank admirers of that gentleman, who participated in the transactions in respect to which he is denounced, insist that his conduct was either irreproachable or altogether honorable. It is particularly important in this quite curious situation, in order to form a just estimate of the conduct and character of the nominee, to guard against the insidious influence of detraction and calumny.

* * * * *

It is said that it is to be regretted that any such controversy as this in which we are involved should arise over a nomination of a justice of the Supreme Court. So it is. But when it is said further that one might better be chosen over which no such bitter contention would arise, I decline to follow. It is easy for a brilliant lawyer so to conduct himself as to escape calumny and vilification. All he needs to do is to drift with the tide.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I be permitted to proceed for an additional 15 minutes.

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

Mr. BYRD of West Virginia. Mr. President, the chairman of the committee, Senator W. E. Chilton of West Virginia, made the following statement:

It is suggested in the brief of counsel of the protestants that if a doubt shall be raised concerning the ethical conduct of the nominee, he should not be placed upon the Supreme Court. If that theory shall obtain, then it is possible, by a campaign of slander, to bar the best men and the best lawyers in the country from the judicial office. I am not willing to indorse a campaign of slander, whether it was intended to be slander or not, when promulgated.

If after full investigation I find, as I do, that Mr. Brandeis is not guilty of the things charged against him by his enemies, then it is my duty to say so and to give him the benefit of a pure life and his upright conduct, regardless of the slander.

Mr. President, those words of a distinguished U.S. Senator from the State

of West Virginia uttered 50 years ago in respect to the nomination of Judge Brandeis, have been worthy of respecting here, and I should like to adopt the words in my own behalf today with respect to the nomination of Judge Haynsworth to serve as an Associate Justice on the Supreme Court of the United States.

Last but not least, the nominations of Brandeis and Haynsworth are similar because many of the opponents purported then and now purport to base their attacks on alleged lack of ethics, although the real factors generating the opposition then had and now have less merit.

Let us put the cards on the table—faces up. The real reasons for the bitter fight a half century ago against the confirmation of Mr. Brandeis were his social and economic ideas and the fact that he was a Jew. The real reasons today for the high pressure campaign to defeat the Haynsworth nomination are his judicial philosophy and the fact that he is a white, conservative southerner.

During the struggle over the Brandeis nomination the real reasons for the opposition lay close to the surface. Sometimes the surface would crack and one could peek through at what was immediately below.

That is certainly true of the struggle over the Haynsworth nomination. We have heard it said that the issue is not whether Judge Haynsworth's actions and conduct meet the ethical standards of Greenville, S.C.; that, in fact, his conduct probably does meet those standards, but, rather, the question is, Does his conduct meet the standards of ethics of the United States as a whole? In my judgment, this is a measured insult to the people of Greenville, S.C., and the South. I do not represent a Southern State.

I represent a border State, a State which sent men, a little over 100 years ago, to fight both on the side of the Union and on the side of the Confederacy. But right is right and wrong is wrong whether we are talking of South Carolina or of West Virginia—North or South, or border State.

Incidentally, the attempt to link Judge Haynsworth with Bobby Baker in an effort to produce a verdict of guilt by association shows just how desperate and specious is the campaign against this nomination. On September 28, Mr. James Weighart, writing for the New York Daily News, stated that Judge Haynsworth and Bobby Baker were involved together in a business deal relating to the establishment of a cemetery in Greenville, S.C. Other portions of the news media published this story.

The facts about the alleged "cemetery deal" are these:

The Greenville Memorial Gardens Cemetery was organized by a person in Greenville, S.C., who was a friend of Judge Haynsworth. He contacted the judge in 1958 and asked him if he would like to participate in this venture. The judge agreed to invest $4,000 in it. There were approximately 25 other individuals and corporations who were coinvestors in this venture. Unknown to Judge Haynsworth, the organizer of the Greenville Memorial Gardens Cemetery also contacted Bobby Baker and asked him if he would like to invest money in the project, and Baker invested $10,000 in it.

There was never any discussion between Judge Haynsworth and Baker on this or any other business dealings. Their only connection was that of costockholders. At the time, of course, Baker was secretary to the majority of the Senate and enjoyed a position of esteem and respect with many persons.

The truth is that Judge Haynsworth and Bobby Baker have had three extremely casual contacts with each other. The first was in 1954, when Judge Haynsworth was in the private practice of law. His friend, the late Senator Charles Daniel, was then appointed to an interim term in the Senate and Judge Haynsworth and other friends of his came to Washington to see him administered the oath of office. On that occasion, while they were in a room in the Capitol, Baker came up and shook hands with the Senator and the judge and chatted for a few minutes.

The second occasion was Judge Haynsworth's hearing on his nomination to be a judge for the Fourth Circuit Court of Appeals in 1957. The judge was here for his confirmation hearing; on that occasion Bobby Baker came up and congratulated him on his appointment and they talked for approximately 5 minutes.

On the third and last occasion in September 1958, Judge Haynsworth and Mr. Charles Daniel went together in an automobile from Greenville to Pickens, S.C., to a picnic. Bobby Baker was in the same car with them going to Pickens and the three of them discussed politics and other matters, but discussed no business, during the course of the trip which took 30 or 40 minutes.

This is the sum and substance of the so-called Bobby Baker connection.

Perhaps an insight into the real motivations of many opponents of this nomination can be had by studying the testimony in the hearings on the Haynsworth nomination of Mr. William Pollock, general president, Textile Workers Union of America. It is fitting and appropriate that this testimony provides the clearest view of the motivations of some of the opposition, because it was a representative of this Union who made unfounded and untrue allegations concering the conduct of Judge Haynsworth as an aftermath of the Darlington Mills decision in December 1963. It is the theory of Mr. Pollock that Judge Haynsworth was and is part of a southern textile conspiracy to subjugate textile workers. The true basis for the resentment, as will be seen, is that since World War II many northern and eastern textile mills have moved to the South.

There are many people, some in high places, who do not like this, and I can understand how they would not.

Mr. Pollock was given a list of the customers of Carolina Vend-A-Matic Co. and was asked to discuss the textile mill customers of Vend-A-Matic. The following testimony, which may be found on page 505 of the printed hearings, ensued:

Mr. POLLOCK. Not having fully studied this list, because it has not been in our possession long enough, I might say that listed here are a number of mills that were formerly located in the north, which were under contract with our union and our relationship was excellent.

Since they liquidated their northern operations and moved into the south, these same companies have now been caught up in this web of conspiracy, and they are just as vicious toward their workers trying to organize as any other one of the big southern chains.

Senator HART. Would that characterization be applicable also, Senator Bayh inquires, with respect to the J. P. Stevens, Dan River, and Burlington?

Mr. POLLOCK. I see one, Delta Finishing Co., which was formerly located in my hometown, Philadelphia, where we had it organized back around 1937. It liquidated and went south. It is now part of the J. P. Stevens chain. We have attempted to organize it several times down there, but because of the coercion and intimidation of this company, we have been unable to help these workers when they seek our help to form a union.

The flavor of Mr. Pollock's testimony, and the quality of his reasoning, can be sampled by the following statement made by him found on page 487 of the hearings:

Finally, we believe that Judge Haynsworth operates within that conspiracy. When he went into the vending machine business, as one of the founders of the Carolina Vend-A-Matic Co., in 1950, his company recruited its general manager from the Deering, Milliken chain. Two other associates in that company came from the Daniels Construction Co., a nontextile participant in the conspiracy to violate the labor law.

The Haynsworth Vending Machine Co. did its primary business with the Southern textile industry. It made a great deal of money. Starting in 1950 with an authorized capital of only $20,000 it sold out 14 years later for $3,200,000.

One of the leading witnesses against this nomination—as could be expected—was Mr. Joseph L. Rauh, Jr., counsel, Leadership Conference on Civil Rights. Some of the questions asked of Mr. Rauh and the responses given thereto indicated that no ordinary southerner should be nominated to the Supreme Court. Mr. Rauh clarified the issue by emphasizing that there were very few southern judges who would meet his ideological litmus test and whose nomination to the High Court he would welcome. His testimony, found on page 469, is as follows in part:

This is not against southern judges, there are wonderful southern judges—Tuttle, Brown, Wisdom, Johnson—who would have been heroic additions to the Court.

The suggestion is sometimes kind of intimated that somebody is against southern judges. I could stand and cheer for one of the ones I have mentioned.

The Judge Brown referred to by Mr. Rauh in his testimony is the Honorable John R. Brown, chief judge of the U.S. Court of Appeals for the Fifth Circuit. He has been in the news very recently in connection with a tardy disqualification of himself to participate in a decision involving millions of dollars worth of rate increases for natural gas companies while he owned approximately $100,000 worth of stock in the affected companies.

One of the finest hours of the Senate was when it voted to confirm the nomi-

nation of Louis D. Brandeis to be an Associate Justice of the Supreme Court on June 1, 1916. By that vote, it showed that one would not be disqualified to sit on the Court because he was a Jew. By confirming Judge Haynsworth, the Senate can likewise show that a nominee will not be disqualified from service on the Supreme Court purely because he is a southern white man with an apparent conservative philosophy.

Mr. President, Mr. Brandeis, who had what appeared at that time to be a very liberal and almost a radical philosophy, became one of the truly great jurists in the history of the Supreme Court of the United States. His critics were wrong then, and the critics can be wrong now.

I urge the confirmation of Judge Haynsworth to the office of Associate Justice of the Supreme Court of the United States.

Mr. STENNIS. Mr. President, will the Senator yield briefly?

Mr. BYRD of West Virginia. I yield to the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I am glad that the distinguished Senator from West Virginia, as is always the case, has had a chance to really give his time to the preparation of his statement. I think this is one of the finest and best quality speeches on the general subject matter of the confirmation of nominees for any bench, much less the Supreme Court bench of the United States.

The statement has been very fine, fair, and impartial. It is very impressive.

The Senator's analysis of the contrast of the nomination of Justices 50 years ago recalls the incident to my mind. I remember that when I was a mere boy Woodrow Wilson, who was then President, made the nomination to which the Senator referred. I remember some of the controversy surrounding the confirmation. I was old enough to read the newspapers. I remember the vicious attack that was made.

The Senator has certainly given a correct analysis of it. His comparison of the principles that finally prevailed then with the situation today is just as fresh as the morning flowers.

I direct the Senator's attention particularly to his analysis which is known in this RECORD as the Brunswick case which involves the judge's purchase of the stock in the Brunswick Corp. I want to quickly relate the facts.

Mr. President, this was a case in which a three-judge court heard the matter. The case was relatively simple and easy to decide, as I see it. It involved a single question of the conflict between two statutes that gave a lien—one in favor of the seller of a product, the bowling alley equipment, and the other in favor of the landlord of the premises where the bowling alley was located.

The argument on the case was heard on one day, and these three Federal judges decided the case either that afternoon or the next morning. It was a quick, easy decision, and the writing of the opinion was assigned to some other judge, not to Judge Haynsworth. For some reason, the writing of that opinion was delayed for 3 or 4 months. However, the work of the court went right on.

In the interval of time between the argument of the case and the writing of the opinion, the stock in the Brunswick Corp. was purchased for Judge Haynsworth. It was an infinitesimal amount of stock by comparison. The judge said, in effect, that he had overlooked it—words substantially of that meaning.

As any other Senator, I do not like to make personal references to myself, and I think the RECORD shows very little references to my own personal experiences. But that rings a bell with me just as clearly as sound can be, of many experiences I had along this line. I was not a member of a court of appeals. I was not a member of the Supreme Court of my State. But for 10 years I did carry the responsibilities of being a trial judge in a court of unlimited jurisdiction, both civil and criminal cases. There was no limit on its jurisdiction. I refer to this only to give a background of experience, to show that I know what it is to dispose of these cases.

I would have 20, 30, 40, 50, or 60 people to sentence at the end of a term of court, for all kinds of crime; women included, sometimes. Unfortunately, some of those cases involved the death penalty. Many hundreds had their freedom taken away. I have had to sign decrees that took men's homes away from them—civil judgments.

Many times I have taken home, for further study—in recess, we call it, at the end of that term of court—10, 15, 20, or 25 motions, many of them for a new trial. The Presiding Officer, the present occupant of the chair is familiar with that. Those motions would bring in review perhaps the entire case or the major points involved.

What does a judge do in a situation such as that? He decides the easy cases first, and then he forgets them. They pass out of his mind. He concentrates on the hard ones; he remembers them. I have studied in my office some major cases, on a motion for a new trial, for 2 or even 3 weeks, being careful in trying to reach a sound conclusion. I remember them. I know how much was involved. But I have forgotten all the easy cases. The quicker the better. I have no doubt, with Judge Haynsworth's record and reputation, that this is exactly what happened, so far as the Brunswick case was concerned. It was a simple, easy case, quickly decided. Someone else had the responsibility of writing the opinion. Later, the stock matter came up. True, there was a motion after the judgment was rendered—to reconsider it, as we say here; a suggestion of error, we say in the State court at home. But it was an open and shut case. It was not considered serious. They cannot all be considered serious.

In my mind, it is clear as crystal that this is the only avenue of approach and basis for disposition of work that a judge can take.

I think that is exactly what happened here, and it lends a great deal of aid to me in understanding how this situation came about. I recite those facts for whatever value they might have to others. It is certainly a part of this record as much as is the printed page.

I commend the Senator from West Virginia for his broad, basic concept, for his fine analysis of the facts, and for his great philosophy of government as shown not only in this matter, but also in many others.

Mr. BYRD of West Virginia. I thank the Senator for his very fine remarks.

I yield the floor.

PRINTING ADDITIONAL COPIES OF SUMMARY OF THE TAX REFORM ACT OF 1969

Mr. ANDERSON. Mr. President, as in legislative session, I send a resolution to the desk and ask for its immediate consideration. The resolution has been approved for the Committee on Rules and Administration by its chairman, the Senator from North Carolina (Mr. JORDAN) and by the ranking minority member of that committee, the Senator from Nebraska (Mr. CURTIS).

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the resolution (S. Res. 282) was considered and agreed to, as follows:

Resolved, That there be printed for the use of the Committee on Finance thirty-five hundred additional copies of its committee print of the current Congress entitled "Summary of H.R. 13270, The Tax Reform Act of 1969, as reported by the Committee on Finance".

Mr. ANDERSON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRANSACTION OF ROUTINE MORNING BUSINESS AS IN LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of routine morning business, as in legislative session.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON FACILITIES PROJECTS, NAVAL RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on a proposed Naval Reserve facilities project and the cancellation of another; to the Committee on Armed Services.

REPORT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

A letter from the Secretary, Export-Import Bank of the United States, transmitting, pursuant to law, a report of the actions taken by the Bank during the quarter ending September 30, 1969 (with an accompanying report); to the Committee on Banking and Currency.

STATISTICS OF INTERSTATE NATURAL GAS PIPELINE COMPANIES, 1968

A letter from the Chairman, Federal Power Commission, transmitting, for the informa-

tion of the Senate, a copy of the publication "Statistics of Interstate Natural Gas Pipeline Companies, 1969" (with an accompanying document); to the Committee on Commerce.

PROPOSED LEGISLATION EXEMPTING FHA AND VA MORTGAGES AND LOANS FROM THE INTEREST AND USURY LAWS OF THE DISTRICT OF COLUMBIA

A letter from the Assistant to the Commissioner, Executive Office, Government of the District of Columbia, transmitting a draft of proposed legislation to exempt FHA and VA mortgages and loans from the interest and usury laws of the District of Columbia and for other purposes (with an accompanying paper and transcript); to the Committee on the District of Columbia.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on U.S. financial participation in the Food and Agriculture Organization of the United Nations, Department of Agriculture, Department of State, dated November 17, 1969 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the need for management improvement in expediting development of major weapon systems satisfactory for combat use, Department of the Army, dated November 17, 1969 (with an accompanying report); to the Committee on Government Operations.

REPORT OF LEWIS AND CLARK TRAIL COMMISSION

A letter from the former Chairman, Lewis and Clark Trail Commission, reporting, pursuant to law, the final report of the Commission will be available no later than April 1970; to the Committee on Interior and Insular Affairs.

N. B. BENTLEY, A CO-PARTNERSHIP v. THE UNITED STATES

A letter from the Chief Commissioner, U.S. Court of Claims, transmitting, pursuant to law, two certified copies of the opinion and findings of fact in the case of N. M. Bentley, A Co-Partnership v. The United States (with an accompanying document); to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A resolution adopted by the American Legion Post No. 783, Stanton, Calif., declaring a policy of support for the Naval Air Station, Los Alamitos, Calif.; to the Committee on Armed Services.

A letter, signed by Joe Rosen, of Rockland County, N.Y., transmitting a resolution adopted by the American Legion Post No. 1232, of Orangeburg, N.Y., praying for the minting of a patriotic coin; to the Committee on Banking and Currency.

A letter, in the nature of a petition, signed by Jose A. Gonzalez, of New York, N.Y., relating to certain policies concerning Puerto Rico; to the Committee on Interior and Insular Affairs.

MESSAGES FROM THE PRESIDENT

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

REPORT OF THE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91–193)

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

Pursuant to the provisions of Title VII of the Public Health Service Act, as amended, I transmit herewith, for the information of the Congress, the thirteenth annual report of the Surgeon General of the Public Health Service summarizing the activities of the Health Research Facilities Construction Program for fiscal year 1968.

RICHARD NIXON.

THE WHITE HOUSE, *November 17, 1969.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer 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.)

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had passed a joint resolution (H.J. Res. 10) authorizing the President to proclaim the second week of March 1970, as Volunteers of America Week, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

As in legislative session, the message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 474) to establish a Commission on Government Procurement, and it was signed by the Vice President.

HOUSE JOINT RESOLUTION REFERRED

As in legislative session, the joint resolution (H.J. Res. 10) authorizing the President to proclaim the second week of March 1970, as Volunteers of America Week, was read twice by its title and referred to the Committee on the Judiciary.

BILLS INTRODUCED

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

By Mr. RIBICOFF:

S. 3145. A bill for the relief of Dr. Arun J. Madhani; to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 3146. A bill for the relief of Kaiganoosh Vartevanian (Monahan); to the Committee on the Judiciary.

By Mr. PROXMIRE (for himself, Mr. CHURCH, Mr. DOLE, Mr. FULBRIGHT, Mr. INOUYE, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MCCARTHY, Mr. MCGOVERN, Mr. MONDALE, Mr. MUNDT, Mr. NELSON, Mr. RANDOLPH, Mr. SCOTT, Mr. STEVENS, Mr. TYDINGS, and Mr. WILLIAMS of New Jersey):

S. 3147. A bill to amend the act entitled "An act to provide indemnity payments to dairy farmers," approved August 13, 1968 (82 Stat. 750); to the Committee on Agriculture and Forestry.

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

S. 3147—INTRODUCTION OF A BILL TO AMEND THE ACT RELATING TO INDEMNITY PAYMENTS TO DAIRY FARMERS

Mr. PROXMIRE. Mr. President, I introduce on behalf of Senators CHURCH, DOLE, FULBRIGHT, INOUYE, JAVITS, KENNEDY, MAGNUSON, MANSFIELD, MCCARTHY, MCGOVERN, MONDALE, MUNDT, NELSON, RANDOLPH, SCOTT, STEVENS, TYDINGS, WILLIAMS of New Jersey, and myself, legislation to extend indemnification against pesticide contamination to dairy manufacturers. This bill is in the nature of an amendment to Public Law 90–484, an act to provide indemnity payments to dairy farmers.

Under the present law, dairy farmers are eligible for indemnity payments if their milk is removed from commercial markets because it contains unacceptable chemical residues. However, dairy manufacturers are not eligible for comparable indemnification against such losses. This inconsistency in the application of the indemnity payments program needs to be eliminated.

THE MILK INDEMNITY PAYMENT PROGRAM

The milk indemnity program was begun in 1964 under section 331 of the Economic Opportunity Act. The act authorized the Secretary to make indemnity payments to dairy farmers whose milk was removed from the commercial market because it contained residues of chemicals registered and approved for use by the Federal Government at the time of such use. Since initial legislation, the authority of this act has been extended five times. Its present extension expires on June 30, 1970.

The milk indemnity payment program has been a great success. Although the original estimate of cost was $8.8 million, the program to date has cost just over $1 million. The total payments made to dairy farmers under the program have been small, but the assistance it has provided them has been great.

Producers in most States have benefited from this program. As of July 31, 1969, approximately 400 producers from 31 States have received indemnity payments. I feel that the extension of this indemnification program to dairy manufacturers will be just as successful, just as beneficial, and just as inexpensive.

THE NEED FOR AMENDING LEGISLATION

There is an obvious need for this amending legislation. Present monitoring capabilities are not adequate to insure that pesticide residues—such as

DDT—contained in milk purchased by dairy plants can be detected before large volumes of milk and of dairy products become contaminated.

The extent of this hazard can result in bankruptcy for many dairy plant operators. Dairy plants are liable for the value of products which they manufacture and sell if those products subsequently become contaminated with pesticide residues. The risk of loss, therefore, is far greater than the original value of the milk containing the residues.

The danger of loss extends to farmers who supply milk to the manufacturer, yet whose milk has contained no residues. A manufacturer's economic loss may make him unable to pay in full for milk he has received from farmers. Furthermore, farmers may lose a market for their milk if the plant is forced to close its doors because of disastrous losses to the manufacturer.

Finally, many dairy plants are owned cooperatively by farmers, so that any losses they suffer are directly at the expense of all cooperating farmers.

THE SOLUTION

The primary means for overcoming the problem of pesticide contamination in dairy products is in better and stricter enforcement of regulations on pesticide use. Many States have followed just this course. In Texas, where indemnity payments have been the highest, DDT is no longer recommended for controlling cotton pests. In many States, including Wisconsin, legislation is pending to prohibit the use of DDT. And, just recently, the Secretary of Health, Education, and Welfare moved to partially ban the sale of this persistent pesticide.

Another means of overcoming this situation is improved monitoring and inspection procedures to enable prompt detection of any residues that may be in milk supplies.

Until the above measures are carried out, however, dairy manufacturers remain under the threat of sudden economic disaster through no fault of their own and for causes they are virtually helpless to prevent. It is to alleviate this situation, and to rectify an obvious inconsistency in indemnity procedures, that I am offering my amendment to Public Law 90–484.

I ask unanimous consent to have a copy of Public Law 90–484, the proposed bill, and a copy of a chart, entitled "Payments Under Milk Indemnity Payment Program," issued by the Agricultural Stabilization and Conservation Service, printed in the RECORD at this point.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill, law, and chart will be printed in the RECORD.

The bill (S. 3147) to amend the act entitled "An Act to provide indemnity payments to dairy farmers", approved August 13, 1968 (82 Stat. 750), introduced by Mr. PROXMIRE (for himself and other Senators), was received, read twice by its title, referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

S. 3147

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 the first section of the Act entitled "An Act to provide indemnity payments to dairy farmers", approved August 13, 1968 (82 Stat. 750), is amended by (1) inserting "and manufacturers of dairy products" immediately after "dairy farmers"; (2) inserting "or dairy products" immediately after "their milk"; and (3) striking out "it contained" and inserting in lieu thereof "such milk or dairy products contained".

(b) The second sentence of the first section of such Act is amended to read as follows: "Any indemnity payment to any farmer shall continue until he has been reinstated and is again allowed to dispose of his milk on commercial markets."

The act and chart, presented by Mr. PROXMIRE, are as follows:

An Act to provide indemnity payments to dairy farmers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is authorized to make indemnity payments, at a fair market value, to dairy farmers who have been directed since January 1, 1964, to remove their milk from commercial markets because it contained residues of chemicals registered and approved for use by the Federal Government at the time of such use. Such indemnity payments shall continue to each dairy farmer until he has been reinstated and is again allowed to dispose of his milk on commercial markets.

SEC. 2. There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 3. The authority granted under this Act shall expire on June 30, 1970.

Approved August 13, 1968.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

PAYMENTS UNDER MILK INDEMNITY PAYMENT PROGRAM, JAN. 1, 1964—JULY 31, 1969

	FISCAL YEAR EXPENDITURES—					
	1965	1966	1967	1968	1969 [1]	Total
Alabama				$2,163.10		$2,163.10
Arizona		$1,265.56		9,616.34	$31,119.14	42,001.04
Arkansas				2,468.70		2,468.70
California	$14,356.64	3,838.34	$8,132.68	4,045.33	2,154.90	32,527.89
Colorado				2,122.37		2,122.37
Florida				4,402.99		4,402.99
Georgia	1,258.89	9,359.99				10,618.88
Idaho	3,630.52			2,247.17		5,877.69
Illinois	226.91	223.52	281.76			732.19
Iowa	1,368.05	20,794.58				22,162.63
Kansas	8,350.00	77,614.58				85,964.58
Kentucky					14,321.26	14,321.26
Louisiana	7,469.47				13,979.00	21,448.47
Maryland	164,747.00	13,868.06				178,615.06
Michigan	215.22					215.22
Minnesota	619.46					619.46
Mississippi		3,583.17	1,428.55			5,011.72
Missouri	736.49	914.45				1,650.94
Montana				47,634.38	4,755.46	52,389.84
Nebraska		4,505.37	2,373.10			6,878.47
New York			7,822.14			7,822.14
North Carolina	4,077.93					4,077.93
Ohio					[2] (7,066.11)	[2] (7,066.11)
Pennsylvania	55,746.45					55,746.45
South Dakota	1,019.21					1,019.21
Tennessee	4,564.48					4,564.48
Texas			244,473.28	97,723.56		342,196.84
Utah	29,896.80					29,896.80
Virginia	23,299.85					23,299.85
West Virginia	13,740.07	3,576.33				17,316.40
Wisconsin	14,609.25	11,066.90	15,021.37	22,302.59	11,227.26	74,227.37
Total	349,932.69	150,610.85	279,532.88	194,726.53	84,623.13	1,059,426.08

[1] Actual payments through July 31, 1969.
[2] Payments authorized.

ADDITIONAL COSPONSORS OF BILLS AND A JOINT RESOLUTION

S. 2523

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Texas (Mr. YARBOROUGH), I ask unanimous consent that, at the next printing, the name of the Senator from Pennsylvania (Mr. SCHWEIKER) be added as a cosponsor of S. 2523, to amend, extend, and improve certain public health laws relating to mental health.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 2825

Mr. BYRD of West Virginia, Mr. President, on behalf of the Senator from Massachusetts (Mr. KENNEDY), I ask unanimous consent that, at the next printing, the names of the Senator from Massachusetts (Mr. BROOKE), the Senator from Connecticut (Mr. DODD), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUYE), the Senator from Rhode Island (Mr. PELL), the Senator from Alaska (Mr. STEVENS), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Ohio (Mr. YOUNG) be added as cosponsors of S. 2825, to provide certain essential assistance to the U.S. fishing industry.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 3077

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Washington (Mr. JACKSON) and the Senator from New Jersey (Mr. WILLIAMS) be added as cosponsors of S. 3077, to create a tax credit offsetting the expenses of higher education.

The PRESIDING OFFICER. Without objection, it is so ordered.

S.J. RES. 156

Mr. BYRD of West Virginia. Mr. President, I, on behalf of the Senator from Texas (Mr. YARBOROUGH), I ask unanimous consent that at the next printing, the names of the Senator from Nevada (Mr. CANNON), the Senator from Utah (Mr. Moss), the Senator from Indiana (Mr. BAYH), the Senator from New Jersey (Mr. CASE), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Alaska (Mr. GRAVEL) and the Senator from Minnesota (Mr. MONDALE) be added as cosponsors of S.J. Res. 156, a joint resolution to establish an interagency commission to make necessary plans for the United Nations Conference on the Human Environment scheduled for 1972.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE RESOLUTION 282—SUBMISSION OF A RESOLUTION AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF THE COMMITTEE PRINT OF THE COMMITTEE ON FINANCE ENTITLED "SUMMARY OF H.R. 13270, THE TAX REFORM ACT OF 1969 AS REPORTED BY THE COMMITTEE ON FINANCE"

Mr. ANDERSON submitted a resolution (S. Res. 282) authorizing the printing of additional copies of the committee print of the Committee on Finance entitled "Summary of H.R. 13270, the Tax Reform Act of 1969 as reported by the Committee on Finance", which was considered and agreed to.

(The remarks of Mr. ANDERSON when he submitted the resolution appear earlier in the RECORD under the appropriate heading.)

SENATE RESOLUTION 283—SUBMISSION OF A RESOLUTION AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF "THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES" (SENATE REPORT 91–83)

Mr. MONDALE submitted the following resolution (S. Res. 283); which was referred to the Committee on Rules and Administration:

S. RES. 283

Resolved, That there be printed, for the use of the Committee on Labor and Public Welfare, two thousand nine hundred additional copies of the 1969 report of its Subcommittee on Migratory Labor entitled "The Migratory Farm Labor Problem in the United States" (Senate Report No. 91–83, Ninety-first Congress).

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

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

James W. Traeger, of Indiana, to be U.S. marshal for the northern district of Indiana for the term of 4 years, vice Casimir J. Pajakowski.

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 Monday, November 24, 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.

ANNOUNCEMENT OF HEARINGS ON MIGRANT HEALTH

Mr. YARBOROUGH. Mr. President, as chairman of the Health Subcommittee of the Committee on Labor and Public Welfare, I am pleased to announce that the subcommittee will hold a hearing on S. 2660, the amendments to the Migrant Health Act in Edinburg, Tex., on November 24, 1969.

NOTICE OF HEARINGS ON USEFULNESS AND AVAILABILITY OF FEDERAL PROGRAMS AND SERVICES TO ELDERLY MEXICAN-AMERICANS

Mr. YARBOROUGH. Mr. President, at the request of the Senator from New Jersey (Mr. WILLIAMS), chairman of the Special Committee on Aging, I am conducting a study of "The Usefulness and Availability of Federal Programs and Services to Elderly Mexican-Americans." On behalf of the committee, I have already heard testimony in Los Angeles, Calif.; El Paso, Tex.; San Antonio, Tex.; and—in January of this year—in Washington, D.C.

I am announcing today that final hearings will begin on November 20 and 21 at 10 a.m. in room 4200, New Senate Office Building.

At that time, the committee will give the present administration an opportunity to express—for the record—its concern about the older Mexican-American, who is too often forgotten about or inadequately served by present Federal efforts.

U.S. BOMBING ALONG THE CAMBODIAN BORDER

Mr. MANSFIELD. Mr. President, President Nixon's policy is to try to restore friendly relations with the Kingdom of Cambodia, and he has taken initiatives for that purpose which have been reciprocated. Unless the President is successful in this effort, the war in Vietnam, which, because of Laos, is already a kind of two-front conflict, could erupt on still a third front.

With respect to the U.S. bombing along the Cambodian border, as reported this morning, I will not second guess a field commander's decisions on the basis of press reports from Saigon and at a distance of 10,000 miles. A battle commander's concern is not with questions of policy but with his immediate orders and the immediate safety of his forces. I assume the field commander was following orders and that his forces were in jeopardy and on that basis, he called for air strikes on the sources of the attacks.

However understandable the field commander's actions, it is difficult to find justification for decisions which still keep U.S. forces so close to the tenuous border between Cambodia and Vietnam that these Americans can still provoke artillery attacks from forces on the other side, after the President has made clear that it is his intention to get all Americans out of Vietnam in an orderly fashion.

It does not seem to me that the way to restore friendly relations with Cambodia or the orderly way out of Vietnam is to be found by placing U.S. forces where the war has to be spread into Cambodia for their safety. It would appear that the Saigon authorities have not yet gotten the President's message.

DEPARTMENT OF JUSTICE EXPERIENCE WITH SENTENCING OF LA COSA NOSTRA MEMBERS

Mr. McCLELLAN. Mr. President, on January 15 of this year I introduced, along with the Senator from North Carolina (Mr. ERVIN) and the Senator from Nebraska (Mr. HRUSKA), S. 30, the Organized Crime Control Act of 1969. The bill was referred to the Subcommittee on Criminal Laws and Procedures, and hearings were held and the support of the Department of Justice was obtained for its major provisions. The bill has now been modified and expanded to include the substance of some seven other bills introduced this session that were aimed at organized crime. The subcommittee is at present in the process of marking up the revised bill.

One of the titles S. 30 included when it was introduced established criteria and procedures by which organized crime offenders, professional criminals, and recidivists could be identified and exposed to maximum terms of imprisonment longer than those for ordinary offenders. That proposal is now found in title XI of S. 30 as revised. It is entitled "Dangerous Special Offender Sentencing." Today I wish to draw the attention of the Senate to some information bearing on the need for such improvements in the sentencing of those convicted of aggravated offenses.

At my direction, a staff study has analyzed data provided by the FBI, summarizing the sentences actually imposed in Federal courts since 1960 upon convicts identified as members of La Cosa Nostra. The study reveals that those individuals have received, in the great majority of cases, either no prison sentence or a sentence too short to prevent the defendant from promptly resuming his criminal career. Two reasons for this deficiency, both largely capable of correction by the Congress, appear in the data.

First, the maximum sentences authorized by law for the offense of which La Cosa Nostra members most often are convicted are too low to be effective in such aggravated cases, usually 5 years or less. This defect in the law would be eliminated by title XI of S. 30, which would authorize sentences of up to 30 years for organized crime offenders.

Second, inadequate sentences for Mafia members result from a factor identified by the President's Crime Commission: Some "trial judges because of corruption,

political considerations, or lack of knowledge, tend to mete out light sentences in cases involving organized crime management personnel"—President's Commission on Law Enforcement and Administration of Justice, "The Challenge of Crime in a Free Society," page 203, 1967—by failing to impose even the limited sentences authorized. This factor, too, would be mitigated by provisions of title XI, such as its authorization of appellate increases in sentences.

Mr. President, I hope to see the major provisions of S. 30 reported to the Judiciary Committee within the next several days. The study of the FBI's frustrating experience in the few cases in which it has been possible to convict organized crime leaders should materially aid the consideration and passage of S. 30, and I urge every Senator to examine it.

Mr. President, I ask unanimous consent to have printed in the RECORD a memorandum embodying the results of the staff study, and the text of title XI of S. 30 as it is being considered by the subcommittee.

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

MEMORANDUM EMBODYING RESULTS OF STAFF STUDIES

NOVEMBER 11, 1969.

To: Subcommittee on Criminal Laws and Procedures.

From: G. Robert Blakey, chief counsel.

Subject: Sentencing experience of the Department of Justice with identified members of La Cosa Nostra.

In the executive meeting of November 7, 1969, on S. 30, the "Organized Crime Control Act of 1969," the sentencing experience of the Department of Justice with identified members of La Cosa Nostra was discussed. It is the purpose of this memorandum to supplement the data discussed at that time.

Title XI of S. 30 deals with special offender sentencing. It is based on the results of staff studies made with the aid of the Federal Bureau of Investigation of the Department of Justice's experience with sentencing of identified members of La Cosa Nostra. The following material reflects that experience:

Present estimates place the membership of La Cosa Nostra between 3,000 and 5,000, with the bulk of the membership located in the eastern part of the United States. Since 1960, the date meaningful statistics began to be collected, the combined efforts of the various federal investigative agencies have resulted in 235 federal indictments involving 328 defendants identified as members of La Cosa Nostra.

Of these 328 defendants, 73 to date have been found not guilty or have had the cases against them dismissed. Ninety-six are awaiting trial or sentencing. Twenty-one have been sentenced under statutes carrying mandatory sentences, chiefly violations of the narcotics laws. Nine have been sentenced for contempt, civil or criminal, which carries no maximum. Fifteen have received no jail term whatsoever, only fines or probation. Eighty-five have been sentenced to jail terms less than the maximums, and 29 have been sentenced to the maximum terms possible.

In percentage terms, 14% of those convicted (21 out of 150) have been charged and convicted under statutes requiring mandatory sentences. Of the remainder, 65% have received jail sentences (85 out of 129), but only 23% have received the maximums possible (29 out of 129), while 12% have received no jail term whatsoever (15 out of 129).

Of those who have received jail terms, but less than the maximums, the range has been from 1.66% of the maximum (30 days out of a possible 5 years for tax evasion) to 75% of the maximum (15 years out of a possible 20 years for extortion). The median sentence (half-way mark) has been 40% of the maximum, (e.g., 2 years out of a possible 5 years for interstate racketeering), while the bulk of the sentences have ranged from 40% to 50% of the maximums.

What this data seem to indicate is that judges are not giving appropriately long sentences, even to identified members of La Cosa Nostra. The most egregious example to come to our attention was the sentencing of Anthony ("Ducks") Corallo, a capo in the Luchese "family," by Judge Edward Weinfeld in June, 1968, in the Marcus kickback case in New York City. Marcus was the city water commissioner. Corallo and two others were convicted of sharing kickbacks he received in connection with city contracts.

Judge Weinfeld was, of course, given a probation report outlining Corallo's background and his record. The record included two previous convictions, one for bribery and one for narcotics. Corallo, however, was not unknown to Judge Weinfeld. He had appeared before Judge Weinfeld only six years earlier to be sentenced with an Assistant United States Attorney and a New York State Supreme Court Judge for an attempt to fix a fraudulent bankruptcy case. At that time, Judge Weinfeld had given Corallo two years out of a possible five under 18 U.S.C. § 1952.

At the sentencing in the Marcus case Judge Weinfeld observed:

"What the court noted then about him [Corallo] still remains true. His entire life reflected a pattern of anti-social conduct from early youth. It is doubtful that his income over any substantial period of his adult life came from honest toil. It is fairly clear that his income derived from illicit activities—bookmaking, gambling, shylocking and questionable union activities."

Nevertheless, Judge Weinfeld only sentenced Corallo to three years out of a possible five for Corallo's second violation of 18 U.S.C. § 1952.

It is difficult to see how society can be protected from hard-core offenders such as Corallo when it is not possible in a significant number of cases to secure appropriately long terms of incarceration.

Moreover, two-thirds of the identified members of La Cosa Nostra indicted by the Department of Justice since 1960 have faced maximum jail terms of only five years or under. Long term imprisonment therefore, has been not even an option in most cases. The bulk of these charges have been for interstate racketeering (18 U.S.C. § 1952: 5 years) or tax evasion (26 U.S.C. § 7201: 5 years). The two most common offenses, on the other hand, involving a possible sentence in excess of five years were extortion (18 U.S.C. § 1951: 20 years) and narcotics (ranging up to 40 years). If more convictions could be secured in these areas, an improvement in sentencing would be at least possible.

It was in part on the basis of this data, therefore, that we reached the conclusion that the existing range of penalties in most organized crime prosecutions is not adequate to achieve the minimum goal of incapacitation. Consequently, the provisions of Title XI of S. 30 were drafted to embody a special term, providing for a sentence of up to 30 years on a showing of special circumstances of aggravation in the commission of an individual felony.

In this connection, we asked the Federal Bureau of Investigation to prepare a statistical analysis of the Department of Justice's experience using the data contained in its Careers in Crime Program. That statistical analysis and the Director's covering letter appear as the final portion of this memorandum. Included in the program were those individuals identified before the Subcommittee during our hearings in March and June as representing the leadership structure of La Cosa Nostra and those members of La Cosa Nostra who have been indicted by the Federal government since 1960. In all, 386 members of La Cosa Nostra were compared against 124,374 federal offenders.

In general, the study confirms the value of Title XI's "recidivist" provision for organized crime cases. It indicates that almost 60% of La Cosa Nostra members upon conviction of another federal felony, would qualify under the provisions of Title XI as a "recidivist," defined as an adult felony offender having at the time of a federal felony conviction two previous felony convictions, one of which resulted in imprisonment.[1]

In addition, the study indicates that La Cosa Nostra defendants accounted for some 2,992 separate charges, 40% of which occurred in the State of New York, although 36 states were represented by separate charges. 17% of these charges were for violent crimes, which is in sharp contrast to the 4% figure characteristic of all federal offenders.

A distribution of these offenses over the years indicates that four-tenths of one percent occurred prior to 1920, 4.5% from 1920 through 1929, 23.3% from 1930 through 1939, 16.3% from 1940 through 1949, 21.6% from 1950 through 1959, and 33.8% from 1960 through August, 1969. This time span distribution indicates the extent to which these individuals were largely immune from legal accountability prior to the federal involvement in the organized crime area, which first began in the early 1950's but did not begin in earnest until the F.B.I. got jurisdiction with the anti-crime legislation of 1961.

The average length of the criminal career of a member of La Cosa Nostra is also in sharp contrast to that of the average offender—20 years, 7 months versus 9 years, 3 months, indicating the extent to which these hard-core offenders learn well the lesson that crime, rightly organized, pays well. Finally, it is instructive to compare the frequency of acquittal or dismissal of charges against the average offender versus the organized crime offender, 37.8% versus 69.7%. Indeed, 17.6% of La Cosa Nostra defendants were able to obtain acquittals or dismissals of cases against them five or more times each. These data clearly show the extent to which, even after charges have been brought against them, organized criminals are able to defeat the prosecutions.

FEDERAL BUREAU
OF INVESTIGATION,
DEPARTMENT OF JUSTICE,
Washington, D.C., October 31, 1969.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: In response to your letter of September 10, 1969, and subsequent discussions between Mr. Robert Blakey of your staff and Inspector Jerome J. Daunt of this Bureau, there is enclosed statistical data obtained from our Careers in Crime Program.

It is my hope the information will be useful to you and your subcommittee in considering anticrime legislation.

Sincerely yours,

J. EDGAR HOOVER.

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[1] Incidentally, the study also reveals that approximately 22 of all persons arrested on federal charges would qualify on conviction as recidivists. Moreover, it indicates that 68% of these recidivists accumulated an average of 4.3 charges per offender following those federal arrests, which is obviously an understatement of the true situation since the offender would not have been caught in the commission of all of his subsequent offenses. Thus, the recidivist provision will be useful not only against the Mafia but also in reducing the high rate of general crime.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., October 31, 1969.

ANALYSIS OF FBI'S CAREERS IN CRIME PROGRAM

A computer review of 65,446 individual criminal histories of offenders arrested by the Federal investigative agencies between August, 1967, and August, 1969, revealed that 11,420 or 17.4 percent had previously been convicted of two or more felony charges. A felony conviction is defined as an actual sentence of over one year, an indeterminate sentence, conviction followed by probation and/or a sentence of life or death.

A computer review of 233,109 individual criminal histories of Federal offenders processed into the Careers in Crime Program from January, 1963, to August, 1969, revealed that 52,300 or 22.4 percent had two or more felony convictions prior to a subsequent Federal arrest. After the Federal process, 35,761 offenders or 68.4 percent accumulated 154,938 rearrests for new crimes or 4.3 arrests per offender.

There is attached a profile of 124,374 offenders who were either arrested by Federal agencies between 1967 and August, 1969, or were previously Federal offenders between 1963 through 1966, and were subsequently arrested by local, state or Federal agencies in 1967 through August, 1969. The term criminal career in this profile is defined as the time between first and last arrest. The term imprisonment is defined as an actual sentence over one year, indeterminate sentences, and life or death sentences. Leniency is defined as probation, suspended sentence, parole, and mandatory release.

With respect to the "Profile of Offenders—Select Group," these are the 386 Cosa Nostra leadership figures and members as identified by your staff for this particular machine run. A review of the 2,992 charges accumulated by these 386 offenders reveals that while 40 percent occurred in the State of New York, at least one charge for these offenders did originally occur in 36 of the states. In addition, 17 percent of the above charges were for violent crimes compared to 4 percent for the average Federal offender profile. A distribution of these 2,992 charges over the years indicated that 0.4 percent occurred prior to 1920, 4.5 percent from 1920 through 1929, 23.3 percent from 1930 through 1939, 16.3 percent from 1940 through 1949, 21.6 percent from 1950 through 1959, and 33.8 percent from 1960 through August 1969.

Information outlined as to the extent and limitations of the Careers in Crime Program is set forth in Uniform Crime Reports—1968, beginning on page 35. This should be reviewed in making comparative analyses of the attached tables.

PROFILE OF OFFENDERS ARRESTED, 1967–69 [1]

	Number	Percentage
Frequency of convictions:		
1	34,420	27.7
2	18,792	15.1
3	13,243	10.6
4	9,476	7.6
5 or more	27,108	21.8
Total	103,039	82.8
Frequency of acquittal or dismissal:		
1	23,164	18.6
2	9,568	7.7
3	4,432	3.6
4	2,392	1.9
5 or more	3,715	3.0
Total	43,271	34.8
Frequency of imprisonment:		
1	30,897	24.8
2	15,004	12.1
3	8,205	6.6
4	4,374	3.5
5 or more	5,313	4.3
Total	63,793	51.3

PROFILE OF OFFENDERS ARRESTED, 1967–69 [1]—Continued

	Number	Percentage
Frequency of leniency:		
1	43,983	35.4
2	16,998	13.7
3	7,755	6.2
4	3,490	2.8
5 or more	2,835	2.3
Total	75,061	60.4

[1] Total number of subjects, 124,374; average age 1st arrest, 22.7; average age last arrest, 32.0; average number of arrests during criminal career, 6.9; average criminal career, 9 years 3 months.

PROFILE OF OFFENDERS—SELECT GROUP [1]

	Number	Percentage
Frequency of convictions:		
1	71	18.4
2	70	18.1
3	39	10.1
4	35	9.1
5 or more	84	21.8
Total	299	77.5
Frequency of acquittal or dismissal:		
1	93	24.1
2	46	11.9
3	37	9.6
4	25	6.5
5 or more	68	17.6
Total	269	69.7
Frequency of imprisonment:		
1	78	20.2
2	63	16.3
3	30	7.8
4	27	7.0
5 or more	27	7.0
Total	225	58.3
Frequency of leniency:		
1	84	21.8
2	52	13.5
3	34	8.8
4	9	2.3
5 or more	14	3.6
Total	193	50.0

[1] Total number of subjects, 386; average age first arrest, 26.3; average age last arrest, 46.9; average number of arrests during criminal career, 7.8; average criminal career, 20 years 7 months.

TITLE XI OF S. 30 NOW UNDER CONSIDERATION BY THE SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURE

TITLE XI—DANGEROUS SPECIAL OFFENDER SENTENCING

SEC. 1101. (a) Chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3375. Increased sentence for dangerous special offenders

"(a) Whenever an attorney charged with the prosecution of a defendant in a court of the United States for an alleged felony committed when the defendant was over the age of twenty-one years has reason to believe that the defendant is a dangerous special offender such attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court and may amend, a notice (1) specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the defendant is alleged to be a dangerous special offender be an issue upon the trial of such felony or in any manner be disclosed to the jury.

"(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, the court shall, before sentence is imposed, hold a hearing before the court alone. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. In connection with the hearing, the defendant and the United States shall be informed of the substance of such parts of the presentence report as the court intends to rely upon, except where there are placed in the record compelling reasons for withholding particular information, and shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for a term not to exceed thirty years. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

"(c) This section shall not prevent the imposition and execution of a sentence of death or of imprisonment for life or for a term exceeding thirty years upon any person convicted of an offense so punishable.

"(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special offender to less than any mandatory minimum penalty prescribed by law for such felony.

"(e) A defendant is a special offender for purposes of this section if—

"(1) on two or more previous occasions the defendant has been convicted in a court of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, and for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony; or

"(2) the defendant committed such felony as part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

"(3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct.

A conviction shown to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In determining under paragraph (1) of this subsection whether the defendant has been convicted on two or more previous occasions, conviction for offenses charged in separate counts of a single charge or pleading, or in separate charges or pleadings tried in a single trial, shall be deemed to be conviction on a single occasion. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as

derived from a source other than such conduct.

"(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felony is required for the protection of the public from further criminal conduct by the defendant.

"(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured from imposition of the original sentence.

"§ 3576. Review of sentence

"With respect to any sentence imposed on the defendant after proceedings under section 3575, a review may be taken by the defendant or the United States or both to a court of appeals. Any review by the United States shall be taken at least five days before expiration of the time for taking a review or appeal by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review by the United States after the time has expired. A court extending the time for taking a review by the United States shall extend the time for taking a review or appeal by the defendant for the same period. The court of appeals may, after considering the record, including the presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be increased or otherwise changed to the disadvantage of the defendant only on review taken by the United States and after hearing. Any withdrawal of review taken by the United States shall foreclose change to the disadvantage but not change to the advantage of the defendant. Any review taken by the United States may be dismissed on a showing of abuse of the right of the United States to take such review.

"§ 3577. Use of information for sentencing

"No limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

"§ 3578. Conviction records

"(a) There is established within the Federal Bureau of Investigation of the Department of Justice a central repository for written judgments of conviction.

"(b) Upon the conviction of a defendant in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision or any department, agency or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, the court shall cause to be affixed to a copy of the written judgment of conviction the fingerprints of the defendant together with certification by the court that the copy is a true copy of the written judgment of conviction and that the fingerprints are those of the defendant, and shall cause the copy to be forwarded to the central repository.

"(c) Copies maintained in the central repository shall not be public records. Attested copies thereof—

"(1) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

"(2) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of a State, any political subdivision, or any department, agency or instrumentality thereof, if a statute of such State requires that, upon the conviction of a defendant in a court of the State or any political subdivision thereof for an offense punishable in such court by death or imprisonment in excess of one year, the court cause to be affixed to a copy of the written judgment of conviction the fingerprints of the defendant together with certification by the court that the copy is a true copy of the written judgment of conviction and that the fingerprints are those of the defendant, and cause the copy to be forwarded to the central repository; and

"(3) shall be admissible in any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof."

(b) The analysis of chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new items:

"3575. Increased sentence for dangerous special offenders.
"3576. Review of sentence.
"3577. Use of information for sentencing.
"3578. Conviction records."

SEC. 1102. Section 3148, chapter 207, title 18, United States Code, is amended by adding "or sentence review under section 3576 of this title" immediately after "sentence".

SENATOR MIKE MANSFIELD INTERVIEWED ON "CAPITOL CLOAKROOM"

Mr. MANSFIELD. Mr. President, on Wednesday, November 5, I appeared on the radio program "Capitol Cloakroom." The reporters who participated were Marya McLaughlin, Bruce Morton, and Roger Mudd.

I ask unanimous consent that the interview in its entirety be printed in the RECORD.

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

TRANSCRIPT OF RADIO TAPE OF SENATOR MIKE MANSFIELD

Q. Senator Mansfield, do you think the Johnson war is now the Nixon war? Do you think the President's "silent majority" voted for his Viet Nam policy this week?

Q. Senator Mansfield, will Judge Haynsworth be confirmed?

Capitol Cloakroom. From the Nation's Capitol, CBS brings you the 1,087th presentation of Capitol Cloakroom, a spontaneous and unrehearsed interview with an outstanding public figure. This week's guest is Senator Mike Mansfield, Democrat of Montana. He meets with CBS correspondents Roger Mudd, Bruce Morton, and Marya McLaughlin. First, we hear from Roger Mudd:

Welcome to Capitol Cloakroom, Senator; it is a pleasure to have you with us again, not only because you are the one member of the United States Senate who enlisted in the Navy at the age of 14, but also because you are the Senate's Majority Leader and, in the time of a Republican Administration, your views and actions as an opposition leader take on added and important influence.

Following the President's Viet Nam speech on Monday, you said there was nothing new in it. You said you had prayed he would give the American people some hope that the war might be shortened considerably. You also said you were opposed to announcing a deadline for U.S. withdrawal from Viet Nam. How could he have done one without doing the other?

A. Well, it all depended on what you expected, and I didn't know what to anticipate so I was just hoping and praying that something would be pulled out of a hat to give the American people and the Congress a form of encouragement. As far as the definite deadline is concerned, I think that would take away from the flexibility of the President. I think, on the basis of what has been said by Vice President Ky, that there will be sizable withdrawals next year and, after all, Ky was pretty accurate in preannouncing the 40,000 reduction some months ago. He evidently had access, as did President Thieu, to the President's speech and the indications which went with it and, out of that, he came up with the belief that approximately 180,000 Americans would be withdrawn from Viet Nam to be replaced by South Vietnamese troops.

Q. A number of columnists have noted that the President likes to follow a relatively tough action like the speech with something heading the other way. Do you expect some sort of troop withdrawal announcement relatively soon?

A. Well, I wouldn't be surprised, but I don't know. I think it would depend on the continued decrease in infiltration from the North; the continued lull in the fighting now in its ninth week; and the fact that in South Vietnam there are 40,000 less Viet Cong and North Vietnamese compared to a year ago. Furthermore, I believe that the new policy which the President was responsible for, which he initiated last July—a policy of protective reaction—which was announced publicly by Secretary Laird and emphasized a few days later by Secretary Rogers—is an indication that things may be moving in the right direction. Let's hope they continue.

Q. Senator Mansfield, in your answer to the first question, do you have the feeling that the President has sort of turned over the control of the timetable to President Thieu?

A. No, but I think it's a pretty close knit with the governments of the United States and South Vietnam, and they are working very closely together. I think, as a matter of fact, that perhaps Thieu is being worn down gradually, but he still is exercising a great deal of influence and discretion.

Q. Senator, do you think that the Johnson war became on Monday night the Nixon war?

A. I do not.

Q. Senator Fulbright said, in listening to the President's speech, that there was revealed no difference between the Johnson policy and the Nixon policy.

A. There is a difference because, after all, you can't dismiss the fact that 60,000 have been or are in the process of being withdrawn. The figure now is about 495,000; by December 15 the 60,000 level will be achieved, and you can't gainsay the fact that these factors which I have mentioned previously have all occurred; that new policies are in effect, even though they are denied in the field and from the Pentagon. No, I think that there is a decided difference. The de-escalation is in progress, not fast enough for me. At the end of Johnson's term as President, what you had was, in effect, a stop to the war in the North, no further bombing of the North. Now you have a de-escalation of sorts.

Q. Senator, a few Senate doves have said in recent days that you and George Aiken and William Fulbright are working together with constant references to hope for a cease-fire; the cancellation of the Senate hearings tried to bring build-up pressure on the President so that he would almost be brought to the point where he would have to announce a cease-fire.

A. Well, I have breakfast with George Aiken every weekday morning. I see Bill Fulbright occasionally, but I make up my own mind. Perhaps that was an inherent hope as far as I was concerned, but, if it was, the speech didn't bear fruit.

Q. These hearings were postponed—these educational hearings we have heard a lot about. Now it turns out that they are going to be closed, which is less educational. What's the reason for the change?

A. Well, these hearings were supposed to be held beginning the 27th of October. The announcement to that effect was made several days before the President announced that he would address the Nation on Viet Nam on November 3, so the postponement is now going to be taken up and the Committee will consider its findings in executive session because the Committee wants to be constructive. It wants to be helpful. It wants to be a statesmen-like, if that is possible, and we do not intend to go out and get in front of the TV cameras to make statements for the sake of publicity, but, recognizing the difficulty of the situation in which the Nation finds itself, to be helpful if we can possibly be.

Q. Senator, was the Moratorium taken into consideration? Evidently, the hearings will now take place in executive session after the Moratorium. Was there any worry about the Moratorium?

A. Oh, no. It was decided when, as a courtesy to the President, Senator Fulbright and Senator Aiken announced the postponement that they would not occur until around the middle of November, or, more likely, towards the end.

Q. Senator, when you said a moment ago you had hoped the President would pull something out of a hat, what could he have pulled out of a hat?

A. Well, he could have announced a cease-fire and a stand-fast, not for the purpose of leaving us defenseless, but allowing us as we are now to go out and to anticipate the attacks and certainly to defend ourselves, and I think, really, that is what is in effect now under the protective reaction policy. He could have announced a further withdrawal of troops and a permanent take-over by the South Vietnamese of the combat area. Those are two things which could have been brought out but, for reasons of his own, and I am sure they are valid, he did not think this was the time to mention them. However, he did say that he has a plan. I believe him. What that plan is, I haven't the slightest idea, but I daresay that, if the present situation continues as is, it will mean a sizable withdrawal of U.S. troops in the not-too-distant future.

Q. The speech was an appeal for support from the "silent majority." Do you view the elections this week, the two gubernatorial races in New Jersey and Virginia, as an endorsement of the President's policy.

A. I couldn't say. I have no way of knowing. The President did appear in both states last week. He undoubtedly had an influence. The Democrats lost with two extraordinarily good candidates in Meyner in New Jersey and Battle in Virginia. I congratulate the Republicans for their win, but, whether or not it had anything to do with the President's speech, I just am unable to say. All I know is that the Republicans got most of the votes and they now have two new governors to add to their star teams.

Q. Your Republican counterpart, Hugh Scott, is connecting the speech with the Republican victories. He said this morning that the "silent majority" is silent no longer; they have spoken and they were heard; the speech had the effect of saying to a lot of quiet people they should be good citizens and vote and vote for Republican candidates with their show of confidence.

A. Well, he may be right, but we'll have to see just what the term "silent majority" means. We better think about the silent minority, about the dead and the wounded, about the casualties here at home, about the cost to this country and the need for us to face up to our own problems. I wouldn't say yes or no to what Senator Scott says. He is entitled to his view. He probably knows more about it than I do.

Q. Do you think there is a "silent majority," Senator?

A. Oh, it's hard to say; and it's hard to say, if there is one, on which side it would be. A lot of coffins have been coming back; a lot of hurt has been felt in the homes of the Nation; a lot of problems have arisen out of this tragedy which is Viet Nam; and I'm not very certain that there's a kind of majority which the President seems to think there is in this country. It could well be the opposite way.

Q. Senator, what about the upcoming Moratorium? Are you worried about that at all?

A. No, I'm not worried about it. All I hope that it is conducted under the auspices of the First Amendment to the Constitution, a part of the Bill of Rights, which guarantees all of our citizens the right to assemble peaceably to express their grievances and to ask redress. Viet Nam is a problem among all of our people, regardless of their personal positions on it. However, I cannot believe nor do I condone violence or license, assaults on property, or assaults on persons. That is illegal, and incidents of that kind should be and must be punishable under the law.

Q. Do you think that the President's speech is likely to turn out more demonstrators on November 15?

A. It probably will on both sides because there very likely will be counter-demonstrations, as well, and out of this sort of act-react syndrome could develop patterns of violence which would do this country no good, but tear it more apart.

Q. Sir, you said that you thought the President did have his reasons for not announcing a cease-fire. What do you think they were?

A. Well, he just didn't want—I'm just assuming this—to tilt his hat to the other side and that he was prepared to undertake certain actions under certain circumstances and that he felt that it would be better to keep that to himself, although I suppose he talked this over with Thieu and Ky, as well as with his counsels and most intimate advisers at the White House, including Dr. Kissinger and others.

Q. Senator Mansfield, did you . . . would you anticipate that in the executive session that the Foreign Relations Committee is going to have, you will be able to get information from the Administration as important as, say, the secret withdrawal schedules?

A. I doubt it.

Q. Senator, I think the criticism of the President's speech is that he seems to have talked himself in to where, whenever the United States troop withdrawals are scheduled, is dependent upon the Thieu government or the Hanoi government actions. Do you agree with that?

A. Yes, I can say that I think there's a locked-in syndrome there, because we are dependent upon Saigon to a certain extent. They are dependent upon us. Hanoi is left free and out in the open to do anything it wants. It has the most envied position of all, and it has most of the cards that can be played. One thing I did not like about the President's speech was his use of the word precipitate withdrawal.

It means unilateral withdrawal right away, right now. I know of no Senator who has advocated precipitate withdrawal. I know of no Senator who had advocated unilateral withdrawal, but I would say that, on the basis of the 60,000 men being withdrawn, that is in itself a form of unilateral withdrawal.

Q. Well, isn't the very word "Vietnamization" a cold word for withdrawal?

A. Well, yes, because the Vietnamese are supposed to take up the slack as we go out, but I have my doubts about those programs as they apply to Viet Nam. I hope that this works out, but there have been so many different kinds of programs and so many failures that I am keeping my fingers crossed.

Q. Can we try one more question on Viet Nam before we move on? Can you give us a prediction, Senator, as to when you think the U.S. will be out of that country?

A. I wish I could. All I can say is the sooner, the better, and it wouldn't be too soon for me.

Q. But you can't see, looking ahead in another two years or three years, our disengagement?

A. All I can say is that the President indicates that most of the combat troops, if not all, would be out at the end of next year, if I remember his speech correctly, and in another part of it, he indicated that all of our troops would be out at sometime, he didn't say when, but eventually.

Q. Senator, on another subject, it is going to be tax reform time on the Senate floor shortly. A *New York Times* column the other day described the Finance Committee's bill as a "mouse" of a reform bill. Do you buy that?

A. Well, you know the *New York Times* is a pretty free-wheeling outfit, and you can't do anything about a newspaper, a TV broadcaster, expressing opinions; they are entitled to them.

Q. Senator, do you anticipate that the tax reform bill, mouse or mountain, will get out of the Senate—off the Senate floor—this year?

A. I do.

Q. Do you anticipate long or extensive debate on the oil depletion or on one of the things that you have said you are in favor of—the increase in the personal exemption?

A. No, I wouldn't think so. I go along with Senator Long, who said that he thinks two weeks, under proper circumstances, would be enough to dispose of the tax reform-tax relief bill. I hope we won't be spending a lot of time expostulating on what we want to do as individual Senators in achieving the kind of reforms we are interested in. If the Senate will work together and do what it can do and has done in certain circumstances we ought to be able to finish it this year. However, I do have to qualify it because I am not the Chairman. I'm only one in one hundred, and the Senate as a whole will have to make that decision. I hope that they will.

Q. Are you satisfied with the content of the Committee's tax bill?

A. Oh yes, indeed, and very happy that the committee met the deadline of October 31, which very few people thought they would.

Q. You can vote for it as it stands now, or are there changes you would like to make?

A. Oh, there are some things I want out, some things in, and other people feel the same way, and I'll tell you what those are when the bill is on the floor.

Q. Do you think the big boys, the lobbyists, in fact, took a beating as Russell Long said?

A. I think so.

Q. Senator, what about, specifically, oil depletion? Do you think that a major effort will be made on the floor to take it back to the 27.5 per cent, contrary to what the Committee has recommneded, or do you think that an attempt will be made to lower it even more?

A. Well, I would imagine that the 23 per cent recommended by the Senate Finance Committee, and the 20 per cent, I believe, recommended by the Ways and Means Committee, might well hold up and there would come a differential halfway between.

Q. One of the legislative items that is piling up now is draft reform. What are the prospects for that? It has cleared the House and has now gone over to the Armed Services Committee.

A. There are elements of progress at the present time. The prospects are looking up for the one-line bill which passed the House, the so-called lottery proposal, to be taken up in the Armed Services Committee soon. If it is, it will be placed on the calendar. As far as I am concerned, it will be called up just as soon as possible.

Q. Would you vote against it?

A. I would, and I would vote against an extension of the draft bill because I think that the bill itself is inequitable, unfair, affects the lower income groups the most, and favors the affluent too much. Furthermore, even the proposal, which is a step in the right direction, the proposal advanced by the President and advocated by Senators Kennedy and Hart, still retains a degree of inequity as far as that group is concerned.

Q. There's no way you could shake Senator Stennis and the Armed Services Committee a little and get a genuine draft reform?

A. He has promised to go ahead with that next year. The Chairman of the House Armed Services Committee has made the same promise for next year. Senator Stennis is a man of his word. It appears that the only possibility this year is to get the 19-year-old lottery passed, and the overhaul of the draft bill would have to come next year.

Q. Why not this year, Senator?

A. Well, I don't think it's a question that you can face up to and decide in a week or so. It will involve a good deal of hearings. There will be many proposals, such as a volunteer army, and other things and you just can't operate that kind of change on a few days basis. As far as I am concerned, I wish they could and would.

Q. Senator Mansfield, you said that prospects were looking up for eventual draft reform. Are prospects looking up for Judge Haynsworth?

A. I would say that it's a toss-up. No, I don't think the prospects are looking up for him. Quite the contrary, from what I hear on the floor, if that is any indication of what is in store for Judge Haynsworth. To me, it is a toss-up. I am hopeful now—again, on the basis of the recent context and conversations—that it still might be possible to bring Judge Haynsworth's nomination up on Tuesday or Wednesday of next week.

Q. You said earlier, Senator, that it looked like it was going in for another week's delay and might bump into the tax bill?

A. That's right, but since then I have had a chance to hold further conversations—within 15 minutes after I gave you that 17th of November date, I was informed otherwise.

Q. You don't see any possibility, then, of the tax bill coming up first and the Haynsworth nomination just sliding into next year without any action?

A. No, if that happened, it would kill it.

Q. Senator, you said . . .

A. And I think he is entitled to every consideration to have his nomination decided on the floor of the Senate. The Senate is entitled to have a chance to vote on it.

Q. Senator, you said that things are looking down for the Judge if what you hear on the Senate floor, I think you said, is ahead of him, or something like that. What do you hear on the Senate floor?

A. Oh, just the opinions of some of the Senators who have not made their positions known officially yet. It appears to me that it's going to be a toss-up. For a while he was ahead, but I think now it's about 50–50.

Q. I think that you think that, even though there might be strong indications that he would not be confirmed, that you think it is too late or advisable for President Nixon to withdraw the name of Judge Haynsworth to get out of it.

A. Oh, that's outside of the area of my responsibility. It would be impertinent for me to make such a proposal. That's something for the President and the Judge to decide on if they are even considering it.

Q. In your conversations with Chairman Eastland of the Judiciary Committee about the Haynsworth nomination, did he confirm that the proposal for direct election in Presidential races is dead?

A. No, that didn't even come up.

Q. What is your opinion on this?

A. Well, I would hope that we can get it out and get it passed so that, if possible, it can be in operation when the legislature begins to meet in the various states, most of them a year from this coming January.

Q. Are the prospects there that it could be brought up this year?

A. No, with the tax bill coming up, the Haynsworth nomination, the appropriations bills, it looks dimmer all of the time.

Q. Whatever happened to all of the appropriations bills? This is the slowest pace on those in a long time. Is this Democratic footdragging or is the White House in it, or what?

A. Well, I suppose it's a combination. If there's any blame, we can share it equally, but this Administration is pretty slow in coming up with some of its proposals and the Congress has been very slow in passing some of the authorization bills which, of course, slows up the consideration of appropriation measures. We are making relatively good progress. We will pass them all this year, by the end of the year instead of by June 30. There are five bills still in the House which have not come over to the Senate, and all of those that are available, hearings have been held on them. We are waiting for Senate action on HEW, Independent Offices, and other measures, so, while we are slow, partly to blame, nevertheless, it is just the way it has worked out.

Q. Why on earth would a Democrat want to drag his feet, Senator?

A. Well, that's kind of hard, but you know you—both Republicans and Democrats—have lots of practice at it.

Q. Senator, we were talking a few moments ago about taxes. What about the surtax? What is going to happen there?

A. Oh, it's in the package—the tax reform-tax relief bill—as reported by the Finance Committee. If necessary, if something happens so that bill is not passed, then out of conference and on the President's desk by the first of the year, it can be made retroactive. We haven't got too much to worry about.

Q. You want to keep it in the package?

A. Yes, indeed.

Q. One final question, Senator: You are up for re-election next year, are you not?

A. Yes.

Q. And you are going to run?

A. I guess so.

Q. And will you win?

A. It's up to the people.

Q. Well, I read in the paper that Mr. Chet Huntley is quitting and going back to Montana. Is he a possible threat, Senator?

A. No, Chet's a good friend—awfully glad he's coming back to Montana. We're glad he is going to venture into a 15,000 acre spread. We think he is an asset to our state—always have—and are delighted that Chet is coming home. He knows an oasis when he sees it, and that's what Montana is.

Q. And you're delighted because he has no political ambitions?

A. I wouldn't care. He would be a good man in politics. I like Chet.

Well, thank you. We like you, Senator. Our pleasure to have had you on Capitol Cloakroom.

HOWARD K. SMITH COMMENTARY

Mr. DOLE. Mr. President, a fad seems to be making its way through the news and opinion community. This craze manifests itself in the criticism, ridicule, and verbal-visual vivisection of the Vice President with which the public has been deluged lately. His statements, opinions, and use of the English language have been the subject of a close-harmony chorus which has reached a crescendo of furor and excitation in recent days.

However widespread this latest exercise in contagious criticism seems to be, there was at least one voice raised last week to question the race to be "firstest with the mostest" in the Agnew-baiting contest. Howard K. Smith, Washington anchor man for the ABC evening news, expressed a good humored but highly revealing analysis of the phenomenon his fellows in the media are pursuing.

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

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

ABC EVENING NEWS COMMENTARY BY HOWARD K. SMITH, NOVEMBER 11, 1969

Political cartoonists have that in common with lemmings, that once a line is set, most of them follow it, though it lead to perdition.

The current cliche shared by them and many columnists is—Spiro Agnew is putting his foot in his mouth, making un-redeemable errors, and polarizing the people.

Well, I am no devotee of Mr. Agnew's, nor of his level of prose. But I doubt that party line.

The fact has to be faced that a portion of Americans—not a majority, but maybe enough to turn a minority into one—believe that Senator McGovern who told us, Mr. Ky was living it up in Paris night clubs when, in fact, he was home in bed . . . is impudent . . . and Senator Fulbright, of Arrogance of Power fame, is effete.

Many believe those spokesmen have had more than their fair share of time to argue, and should be answered back; and Agnew's answers are not more offensive than Dr. Spock's speeches.

To polarize—science teaches us—takes two. It is not fair to claim the right of dissent, then cry foul when someone dissents from you.

But the nub of the matter in a democratic republic is votes. Mr. Agnew is angering those who would never vote his way anyhow. The Gallup poll says he is gaining heavily from those who used to support George Wallace.

I may be wrong—I am not going to follow any line to perdition—but there is a possibility that it is not Mr. Agnew who is making mistakes. It is the Cartoonists.

VETERANS SPEAK OUT FOR THE SENATE VERSION OF H.R. 11959, THE COLD WAR GI BILL

Mr. YARBOROUGH. Mr. President, during the past week, in which we paused to honor the gallant men who have given their lives in defense of the United States, it is only fitting that we now take time to consider the problems of the veterans of Vietnam and the cold war period.

The Vietnam war, which has now become the longest war in our Nation's history, has made extraordinary demands of the young people of America. Countless numbers of our young men have had their lives disrupted and their plans postponed in order to fight in this cruel conflict. All too many of these young men have come from the poverty-

stricken areas of America, such as the Appalachian regions of West Virginia, the ghettos of Harlem and Watts, and the barrios of Laredo, San Antonio, and San Diego.

Many of these unfortunate young men have grown up in poverty and have lived with its harsh affects and now they are being called upon to risk their lives in a foreign war. It would be cruel and heartless to return these brave young men to the poverty from which they came after their service is over.

The purpose behind the cold war GI bill is to furnish our veterans with the opportunity to obtain the education and training they need to achieve meaningful and useful careers. Without this important bill, many veterans would never have had an opportunity to obtain an education. In other words, the cold war GI bill has provided the means for making many seemingly impossible dreams come true. Unfortunately, the present allowances provided for by the GI bill are far too low in comparison to the skyrocketing costs of living and education.

On October 23, 1969, the Senate passed H.R. 11959 which incorporates in title I my bill, S. 338, to increase veterans education and training allowances by 46 percent. This bill was passed by a vote of 77 to 0 demonstrating the strong bipartisan support that exists in the Senate for these needed increases. With a 46-percent increase in the allowances, many veterans who cannot now afford to go to school will be able to obtain education and training they are so justly entitled to.

H.R. 11959 as amended by the Senate has received the enthusiastic support of every major veterans organization in the Nation. I have received numerous letters from veterans from almost every State in the Union supporting this bill. I ask unanimous consent that several petitions that I have received be printed in their entirety, with the names of all the signers, in the RECORD, at the conclusion of my remarks.

Mr. President, I earnestly hope that the House of Representatives will accept the Senate version of H.R. 11959 so that this important measure can be enacted into law. By passing this bill, we will be showing our gratitude for the sacrifices these gallant men have made.

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

OFFICE OF THE STAFF JUDGE ADVOCATE,
Fort Campbell, Ky., October 22, 1969.

Hon. RALPH W. YARBOROUGH,
Chairman, Senate Labor and Welfare Committee, Washington, D.C.

DEAR SENATOR YARBOROUGH: As a serviceman wishing to pursue my educational goals upon completion of military duty, I applaud your efforts to substantially increase the educational benefits offered to veterans. I feel that the 46% increase in benefits is not "excessive" or "unrealistic" as President Nixon has recently stated. On the contrary, present college tuition and room and board rates wholly justify the proposed 46% increase in benefits.

Sir, when I go back to school, I want to do just that. Optimum scholastic atmosphere should preclude weekend jobs and dropping out for a semester to meet costs. President Nixon's proposed 13% token increase would, if enacted, do little to meet the problem head on. Your proposal, if enacted into law, would most certainly be an important step in aiding the GI so that he in turn can help himself. Thank you for thinking of our lot.

Sincerely,

DONALD P. CIANCI.

The following persons concur in this letter:

Pfc Donald P. Cianci, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Connecticut.

Pfc Allan Silverberg, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Missouri.

Pfc Stephen Spafford, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Texas.

Pfc Robert Salzer, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Maryland.

Pfc Howard Pollock, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Wisconsin.

Pvt Rodney Loy, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Illinois.

Pvt Frank Bonan, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Illinois.

Sp4. Mark Signorelli, Office of the Legal Assistance, Fort Campbell, Ky. Resident of Minnesota.

Pfc Anthony Sonfelippo, Office of Legal Assistance, Fort Campbell, Ky. Resident of Wisconsin.

Cpt Arpiar Saunders, Jr., Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Massachusetts.

Cpt David W. Neeb, Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Wisconsin.

Cpt David W. Davenport, Jr., Office of the Staff Judge Advocate, Fort Campbell, Ky. Resident of Texas.

Pfc Daniel Clinton, Court Room No. 2, Fort Campbell, Ky. Resident of Michigan.

Sp4 James Thill, Court Room No. 2, Fort Campbell, Ky. Resident of Minnesota.

1 Lt. Stephen I. Tamber, Court Room No. 2, Fort Campbell, Ky. Resident of New York.

CHAPEL HILL, N.C.
October 23, 1969.

Hon. RALPH YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: We, the undersigned veterans who are law students at the University of North Carolina, endorse your efforts to obtain the maximum feasible increase in G.I. educational benefits. We enjoy and appreciate the benefits we are currently receiving, but can attest that they are insufficient to satisfy substantially the expenses incurred in the pursuit of education. The rising cost of living, particularly the ever-rising cost of a college education, is making it increasingly difficult for deserving veterans to meet these expenses. We earnestly hope that your leadership will gain the necessary support to convert proposal to reality.

Winston J. Dean, William B. Crumpler, Roger D. Grout, Lanny B. Bridgers, Bruce J. Downey, Gilbert T. Davis, Timothy J. Lemmons, Herbert D. Williams III, Edward T. Brewer, William W. Maynehart, Walter R. Callison, Charles David Benbow IV, James D. Little, Jim Fuller, Bobby G. Abrams, James K. Lanics.

Donald W. Harper, Chester C. Davis, Terry Yarbrough, Jim D. Caudell, John C. Livingston, George S. King, Jr., Anthony B. Lamb, Kitrell Smith, Wm. P. Aynch, R. T. Oliver, John C. Euch, Jr., W. E. Spainhour, David K. Lot, Jr., J. Perin Quarles, George L. Neshart, Jr., Michael Schoenby, William R. Davis, Willis R. Lawrence, F. Stuart Clarke.

Kenneth F. Essex, William H. Sessoms, Jr., Thomas L. White, Jr., Robert W. Hutchins, Norman Estes Smith, William H. W. Anderson, Jr., Edward J. Crotty, Donald K. Speckhard, Kermit W. Elkin, Jr., William M. Bernstein, Joseph Main, Kenneth R. Johnson, Dennis Marquardt, F. J. D. Pasquentonio.

TULSA, OKLAHOMA,
October 22, 1969.

Open letter: President of the United States; Senate; House of Representatives.

Attention: RALPH W. YARBOROUGH, Senator, Chairman of Senate Labor and Welfare Committee.

DEAR SIR: I'm sure a majority of veterans feel as we do; that the time has come when we should voice our opinions and feelings on a matter that concerns us, the veterans benefits.

In a recent issue of the Tulsa World (a local daily), it stated that President Nixon hinted Tuesday, 10–21–69, he would veto a pending Bill on Veterans educational benefits labeling the bill as inflationary. This sir, we believe with strong feelings of being unjust and of poor judgment to even consider veto because of inflation.

I'm sure we understand the problem of inflation and admire the President for trying to solve the problem. But is it fair to issue a statement of that nature to the very persons that made a large contribution to the greatness of this country? To ask of them another sacrifice, where as they have already given something no nation could ever measure in value; the loyalty and fierce pride of being an American.

We do not ask for a hand-out, just merely a chance and help to prepare ourselves for the free society we so willingly and freely, for some layed our lives on the line, others gave their lives and others still limbs, sight, and/or sanity. Is this, sir, too much for us to ask?

I quote, "They know the basic truth that a veterans program not good for the nation as a whole cannot ultimately be of benefit to veterans themselves," unquote. What is the basic truth? Is it not good to assist the veterans? Where as we (U.S. Government) have supported schools and colleges that are directly rebellious against our government? Again, I say is the fierce pride and loyalty of our American sons to be measured in money and would you say 553 million dollars is too much to say thank you to the veterans? Could that money buy the suffering lives and heart breaks? Yet, among supporting those schools as mentioned previously we also spend billions of dollars in foreign aid, with some of this support going to countries that threaten the very ideals we so bitterly fought for. We are not too familiar with other Government spending; but I'm sure there are other places in the budget that could be reduced other than this pending bill.

To describe the reasoning behind why many veterans do not use the G.I. Bill, I quote, "It's not the going to school and working that's hard, it's trying to make ends meet and getting out of debt after school that's hard," unquote.

If there is any doubt of that statement I would like to invite you to spend a day with me and my family and examine our monthly budget.

I hope this letter will give you a clearer view on how the veterans feel about the G.I. Bill and veterans benefits.

Sincerely,

SAMUEL CERIDON.

VETERANS

Morgan Brown, Jr., George D. Bed, Lawrence Franke, Robert W. Crouch, Thomas R. Cochran, Roy J. Reec, Jr., Donald D. Bergen, Jesse Castillon, Jr., Verlin L. Schauer, Ronald P. Blanchard, Curry V. Pierce, James A. Benton, Le Roy M. Sharp, Lynn H. Scott, Ronald R. Chafin, Robert R. Clayman.

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John Pierce, LOG, Ely, Minn.

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Dennis Hamilton, 207, Wash. State.

Ronald Griffith, 65th DPU, Louisiana.

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Thomas P. Welsh, HQ Co. USAREUR SigC., Baltimore.

Samuel W. Gore, Hq Co USAREUR Sig Cen., Warren, Pa.

SENSELESS CONTINUATION OF VIETNAM WAR

Mr. CRANSTON. Mr. President, a constituent of mine from San Diego, Mrs. Lucile H. Butterfield, recently wrote about our continuing involvement in Vietnam. Mrs. Butterfield also sent a long letter to President Johnson in 1967 after she lost her only son in combat. Because she has expressed so eloquently the tragic effects this war is having upon our own society, I would like to share her letters with Senators.

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

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

OCTOBER 16, 1969.

HON. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CRANSTON: It is heartening to know that you are working so diligently for withdrawal of our men from Vietnam. A little over two years ago, I lost my only son in Vietnam. Prior to his being sent to Vietnam, he had proven his abilities physically, mentally, and interpersonally as well as exhibited great leadership qualities. Everyday the casualty list grows longer and longer of the dead and the maimed. I do not feel that more deaths, maimed lives, and broken families can avenge his death. It only adds to the frustration felt by us all. It doesn't make sense to continue the price of so called "victory" is exorbitant. Each day makes it more outrageously extravagant which really is defeat. Let's strive to bring the men home now and return defeat into victory by using the potential of all our young men in a positive way.

Thank you and God bless you.

Respectfully yours,

LUCILE H. BUTTERFIELD.

DECEMBER 7, 1967.

DEAR MR. PRESIDENT: For some time I've felt I should write you. I heard you say recently that when one disagreed to express it in a way befitting our way of life. I wholeheartedly concur even though it may not make your job of making weighty decisions any easier. However, it will place a symbolism of dignity upon our methods of dissent. Perhaps, though, all the fault is not one-sided.

There appears to be a growing concern among people I know that many facts are being withheld from us or that these facts are being stated in such a manner that they leave the issues clouded. Could it be that many facts are stated in such a manner as to do the least harm to the image of those in a position of authority? Most of us like to be in a position of prestige. It usually takes a big person to admit a mistake and take the consequences. None of us like to suffer from wounded pride by admitting that we are wrong but it often makes us more human when we are able to say we "goofed."

In many of your speeches I've heard you state that we are in Vietnam to insure the South Vietnamese the right of self determination. If this is the case why is there so little interest on the part of the South Vietnamese to fight for this right? If I can believe the newscasts, the men who have been in Vietnam and the many publications with writing on the subject, there appears to be a very small percentage of Vietnamese who are fighting alongside of our men. Why?

I am sure there are many Vietnamese that are glad we are there. However, I question the motives of many of them when I hear stories of the exploitation of our supplies, the way the elections were conducted, and other related incidents.

Four years ago I returned to the University to do graduate work. Prior to my return I was somewhat complacent about many of the happenings around me. Three years ago I took a course entitled "The World Community." As the title implies, it gave rise for much discussion of the *world* situation. Many of us at that time searched for the real reason we were in Vietnam. Our instructor could not give us an adequate answer. All he could say is that we have a right to be there. Most of us in the class could not buy such a vague answer. We found those people both in and out of the classroom who said we are in Vietnam to save ourselves from Communism. To many of us, this idea was just another smoke screen. To a well read, thinking person such an idea carries no credibility.

Our government didn't move into Indonesia when they went Communistic. Who are we to play God or Great Father to the world? We have been so authoritarian in relation to other peoples by going in and telling them what is good for them without listening to what they, the people of the country, want or have to say. At this point I'm not sure whether our government was smart or whether it was a matter of expediency to stay out of Indonesia when they appeared to go against everything our government stands for. You may say that our being already involved in Asia made the difference. How can you be sure? Yes, the United States would like to take the credit, just as every parent would like to take the credit for the successes of his child and vicariously make them his own. A good parent allows his child to make mistakes. You, as a parent, appear wise enough to allow your children to live their lives without writing their script for them. Why do we, the United States, have to write the script for Vietnam or any other nation?

In my study of government, I learned that only the Marines could be sent on foreign soil without a declaration of war. Has this been changed? If it hasn't, it appears to me that most of our troops are illegally in Vietnam. I would appreciate clarification on this point.

Let us take off the facade and say what we really mean. The United States has been playing the father who says, "Do as I say, not as I do." It is catching up with us. Our children haven't learned from what we say but from what we do. The United States is fighting in Vietnam. Our people at home are rioting and using violence to gain their ends. Could it be that the United States has set the example by fighting in Vietnam?

How can we say that our way of government is best for Vietnam? I hear the Vietnamese people saying, "You (United States) can't do this for us; we have to do it for ourselves. Did not you (the United States) do it for yourselves"? No, Mr. President, I cannot buy your reasons that you have reiterated so frequently why the United States is in Vietnam. We, the American people, have had to sort out all the messages from many sources to learn that the Vietnamese are telling the United States as they did the French to get the hell out and let us (the Vietnamese) do this ourselves. Didn't the United States tell the English in effect the same thing almost two hundred years ago?

Many times I've noticed that either you or Congress appoints a committee to make an investigation or take on some other project. It so often appears that they are all past fifty years of age and are not a widely representative group. This may be good in some instances but there are times when a cross section of generations would bring about more harmony as well as a balance of understanding in the solution of problems.

In addition to having a generation gap and a credibility gap there is a sensibility gap. This is demonstrated in several areas as follows:

1. The United States has less than 10% of the world's population yet we think we can take on an area that has better than 50% of the world's population. It doesn't make sense.

2. Who are the boys going to Vietnam? They are the best physical, mental, and personable specimens of the United States. Does it make sense to use our best men for cannon fodder? If there is anything to the genetics angle, I fear for the next generation of people in the United States. Who will run the country?

3. The men we send to Vietnam mostly fall between the ages of 17 to 25. Those under 21 have absolutely no say about whether they go or not if they are drafted and found physically and mentally fit. These boys do not even have a vote that they can cast for or against the people making such a policy. It doesn't make sense that these boys have to go fight for their country but do not really have all the rights of citizenship, i.e., a vote. Since our present population is rapidly making us a people young, chronologically, is it fear that deters our leaders from giving them the vote? I maintain that if a man is old enough to put on a uniform and go out and fight he is old enough to determine who makes the decisions in government. It doesn't make sense for our government to say it is wrong for a young man to refuse military service when he isn't allowed to vote for the people that shape our governmental policies. I thought we lived in a democracy.

When dissatisfaction with the present situation falls to an all time low there is something wrong. Why has dissatisfaction of the war doubled in the last two years? Why do 70% of the people feel that they haven't been told the truth? Why is it that every time I hear one of our leaders asked the question, "Isn't the real reason the United States keeps on in Vietnam is that it boosts the economy"?—that these leaders *always* skirt the issue and give an inadequate answer? In more and more of the cases concerning our government's policies in situations regarding the well-being of ourselves and future generations I ask the question—"Does it make sense"?—and I find I have to answer this question with an unqualified NO!

Several months ago I lost my only son in Vietnam. Prior to his death, I was proud of him, as any mother would be. I knew he had leadership qualities, but I never realized the reach of these qualities until after he had paid the supreme price. The many letters and news writeups in several states, testify to the qualities, physically, mentally and interpersonal that my son had. He graduated at the top of his class at the U.S. Air

Force Academy and seven months later received his M.A. degree from Purdue University. This young man and many more like him had far more to offer their country. It does not make sense! If this keeps up the United States is going to be like Sodom and Gomorrah. There won't be ten good men left to run the country.

If my son died to give the Vietnamese people the right for self-determination or to save them and, or us, from communism, he died in vain. If the cause was to take me and others out of the state of apathy and complacency, to stand up and do more than just protest, then the cause was not in vain.

This waste of our potential leaders and the great drain on our financial resources could be put to so much better use to rebuild our sick cities. These potential leaders could also be used in a humanitarian capacity in these undeveloped countries to help the people help themselves.

Mr. President, you may never see this letter but my conscience would not let me sit idly and not make an attempt to let you know how one mother, who loved her son and loves her country, feels.

Respectfully yours,

LUCILE H. BUTTERFIELD.

UNESCO CONFERENCE IN SAN FRANCISCO ON MAN AND HIS ENVIRONMENT

Mr. YARBOROUGH. Mr. President, on November 23, 1969, the United States National Commission for UNESCO will convene its 13th National Conference on Man and His Environment: A View Toward Survival.

The Conference will be held in San Francisco and the program is being developed with the cooperation of Stanford University.

The program for the Conference is designed not merely to discuss the problem of environmental deterioration, but, more important, to seek solutions to the problem. The Conference will concentrate attention upon action programs to improve the quality for the environment and to bring together for that purpose representatives of educational, scientific, and cultural organizations and institutions, and labor and industry. In pursuit of this objective, the program will culminate with recommendations for action which will be meaningful, perceptive, constructive, and possible.

Mr. President, on October 6, 1969, I introduced Senate Joint Resolution 156, which provides for the creation of an Interagency Commission to plan this Nation's participation in the 1972 Worldwide Conference on the Human Environment.

One must have a proclivity for Russian roulette to fail to recognize the lethal dangers posed by the constant encroachment of pollution upon our natural environment.

For 50,000 years man's average doubling time in population was 10,000 years and now it is down to about 30 years. In the United States alone 5 pounds of solid waste per person is produced every day. The rapid increase in the pollution of the environment is both the consequence and the indication of the uncontrolled population growth and the surge into the supertechnological age.

I have received a copy of a recent press release issued by the U.S. National Commission for UNESCO, announcing that televison star Arthur Godfrey will participate in the Conference. The San Francisco conference will be a vital prelude to the worldwide 1972 U.N. Conference. The press release I mentioned, dated October 15, 1969, is worthy of consideration because it outlines some of the details about the UNESCO Conference on this urgent matter. I ask unanimous consent that the press release be printed in the RECORD.

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

ARTHUR GODFREY TO HIGHLIGHT NATIONAL ENVIRONMENTAL CONFERENCE

Radio and television star Arthur Godfrey, long an outspoken conservationist, will be among the principal speakers at the forthcoming Environmental Conference in San Francisco November 23–25 sponsored by the U.S. National Commission for UNESCO in cooperation with Stanford University.

Mr. Godfrey will join keynoter Lee DuBridge, the President's Science Adviser, and nearly forty other distinguished specialists and experts in environment and related fields, in three days of searching interchange of ideas through which the National Commission hopes to take basic phases of the environmental crisis out of the discussion stage and into solid proposals for feasible immediate action. Among the panelists and formal speakers will be Robert O. Anderson, President of the Atlantic Richfield Oil Company; David K. Brower, one of California's most militant conservationists; Biologist Barry Commoner; Anthropologist Margaret Mead, Architect Nathaniel Owings; and Population Control Authority, Prof. Paul Ehrlich of Stanford University.

"Man and His Environment: A View Toward Survival" is the Conference theme which will bring to San Francisco's St. Francis Hotel nearly five hundred Americans from the broad spectrum of national educational, cultural and scientific activism, including representatives of the sixty national non-governmental organizations represented on the U.S. National Commission for UNESCO. In a series of plenary sessions and panels, conferees will examine the problems and potential solutions from such diverse points of view as youth, business, urban needs, the law, and ecology.

Arthur Godfrey, whose growing interest in conservation is well-known to his daily audiences, is flying from an engagement in Greece directly to the Conference in order to lend, as he has described it, any assistance he can to the Conference and the tasks it undertakes. Dedicated to what he has termed "bridging the gap between the specialist and the public" Mr. Godfrey has become a major force for public understanding of the environmental crisis which threatens mankind.

APPOINTMENT OF DR. ROBERT L. FROEMKE TO NATIONAL PUBLIC ADVISORY COUNSEL

Mr. GURNEY. Mr. President, the General Services Administration's National Public Advisory Council reportedly has developed some excellent ideas and made thoughtful suggestions to Administrator Robert L. Kunzig. I am delighted that Florida is represented on the council by Dr. Robert L. Froemke, dean of the College of Business and Public Administration at Florida Atlantic University.

Dr. Froemke is a specialist in organization theory, and I am certain that his contributions toward involving the public in the affairs of Government will be many and welcome. Mr. Kunzig is to be congratulated for his foresight in assembling such a panel of 16 distinguished citizens of our great Nation to advise him on GSA policies and programs. This step is in line with President Nixon's promise to give Americans more of a voice in the operation of their Government.

Dr. Froemke has served on the faculty of Columbia University, the University of Georgia, Florida State University, and the Polytechnic Institute of Brooklyn. He formerly was head of central data processing for Standard Oil Co. of New Jersey. He holds a bachelor of science from the Colorado School of Mines, a master of science from Georgia Institute of Technology, a doctor of philosophy from Columbia University, and a bachelor of laws degree from New York University.

THE VIETNAM WAR—ADDRESS BY SENATOR RIBICOFF TO YALE UNIVERSITY STUDENT BODY

Mr. RIBICOFF. Mr. President, at the invitation of the Yale University student body and university president Kingman Brewster, I had the privilege to deliver a speech at Yale University, New Haven, Conn., last Thursday evening, November 13, 1969, discussing the problems presented by the Vietnam war.

Because the war affects every American, I ask unanimous consent that the speech be printed in the RECORD.

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

There is a sickness in our society—and that sickness is the Vietnam war. Our country is uncertain, bitter and confused.

A rising crescendo of anguish can be heard as thousands of Americans continue to be killed and maimed in a war seemingly without end.

This outcry is met with a plea for more time—and for more support. But time and support have been exhausted over the last four years.

The tragic waste of thousands of lives—American and Vietnamese—has seared the soul of America.

The Vietnam war has left a scar on our consciences that will not fade for years. The war obscures our vision of our role in the world and here at home. It is causing us to doubt ourselves—and to question the noble goals and values we have always held. No problem can be discussed without reference to the war.

A domestic crisis is upon us.

While we are bogged down on the Asian mainland, spending two billion dollars a month, our cities are dying—our colleges are in disarray—our aged too often live without dignity—and our poor despair. But we are helpless in the grip of the war.

We cannot measure the cost of the Vietnam war only in lives lost and property destroyed. We must look at the housing not built, the sick not treated, the hungry not fed. The stark realities of this war are seen there as well as on the battlefield.

Our youth grow increasingly alienated and bitter. They are disillusioned when they compare our rhetoric with our actions.

The war in Vietnam is tearing us apart as nothing has since the war between the States. Vietnam is polluting our political life. It hovers above us like a shadow of impending doom.

Millions of Americans are being polarized into pro and anti-war factions. The war has turned us against ourselves. It has made enemies of old friends.

Lyndon Johnson brought to the Presidency a sense of urgency about solving the domestic problems that burden this nation.

He would fight for the poor, initiate an anti-poverty program, improve life for older Americans, pass Medicare and do a whole host of other things that needed doing.

To his credit, Lyndon Johnson did accomplish much.

And he could have gone right on accomplishing had it not been for Vietnam.

Now we have a new President.

We hoped he would end the war. He said he would. But he has not ended it yet.

I will say this. I did not vote for Richard Nixon—but I'd love to see him get the credit for getting us out of Vietnam.

For we must end the war and withdraw promptly to keep the bonds that hold us together from shattering completely.

The American people do not want to fight Asians thousands of miles from our own shores.

The American people do not want to be bogged down in the swamps of Southeast Asia.

But fighting Asians we are—and bogged down in Asian swamps we remain.

What is there that can justify the continuation of this war?

We have no vital interests in South Vietnam worth 40,000 American lives. There is no threat to our security there worth 300,000 American casualties.

Many former government officials now share this view. Able, sensitive men such as former Defense Secretary Clifford have recognized the mistake of our military involvement in Vietnam.

How many Presidents and how many advisors must we exhaust before we finally learn the lesson?

Ours is a great country. But a test of greatness is a nation's ability to recognize its mistakes.

A great and confident nation should not hesitate when confronted by its errors. A great nation listens to responsible dissent rather than trying to discredit it.

We can argue for years over who made mistakes: Truman, Eisenhower, Kennedy, Johnson or whoever.

The important thing is that we not concern ourselves with who made what wrong move. We must recognize a mistake was made.

It was a serious mistake—but we don't have to go on forever trying to make good on a bad bet.

There is something irrational about logic that justifies the present course of action on mistakes of the past.

We are told that we cannot run out on our commitments in Vietnam. But what is that commitment? It cannot be to continue to sacrifice thousands of lives for some elusive goal.

We have fought in Vietnam for over six years. Thousands of Americans have died. Billions of dollars have been spent. Can anyone say we have not met our commitment?

George F. Kennan put it bluntly this week when he said:

"I find it inconceivable that we could ever have knowingly given a blank check to any regime for the lives of our men and our resources, especially without regard to its performance.

"Are we committed to holding the South Vietnamese regime up by the scruff of the neck like a limp puppet forever? If not, 40,000 lives and a hundred billion dollars seem a rather generous fulfillment of our obligations."

I concur with Mr. Kennan completely.

The South Vietnamese have had years to become self-sufficient, to fend for themselves.

How much longer must we fight their battles?

We should not abandon the people of South Vietnam to a reign of terror. But continuing the war is a terror all its own.

Villages have been destroyed completely to supposedly protect them. Millions of Vietnamese have been uprooted and driven about the land. Families have been separated. Education has stopped.

540,000 Americans have not saved a nation. We have helped destroy a people. We have helped destroy a culture. We have helped destroy a way of life.

The South Vietnamese have been at war for over 20 years. The mass of people there see us as agents of their destruction. The Vietnamese simply want the peace to live their own lives.

There are those who say we must stay in Vietnam to "save face"—yet every day, in every corner of the world, we lose face.

Because of the Vietnam war, we lose dignity—prestige—and character.

And we lose confidence in ourselves.

We know—and our friends around the world know too—that what we are doing in Vietnam is not an American thing to do.

It is not our style to "destroy so that we can build," as the saying goes.

It is not our style to forcefully impose our will on a people who do not appreciate our presence. And what we are imposing on the South Vietnamese is not at all what we believe in ourselves.

We believe in democracy. But in Vietnam we support a dictatorship, a dictatorship that fights another dictatorship. We believe our dictatorship is better. In the disjointed rationale of the Vietnam era, perhaps our dictatorship—the present Saigon regime—is better. But is that our decision to make? I don't think so.

We believe in the inherent right of each nation to grow and develop along a course of its own choosing. But in Vietnam we are allowing a nation to grow and develop only along a course that we approve.

Our dilemma in Vietnam is riddled with irony and paradox.

Our predicament is that of the naive Westerner adrift in a mysterious Eastern world he does not understand—and should not seek to conquer.

Our assistance programs, supported with billion dollar pricetags, pacify the countryside—but not enough to permit ARVN troops to go it alone among their own people.

The time has come for us to see the situation in Vietnam as it is—not as we wish it were. We can no longer afford the luxury of simplistic concepts and unrealistic theories.

We are now given a new policy—Vietnamization.

Vietnamization is another fake word in a long line of fake words. It weds us to the Thieu-Ky regime. The war will be continued—not ended—by this policy. We are to stay in Vietnam until the present Saigon government can wage the war as vigorously without us as the two of us are presently doing.

This is a fundamental error.

540,000 Americans with a tremendous supply of weapons have not won a military victory. A discredited South Vietnam government with no basic home support certainly cannot bring victory.

The South Vietnam Army has shown little ability in the past to fight on its own.

Corruption is widespread in the South Vietnamese Army. Leadership is lacking. After 20 years of war, thousands of the best officers have been killed.

Original estimates were that it would be years before this army could defend itself against the Viet Cong. But military experts now tell us that a successful transition can take place within the next two years. During that time another 10,000 Americans, at least, will have died.

Vietnamization is not worth this price. And it cannot be achieved even if we pay the price. Military experts have taken us down the path of delusion before in Vietnam.

We have had enough expert guidance designed to fit the theory of the moment. Pacification has been tried and failed. Search and destroy only destroyed more American men.

It will take more than talk and hopes to turn the South Vietnam Army into a self-sustaining operation. I do not think it can ever be done.

While we are waiting, we will continue to be mired in Vietnam—because Vietnamization eliminates the chances for success in Paris.

We will leave South Vietnam under our present policy only when we are satisfied that the Thieu-Ky regime is securely in power. This emphasis on the continued existence of that government precludes any meaningful progress in Paris toward peace.

We call for good faith negotiations. But we are attempting to decide by fiat the very issue about which the Vietnam war has been waged—who is to govern the South Vietnamese people.

The present South Vietnamese government has made it clear that a coalition government is unacceptable. It should not be surprising, therefore, to find the NLF objecting to the Thieu-Ky regime.

We must also recognize that even successful Vietnamization cannot be equated with freeing America from this war. 200,000 American support troops will still be left in South Vietnam.

We should have learned from our early experience in Vietnam that support troops cannot be isolated and protected from the Viet Cong. The first Marines landed in Vietnam in an unsuccessful effort to defend our airbases. Even today, major bases suddenly find themselves with Viet Cong satchel throwers wreaking havoc.

So long as any American troops remain in Vietnam, we will continue to be vulnerable to attack. When this attack comes, we will either have to withdraw or send more combat troops for protection. If we make good our threat to take affirmative action, we will be right back where we started.

The war will escalate rather than deescalate. American troop withdrawals will stop rather than increase.

There is a hidden factor included in our Vietnamization policy that we should not overlook. That is the financial cost of continuing the war under South Vietnamese control.

We presently spend 30 billion dollars every year on the war. The total budget of the South Vietnamese government is less than one billion dollars.

Assume that American combat troops can be withdrawn. The South Vietnamese government will still need billions of American dollars every year to bankroll the war.

These billions could improve the quality of life here for millions of Americans. These billions could restore our cities—educate our young—treat the ill—and purify our environment.

Instead, we will still be sharing the burden of the war—not shifting it. We will be continuing our ties to Saigon—not severing them. We will be supporting the war—not stopping it.

We need more than a proposal based on the wishful thinking that the South Vietnamese will be able to accomplish by themselves what we have not accomplished together.

We need more than a policy that dictates the political environment for the South Vietnamese people.

We need more than a program designed to cost us billions of dollars for untold years—with thousands of noncombat American troops left to fend for themselves.

We are on a self-perpetuating cycle—one that we must stop riding quickly.

How do we stop the cycle? How do we withdraw militarily from Vietnam?

First, we must directly confront the issue of troop withdrawals. We must withdraw our troops as fast as we can while minimizing our casualties as the number of troops decreases.

We must insure that we are able to provide for the safety of those who have risked their lives supporting our efforts in this war. As the French after Dienbienphu, we should provide asylum for those South Vietnamese who want to leave South Vietnam.

The absence of such asylum should no longer be used to justify the continuation of the war and the death of more Americans.

At the same time, we must establish our independence from the government of President Thieu and Vice President Ky.

Their government is not representative. Its politics are repressive. Dissent and political activity are suppressed—not encouraged.

If Thieu and Ky will not broaden their base of support, we should work to establish a broad based, interim government in South Vietnam. This government would then join us in Paris or elsewhere to negotiate a settlement to end the war.

Such a "peace" government should provide a mechanism for post war elections. These elections should be freely conducted and open to all people in South Vietnam and to all political parties.

During a recent visit to Paris, I talked with detached and knowledgeable observers of the peace talks, men in whom I place considerable faith.

It is their feeling that in interim "peace" government itself need not include Viet Cong representatives. It need only be broadly based—and reflective of all aspects of the South Vietnamese nation.

The new government in South Vietnam should reverse the repressive policies of the present Saigon regime.

Press censorship should stop.

Participation in political discussion should be allowed.

Political prisoners should be released.

Political parties should be given the chance to organize and function.

Mechanisms for the exchange of ideas should be fostered. Only then will the climate be right for meaningful elections after the war. Only then will there be true self-determination by the South Vietnamese people.

Finally, we can—and must—make known our willingness to continue to assist in achieving an economically stable South Vietnam and Southeast Asia.

Economic assistance will be needed for stability. But the amounts are paltry compared to the costs of this war.

A recent economic study found that South Vietnam could be economically self-sufficient within 10 years with only $2.5 billion in foreign aid.

It costs us $2.5 billion each month to fight the war.

Peace in Southeast Asia—in Vietnam—must be our goal. For continuing the war is no solution at all. We should have learned that lesson by this time—after this many years—after this much bloodshed—after so much disappointment, bitterness and suspicion at home.

Millions of Americans around the country are again demonstrating their opposition to the war this weekend. Some are communists. Some are misguided enough to fly Hanoi's or the Viet Cong's flags and support their cause.

They do not deserve our support and will get none from me.

But the overwhelming majority who object to the war in Vietnam do so not because they are for Hanoi—not because they like the Viet Cong. They oppose the war because they support this country of ours—its principles, its achievements and the great promise America offers to its own people and to the world.

We hear so much these days about the so-called Vietnamization of the war.

It seems to me that we should be aiming instead for a de-Vietnamization of our own country—a kind of re-Americanization of America.

Basic American principles and doctrines should guide us. Words alone cannot justify the thousands of lives lost in the quicksand of Vietnam.

Dylan Thomas said, "my immortality must matter less to me than the death of other men."

How many more people must die before we recognize this truth?

THE SAN ANTONIO POLICE ACTION PROGRAM—NEW BRIDGES TO UNDERSTANDING IN LAW ENFORCEMENT

Mr. YARBOROUGH. Mr. President, the November issue of the FBI Law Enforcement Bulletin contains a fine article about a program being conducted by the San Antonio Police Department to promote greater understanding of the problems of law enforcement. Law students from St. Mary's University Law School in San Antonio accompany police officers in their patrol cars and thus gain a better understanding of the problems which the officers face in carrying out their day-to-day duties.

But understanding is a two-way street and there are two sides to any law-enforcement problem. First, the public safety must be provided for, but equally important the rights of the accused must be protected, for in our system of jurisprudence, the courts, not the law officers, are the final determiners of guilt. It is the duty of the police officer to protect the public safety and it is the duty of the lawyer to protect the rights of the citizens. Hopefully, through this program in San Antonio, both the police officer and the lawyer will come to understand their roles better.

Mr. President, I ask unanimous consent that the article entitled "Law Students Police Action Program," written by Inspector Emil E. Peters, which appeared at page 16 in the November 1969 issue of FBI Law Enforcement Bulletin, be printed in the RECORD.

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

LAW STUDENTS—POLICE ACTION PROGRAM

(By Inspector Emil E. Peters)

In recent months the San Antonio, Tex., Police Department, under the direction of Chief George W. Bichsel, has conducted a Police Action Program in which law students of St. Mary's University ride in patrol cars with officers on duty to gain a better understanding of the role of policeman.

In order to assure an orderly, meaningful, and controlled program, the law students formed a club of interested young men and set down rules for those participating. These regulations are designed to keep the students from interfering with the officer's work.

Before the young men are assigned to ride with patrolmen, they receive a briefing, including a tour of police facilities, signing of necessary waivers, and instructions on what to do and to what extent they may assist the officer. They are reminded that they are observers and not advisors or critics. After his tour, each student must complete and submit a report containing a resume of events, questions, impressions, and assessments for later discussion sessions.

In several instances the law student has proved to be a valuable witness as there are no "two-man" cars in the San Antonio department.

EYE WITNESS

On one occasion an officer was hailed by a citizen and advised that someone was shooting a gun under a bridge. The officer proceeded to the scene, parked, and walked into the area under the bridge to make a search. The student also got out of the car and followed at a short distance. He saw the officer approach two men under the bridge. One drew a revolver and opened fire at the officer. As instructed, the student retreated to safety but not before seeing that the officer did not return fire until after two shots were fire at him. Luckily the patrolman was the better marksman.

The program has earned much understanding and appreciation for the department. It has given the law students first-hand experience with people they will later be dealing with—the police and the charged.

THE UNIVERSITY OF KANSAS MUSEUM OF ART

Mr. DOLE. Mr. President, there is some tendency to look to the urban centers of the United States for events of major artistic and cultural significance. Often overlooked are many outstanding contributions to the esthetic wealth of our Nation which take place outside the traditional cultural focal points.

One such remote seat of distinguished endeavor is the University of Kansas Museum of Art at Lawrence, Kans. The museum, under the guidance of its director, A. Bret Waller, has developed a tradition of excellence and creativity in its collections and exhibits which has been highly regarded within the academic and museum communities.

The museum's most recent exhibit, entitled "The Waning Middle Ages," has succeeded in attracting deserved acclaim beyond the customary professional and academic channels.

I commend to Senators an article describing this exhibit and its significance, and I urge them to encourage the development and efforts of the smaller museums and galleries in their home States. These institutions have an invaluable contribution to make to the lives of all Americans, and they deserve everyone's support.

Mr. President, I ask unanimous consent that an article written by John Canady for the New York Times News Service, and published in the Kansas City Star, be printed in the RECORD.

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

K.U. SHOW EXCITES IN A FINE NEW WAY

(By John Canady)

New York City's notorious provincialism, to which New Yorkers always admit without believing it, is quite real when it comes to art exhibitions.

When the museums in Chicago and Los Angeles, or even in Boston and San Francisco, turn up with important shows, New York pats them on the back as if they were precocious children growing up to the parental example.

And when it comes to a place like Law-

rence, Kansas, there probably is not one art-conscious New Yorker in a thousand who knows that there is such a thing as the University of Kansas Museum of Art, and not one in many thousands who even suspects that when this small museum sets about the job of creating an exhibition, it can turn out one that is more imaginative, and in a definite way more important, than most of the exhibition fare from which New Yorkers absorb their culture substitute.

A couple of weeks ago, having completed a bit of business in Kansas City (where incidentally, the Nelson Gallery has an excellent exhibition called "The Taste of Napoleon") I took the short trip to Lawrence, where a friend wanted me to see a new exhibition, "The Waning Middle Ages," being installed.

It was obvious at first sight, and confirmed by the checklist of loans, that the usual patronizing attitude toward a provincial (and very small) museum is not always shared by such institutions as the Metropolitan Museum, the Fogg Museum, the Art Institute of Chicago, the National Gallery in Washington, and 28 other museums across the country. All these, along with a smaller number of private collectors, are represented by illuminated manuscripts, paintings, sculptures, and objects of craftsmanship from their collections.

The Metropolitan's loans include an alabaster fragment of a relief of the crucifixion that the museum purchased in 1936 but has never got around to exhibiting.

Bret Waller, the director of the University of Kansas Art Museum, and J. L. Schrader, who with Waller arranged the exhibition and has written an excellent catalogue, found the fragment when they were allowed to go through the Metropolitan's storage rooms in their search for appropriate material.

This doesn't mean that the show is made up of leftovers. Rather the reverse. It is an exhibition in which each piece is selected for its effectiveness in the development of a theme as well as for its esthetic quality.

Asked how he negotiated so many important loans, Waller said that while "nobody wants to lend something beautiful to a museum out in Kansas just so people can come and gawk at it," museums and collectors will go out of their way for an exhibition with a subject both imaginative and scholarly and with a serious educational reason for being.

It is good to know that while the Metropolitan Museum subjects this city to an exhibition as vicious as the current "New York Painting and Sculpture," it is justifying its existence in another direction.

Looking at this exhibition I kept thinking how much it would have meant to me as a student. Huizinga's book was required reading and I found it a combination of fascinating and far-removed. It took years of museum-going and travel to make it come alive, but a couple of hours in Lawrence made me want to read it again.

This is the kind of thing museums should be doing, whether they are dealing with antiquity, the middle ages, or the 20th century.

A SURVEY OF HUMAN RIGHTS IN THE UNITED STATES

Mr. PROXMIRE. Mr. President, the President's Commission for the Observance of Human Rights Year 1968 completed its activities on January 30, 1969, 1 year after its establishment by Executive order. The purpose of this Commission had been to give the American people a greater understanding of the principles of human rights, as found in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in December of 1948, and the Constitution and in the laws of the United States.

The President's Commission issued a publication entitled "For Free Men in a Free World" which has as its purpose to survey human rights in the United States. The Commission's most distinguished Chairman, W. Averell Harriman, stated:

This publication aims to advance the President's purpose in establishing this Commission, and to fulfill the request of the General Assembly for a review of our domestic laws and practices against the standards set in the Universal Declaration. If this publication can contribute to a pride in the past, and to an awareness of future needs, and a national determination to deal with the problems of human rights that confront us, it will have advanced the cause of freedom.

I applaud the fine work by the President's Commission in bringing together in a single publication such a fine commentary on human rights in the United States. During the next few days, I will offer a number of illustrations from this fine work to substantiate my continuing efforts to see the Senate ratify the Human Rights Conventions on Political Rights for Women, on Forced Labor, and on Genocide. Certainly if the Senate will face these issues head on and meet our moral obligations to ratify them, then we will be able to say in Ambassador Harriman's word's, we will have "advanced the cause of freedom."

SALT TALKS

Mr. DOLE. Mr. President, today the United States and the Soviet Union begin what Secretary of State William P. Rogers described last week as "the most critical negotiations on disarmament ever undertaken." Leaders from both countries have expressed the hope that for the first time since World War II, the two major nuclear powers can enter serious negotiations on an agreement to control offensive and defensive strategic nuclear weapons.

Beginning with the first American proposal for the international control of atomic energy presented by Bernard M. Baruch at the United Nations Atomic Energy Commission in 1945, there have been repeated attempts to negotiate an arms control agreement. Our success has largely been in a number of peripheral pacts, including the most recent agreement to insure that the world's seabeds are reserved for peaceful purposes only and the nonproliferation treaty. Only by strenuous and often frustrating negotiations have we taken these initial steps. But these agreements provide a basis for today's negotiations, negotiations which will undoubtedly be strenuous and frustrating. The American people must realize that there are no quick answers in these negotiations. They may proceed for months with little evidence of agreement, but a start must be made. Throughout the negotiations in Helsinki and thereafter, the United States must be patient and resourceful, as the United States and the Soviet Union move into a new phase of the arms race, more deadly and more expensive with the development of multiple-warhead systems for intercontinental ballistic missiles and by the creation of an anti-ballistic-missile defense system.

President Nixon stated the challenge in his inaugural address:

After a period of confrontation, we are enterng an era of negotiation. Let all nations know that during this administration our lines of communication will be open. . . . I know that peace does not come through wishing for it—that there is no substitute for days and even years of patient and prolonged diplomacy.

Negotiation and even signing of an agreement to control strategic weapons will not bring peace to a troubled world. But this is a major step and one that we all hope will be successful.

BIAFRA: A TRAGEDY FOR HUMANITY

Mr. YARBOROUGH. Mr. President, Biafra continues to be a great tragedy for all humanity, a grim exhibit of hunger and starvation. It is important to remember that while tragedy only touches us periodically, Biafra's suffering continues every day.

This month's Harper's magazine contains an article entitled "My Summer Vacation in Biafra," written by Mr. Herbert Gold. It serves as a reminder of the conditions that are destroying a generation of Biafrans. Mr. President, I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

Another noteworthy article on the subject of Biafra was published in the Washington Post of November 14, 1969. The article, written by Jim Hoagland, of the Washington Post Foreign Service is entitled "How Many Children Dying in Biafra? No One Can Say" I ask unanimous consent that this article also be printed in the RECORD at the conclusion of my remarks.

The article in the Post contains some shocking revelations. It is there stated:

How can I tell you how many children are dying a day? Dr. Aaron Ofekwunigwe, Biafra's leading child specialist, asked with exasperation. "Pick any number you like and I'll say it. The point is they are dying."

He spoke after walking through the grim last hope ward at the Santana Hospital, which houses 600 children suffering from Kwashiokor, the killing protein deficiency disease.

Mr. President, I know the effort to feed the hungry in Biafra is being complicated and frustrated by the Nigerian blockade and Nigerian-Biafran relations. The shooting down of the Red Cross plane by the Nigerians on June 5, 1969, has produced the worst crisis yet. As Father Byrne, a Catholic priest on Sao Tome—the jumping off point for relief flights—stated:

We have the food; we just cannot get it to them. These children know nothing about secession, economic blockade, political involvement. They only know they are starving.

Mr. President, this Nation and all other nations everywhere must take every means, seek every opportunity, and go to any reasonable length to bring about a resumption of a full contingent of relief flights immediately. Two months from now it may be too late.

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

MY SUMMER VACATION IN BIAFRA

(By Herbert Gold)

I am invited by telephone by a Committee for Biafran Writers and Artists and I accept at once. The lady at the other end of the wire in New York tells me about shots and preparations and then begins to giggle. "You mean you're really going? You're not going to think about it and call back and say you can't? Do you know there isn't any place to sleep and you may not eat for a week?"

It's odd to hear her laughter across the continent.

Thinking to get some information, I telephoned a Biafran relief organization in San Francisco. The reverend in charge was in conference, but I spoke to an assistant. "I'm going to Biafra on Monday," I said.

"You're going to be off on Monday?" he asked.

"Biafra!" I said.

"Oh, *Biafra,*" he said. "Yeah, man. Cool. Why?"

Next I called an editor to whom I suggested writing about this trip. "Oh Jesus, we're up to our ——— in Biafran babies." I agree. I skip those articles, too. I have an image of the swollen belly and the mournful eyes, and it's classified like the Vietnam war: a horror with which I continue to live, like everyone else.

GETTING THERE

Biafra makes bad dreams for people who refuse to dream.

While the moon rocket splashes down, and all over the front pages, the red-haired babies are buried in the News of the Week in Review. I'd heard about kwashiorkor, "the red-man's disease." But the hair looks more like a crispy grayish-red, and it doesn't look like hair—more like something weakly extruded by a disoriented body, and it looks as if it would break if you bent it.

"Hunger is a legitimate weapon of war," says one of the Nigerian generals. The Nigerians use it to destroy the Biafrans. The Biafrans use it to try to arouse the atrocity-drugged conscience of the world. The children die to these purposes.

These abstractions are not the truth of it. The truth here is suffering and the sufferers cannot tell it and I am trying to write my way out of shock. Floating through the suffering, immune and shaken, sleepless and immune, full of rage and immune.

Our party: Leslie Fiedler, literary critic. Miriam Reik, Professor of English ("Just call me Dr. Reik"). Diana Davies, who calls herself "The Pack-horse," photographer and black-belt judoka. H. Gold, who wonders what the devil he is doing here.

Jews and Ibos. "The Ibos should go home to their region."—Alhaji Usman Liman. "These people know how to make money."—Mallam Muhammadu Mustapha Mande Gyari. "There are too many of them in the north. They were just like sardines"—*spawned in some estaminet?* as T. S. Eliot said—"and just too dangerous."—Mallam Mukhter Bello. (These quotations are from an address by Colonel Ojukwu to the African Unity Consultative Committee meeting, Addis Ababa, August 5, 1968.)

Fourteen million people in Biafra! Hardly a tribe. We don't call the Irish or the Jews a tribe, not without some malice in there someplace.

I wouldn't have chosen this trip, but neither could I refuse it. I can only bear witness, and it's all I can do. Who is the meddler described as having lost some fine opportunities to remain silent?

"Captain Genocide" is the bomber pilot who boasts on the radio of killing children. He flies an Ilyushin, but they think he's a Belgian. About 40 per cent of the children are dead from starvation, so Captain G. is not a major producer and packager of child mortality. He relieves the protein shortage by reducing the demand. "Never to be born would be best for mortal man, but this happens only to a very few." The melancholy joke has another meaning in Biafra. Babies are born who are not born. Babies are born with death as their only and their immediate future.

Biafra was an ancient African kingdom of which little memory but the name endures. However, the name is magic and its history is becoming real again at the command of modern war.

From the *Guardian,* May 28, 1969, an editorial urging freedom for Wole Soyinka, the Nigerian playwright held in prison because of his sympathy for the Biafrans: "In order to improve Nigeria's public relations, General Gowon has lately made commendable efforts to scale down the bombing of Biafran civilians. He could win more sympathy by releasing an artist who is regarded abroad . . . ," etc.

San Francisco-New York-Lisbon-Luanda-São Tomé-Biafra. The crashing through time zones, confusion of nerves in day and night, is an appropriate prelude to mass murder and desperate hope in an African rain forest.

THE PORTUGUESE ISLAND OF SÃO TOMÉ

May 29: The Biafran official has a habit I recognize—the Haitian one of grabbing his balls at odd moments when he needs reassurance. I don't think it's merely the heat and tight underwear. "I went to law school at Tufts," he beams.

We wait at the Geronimo Hotel for permission to fly in one of the relief planes, Caritas or World Council of Churches, Catholic or Protestant. We get drunk with the fliers. The pilots are (a) Steve McQueen, (b) Steve McQueen's Best Friend, the Crazy Kid, (c) The Old Boy Who Drinks Too Much But Give Me One More Chance, Steve. There are also the British flying officer who got into some unmentionable trouble with a guardsman, a smiling Japanese, a deformed Texan whom I think of as the Forceps Baby, and subsidiary do-gooders, ironic intellectuals, machined Canadians on leave from their airlines—the full cast of an outmoded flick. They are idealists in it for the ideal of money: they can make up to $3,000 a week. I especially like one whose real name is Johnny Cash (he showed me his driver's license to prove it) and another called Jack Frost from South of the Equator, Jack for short. When Jack heard Leslie and I are writers, he began to tell us about the Biafran children to whom he transports Formula 2, rice, and beans through the blacked-out, Mig-haunted sky.

A crowd of us hangs around the airport, trying to catch on to a flight. "The Princess" flirts with a Biafran official; she looks like Princess Radziwill, but she's a real princess. Like stop-action photography of growing vegetables, first you see her in Pucci pajamas and then one frame later she's in starched combat suit and then in a sweet limpid little frock. We drink cokes with the pilots and nervously visit toilets overflowing *à la portugaise.* The weepy American who wanted to rejoin his Ibo wife, the Italian reported who has been turned away day after day, the Swedish team, the Swiss boy journalist, and the four of us with our letters, invitations, passes, and Dr. Reik to speak for us. Three of the six planes which went out returned without landing in Biafra. "Intruder" was back.

The ground crews in shorts, stained T-shirts, with the frazzled faces of old softball coaches. "Jello and a coke!" one mechanic was yelling at the waiter. "No ice for the coke on this ——— job."

Jack Frost: "Now you just stick close to me if you want to know all about the war—what paper you say you write for?"

Johnny Cash: "Now, here's my wife and here're my four kids in Glendale. . . ."

Jack Frost (as we climbed on a Super Constellation): "So you're playing Bet Your Life today, are you?" We signed the No Harm agreement. He told us the Joint Church Aid flights are called ——— ——— Airlines. He has a whole repertory like that.

We lumbered off the runway on a Super-Connie called *Snoopy* with nineteen tons of rice and dried milk. We stretched out on the sacks. "You'll get rice mites if you sit on the rice," the pilot said amiably, "or milk worms if you sit on the milk."

The radio man said, "———, the Bomber used to fly with one of our pilots. He'd radio in and say, 'Man, I'll get you tonight.' " He was a South African.

"What about the Migs? Don't you have any trouble with them?"

He grinned. "Egyptians. Six Day War," he said.

I fell asleep, rice mites and milk worms, as we droned through the sky over tropical sea and Nigeria into Biafra and Uli Airport. He wakened me with a grin to see the flak below—pretty tangerine flashes following the sound of the aircraft.

ULI AIRPORT COMING

We arrived in a pandemonium of blacked-out airfield. Planes unloading food, pilots screaming—they have to get out before dawn; they don't want to be bombed down here, either—trucks grinding and backing, officials greeting us and smiling. "Welcome to Biafra. Welcome to Enugu." Though Enugu has long been in the possession of the Federals, they still carry on the fiction that the Uli airstrips are really Enugu Airport. Nearby, in a blacked-out building, I heard, no kidding, a band playing, "I Ain't Got No Satisfaction"—celebrating two years of freedom.

We wandered about helplessly, looking for our contacts, nameless officials in the faceless dark. Diana asked to take a flash photograph and immediately an eager-beaver soldier boy arrested us. While he went to get an officer, I wandered off toward the music: "I Ain't Got No Sat-is-fac-tion, unh, unh, UNH!" Vaguely I understood we were under arrest, but at four in the morning in the tropics, in a strange land fighting a strange war, the music seemed realer to me than a red-tape misunderstanding.

The soldier caught me at the door to the dance. "You move very fast," he said, and in his voice was hatred, suspicion, stupidity, and bucking for stripes. We were passed from bureaucrat to bureaucrat. Finally we reached the commander of the base. The sly foolish soldier said, "She took a picture."

"She did not. She asked if she could take a picture," I said.

"———, the Committee for Biafran Writers and Artists is hereby dissolved!" Miriam cried.

"In my opinion, sah," said the soldier, "she was ready to take a picture."

The Commander said, "Tut-tut." He had been a former school principal. He explained to us that they were fighting a war for survival, to the soldier that we were friends of Biafra, and wrote out an official piece of paper declaring everyone innocent—us, soldier, officers, himself. We need this man in Berkeley.

Somehow in the mess of being arrested, soaked in the rain, shuttled about, we lost our contact. We slept on chairs in the customs house. Someone brought us cold corn and coconut for breakfast, and then coffee. A man from the Ministry of Information came to get us, carrying his copy of *Le Grand Sommeil,* par Raymond Chandler.

He drove like a madman down roads blocked with stumps so the Nigerians could not use them as landing strips. At the checkpoints the guards said, "Welcome," as they pointed their antique weapons at us. *Le Grand Sommeil?* Is he putting us on?

A DAY OR TWO LATER

A blood vessel in my right eye has broken. Days without sleep, much heat, much strain. Our clothes aren't dry since the soaking of a few nights ago. Every official says, "This

war, these conditions, things are rather difficult, really. We are decentarilzed, you know."

"Decentralization" is the euphemism for the capture of the capital, Umuahia, and all other cities. Though the Biafrans have recaptured Owerri and are moving services back into it, it is burned out, wrecked, nearly deserted, with a few stunned and starving people squatting beneath the riddled Pepsi billboard.

Stopped by the side of the road, waiting for a pass, which we needed in order to get to the place where we could get a pass which would, in turn, enable us to get a pass, I handed out protein tablets which I had carried with me. They are compressed lumps of fishy dust which had turned my stomach when I sampled them in the States. They were delicious. Diana had water in her canteen, a mouthful for each of us. The driver looked as if he were eating birthday cake and I gave him another handful. He was very thin and I asked him if he had lost weight since the war. "No, no, oh no, I was always like this."

Ibo pride, ebullience, and optimism. Plus a bit of fibbing.

We got gas at a military camp. The Biafrans have created backyard refineries, sometimes even using wood as fuel for Rube Goldberg distilling contraptions.

Can they be defeated by the combination of English, Soviet, Arab, and Nigerian energy directed against them? No, not without extermination. And this would be a great loss—a gay, energetic, inventive people. Is there a possibility of reconciliation with Nigeria? No, not after the mutual hatred and mass murders. Father Doheny estimated over a million Biafran dead already, a generation of men and children. He sighed and his Irish Cary Grant face crinkled: "Polygamy is unavoidable. There are so few men left."

But can Nigeria be defeated? No again—not with its overwhelming advantage in population, material, and allies. However, it can fall apart.

Is there something besides murderous stalemate in store? The Biafrans grin. "Nigeria will dissolve, it's unnatural." The separate states will follow natural (linguistic, racial, geographical) rather than colonial boundaries. And then perhaps there will be alliances and trade, as between the U.S. and Canada, which were enemies in 1812, or among the Common Market, where wars were fought rather recently, rather than the Nigerian exploitation of tribe by tribe and struggle for power and corruption.

I asked a Biafran why American blacks, if they are interested at all, seem to support Nigeria. "Because they think we are like Katanga, the creature of someone else. Because they don't know how the Arab hates the African and they fancy themselves Muslim and we're Christian. Because they don't know the truth, the world doesn't know, either."

KWASHIORKOR IN THE HOSPITAL AT IHIALA

An Irish nun shows us a heap of about a dozen children on a mat. "Of these," she says briskly, "three may live—this one, this one, this girl."

When one whimpers, another dying child strokes it with a withered hand.

"*Agu, agu, agu*," a child is crying. This means Hungry. But he's a healthy one; the lost ones can no longer assimilate food.

"If they live, are they retarded?"

"They were so keen before," she says, "it takes a lot to put them down. But it's the first time for kwashiorkor. How can you know?"

One of the priests teases and chucks the chins of the soon-to-be-dead, calling to them in Ibo, trying to make them answer. These are the Fathers of the Holy Ghost, the Holy Rosary Sisters, the Hospital of Our Lady of Lourdes at Ihiala. They have given up missionary work for the duration.

Sister: "We're slack at the moment. If you think we're busy, we're not. We're slack. When the fighting was here, we worked twenty-four hours a day."

Wounded soldiers outside were playing checkers, joking, laughing, and studying mathematics and engineering textbooks. The priest got a group of children to sing a Biafran song for us. Leslie and I, escaped from the Kwashiorkor ward, were happy to be among the legless, the armless, the eyeless. "Mending bones. Ah, that's nice," the sister said.

No dogs, no birds. They've all been eaten. I saw a woman with a target painted on her dress. She is the target. A priest is telling us how they have cultivated everyplace; how chicks are growing, but they need corn; how salt costs as much as $30 a cup. Along the roads there are signs such as "The Universal Insurance Company (Inc. in Biafra)," advertisements asking for clerks, typists, offering barristers, herb doctors (Diplomate in London).

THE KING OF IHIALA

That's the translation of "Oluoha": King. His name is J. M. Udorji. He gave me an audience though he was not well; he looked as if he were dying, burning with some fever, exhausted, emaciated, and tottering in his robes.

Poem dedicated to King Udorji on painted scroll in the antechamber:

"What the joint growth of arms and arts
foreshow:
The world's a monarch, and that monarch
You."

He offered me the ritual kola nut, a bitter mild narcotic which relieves hunger. He offered me other food, but his hot hand and burning eyes made me think of germs everywhere. Women in the courtyard were singing and chanting for his recovery. Sometimes his voice gave out and he seemed to lose his thought in the middle of a sentence. I would guess he is about forty years old.

"There will never be a proper peace and understanding with Nigeria. Someone will always remember the horrors, the happenings, so many happenings. We will not fight a war of survival and then lose. Gowon will find it difficult to say, I am tired. Britain who supplies ammunition is not tired. When Britain is tired, Gowon will be tired."

I excused myself early, wanting to save his strength.

I walked back to the Mission, past the gun emplacement with its battery of homemade anti-aircraft—greased pipes. The trench and dugout had been flooded by the rains last night. The soldier guarding the anti-aircraft symbol said, "Yes, sah! We are here all the time, sah! My brother and me, sah!"

"The word redeemeth, and food and weapons give life," said one of the priests.

I walked through a ward of children with kwashiorkor. These were babies well enough to be moved by plane to Gabon; they are expected to recover. But there was one child who had suddenly toppled over and seemed to be dying. "Flora! Flora!" cried her little brother. And in the Ibo language: "Wake up! Wake up, Flora!" There was a black priest bending over her and talking to her brother: "This is a scandel. You must wake her up."

THE LEADERS OF THOUGHT

Somewhere in Owerri province, in the middle of the night, we were driven to hear General Ojukwu address the Leaders of Thought on the subject of two years of Biafran independence. It was in a wrecked church. We were searched as politely as possible by a soldier who murmured, "Welcome, welcome." Black-beret honor guard, pride and seriousness, a Handel hymn played by a scratchy record. "Blockaded, starved, and massacred, let us give thanks to Almighty God for preserving Biafra as a soverign and independent nation," said General Ojukwu.

Wearing clean fatigues, a shining-eyed, black-bearded, handsome young man with an Oxford accent and a solemn manner, he invoked "the Nigerian crime a genocide." While he read the speech, an aide took the pages one by one as he finished. "For the dead on the other side of the conflict, may their souls rest in peace."

"Amen," came the response from the crowd—officials, officers, priests, nuns, wives, and friends. The red, black, and green Biafran flag was draped about him; also a banner with lions rampant, eagle, knives, palm tree spilt by lightning and the legend: "TO THINE OWN SELF BE TRUE." He denounced English imperialism, Soviet bolshevism, Arab expansionism, white colonialism, African servitude and feudalism. And with all these enemies, he was optimistic about the future—and I think he is right to be.

"Some people are frightened by the word Revolution—good gracious! It is simply a quick change for the better." Once again he made the crucial distinction for Biafra; they did not secede from Nigeria, they were expelled in a series of pogroms.

Leslie and I collaborated on a name for his style: Monseigneur J. Pierpont Guevara X.

The speech took too long. It seemed to be an educational program—history plus consecration of history plus a program for the future. Several disparate speeches by separate hands seemed to have been yoked together and read with enthusiasm by a healthy young man who lacks a natural orator's rhythm. But the Oxford accent and slightly pedantic manner encouraged hope that he is not a tyrant or rable-rouser. Everything came in threes—"corruption, malfeasance, and inefficiency," "arrogant, insolent, and overbearing." Or in twos: "Love and friendship," "distrust and hardship," "proud and courageous." "Responsible, trusting, and loving," "industrious, resourceful, and inventive," "proud and courageous."

"Colonialism and genocide."

"Honor, pride, and glory."

But it's a relief to find a non-charismatic leader. We've seen the others lately.

Afterwards we were taken to a buffet supper with General Ojukwu and other dignitaries. It was a silent and weary and somewhat stiff occasion. Fiedler and I circled warily about the other Americans present. Dr. Ferguson, Nixon's fact-finder, a light mulatto gentleman with two aides, one from the Red Cross, one from Washington; they circled warily about us. Impression: that they thought us Biafran propagandists, that we thought them pro-Nigerian. The Biafrans, unskilled politicians, seemed to enjoy us powerless writers, who could do them little good, and they mostly ignored the official mission from Washington, which was in a position to do them much good.

Few guards, few cops and soldiers: for a nation under siege, their confidence is astonishing and hair-raising.

ABOUT MEETING FIEDLER IN STRANGE PLACES

Attacked by Migs at Ihiala. Two Migs made two passes at us—that is, at the hospital and the mission house.

Leslie (to me): "We seem to meet in strange places." At a Princeton psychiatrist's house, at Hugh Hefner's mansion in Chicago, at Harvard summer school, in a men's room in New York—and now at the mission of the Irish Fathers of the Holy Ghost in Ihiala, Biafra, being rocketed by Soviet aircraft piloted by East Germans or Egyptians.

We looked at the crater a few yards from the mission. Then we went to see the wounded, dying, and dead in the hospital. No panic; much hatred. I see why the bombing of civilians doesn't end wars. The passion to resist is very powerful. *Don't Touch Me!*—I remember the American Revolution.

THE REHABILITATION CENTER IN ORLU

Dr. Imoke: "Once I was a doctor. Now events have made me a politican."

We drank palm wine, a sweet fermented cider, and ate African pears and rice with bits of what I took to be chicken gristle; it was stockfish—smoked, dried, salted cod. The house was painted with the letters "Rock of Ages." Dr. Imoke told us about the Land Army; we saw the plantings everywhere, yams, maize, okra, groundnuts, cassava, plantains, bananas, sweet potatoes. "The Land Army fights the Hunger."

Dr. Imoke: "It is not possible to lose a war for survival. That has not happened in history, has it?"

We visited some refugee camps. At Umuhu we met a girl—homeless, emaciated, without family—studying a French grammar. Walter gave her his two-week-old copy of *Le Monde*. She was a lovely willowy Ibo. I wiggled my ears for the children, and made coins disappear, and was told by a spokesman for the crowd that I am a trickster.

Nobody begged. We saw lines of children at feeding stations, carrying their bowls every which way, on heads, in hands, juggled. The laughing optimism of this suffering people makes you believe in something congenital, hormonal, inbred about good nature. The building painted with the letters: "Little House of Small Regrets."

We visited a backyard oil refinery: gas being dripped out amid hellish heat and a constant hiss and roar and penetrating smell. An Ibo tribesman (trained at Purdue) directed the operation. Nearby, a crowd of mechanics was cannibalizing automobiles. Two years without spare parts and still the transport moves Batteries are the great problem, but wherever a car needs a push, the nearest bystanders lend their shoulders. (My back aches.)

ULI AIRPORT GOING

Jack Frost of South of the Equator will get us home, maybe.

The State House customs routines, a parody of British habit which they cannot shake off, continue in blackout, under air attack, with war and starvation all about. In a smoky, lamp-lit cubicle, an emaciated clerk with glasses sliding down his nose asks: "State of birth?" "Ohio," I answer, and he nods sagely as if I have told him something, and he writes O-h-i-o.

On the form which asks for Port of Entry, he says, "Write Enugu." But the Nigerians have bloodily captured Enugu months ago and we were not at Enugu.

"If you're going to be a correct official," I say, "why tell me to write Enugu?"

He smiles in the flickering yellow light. "Let me see your medical certificate," he says. He checks it and says, "Now, follow Carol."

Carol is the girl studying a five-year-old copy of *Modern Screen*. She stands up, smiles, and disappears into the dark. Single-file, we shuffle through the crowd behind her. I'm afraid of losing her and put out my hand to touch her shoulder and a girl looks up at me and says, "Pardon, sah?" It's not Carol Modernscreen. We've lost her. I start to giggle at the lady whom I have grabbed in error. Carol finds us.

Despite all the pretense of customs and exit formalities, this is a parody, a society being bombed and starved into chaos, but persisting in keeping the forms and ledgers filled. They ask us to open our baggage, but can't see inside because there is no light. And what is there to smuggle out?

Now we have to find a relief plane heading for São Tomé. The pandemonium of the blackout airport. We drive about, bumping lorries, men, planes, crowds of workers. When a flight comes in, the runway lights flash on for about thirty seconds, to get the plane down, and then off at once. If you're on a runway when the lights go on, you get the hell off before you have a Super Constellation in your hat. It's hot, jungle-wet, dusty, noisy, and dangerous. All the flights seem to be Red Cross flights for Gabon or Fernando Po. We wonder if we can get one at all. The props spread filth on us. All we need is a plague of frogs. Six hours pass, rushing in the dark from plane to plane.

Father McGlade, three times injured at this airport, says, "Don't worry, you'll get on." I'm ready to believe. We chat and I express admiration for his—well, I say stamina but mean bravery. "I'll take a vacation in 1970 or '72, when this is over." He is a wizened energetic priest, who reminds me of Barry Fitzgerald, with a cheerful hard face and a hand twisted into a claw by the Nigerians.

The airmen land their tons of food and stand screaming at the hatches as they open, "Get it off! Get it off! We got to get out of here!" They are making thousands of dollars a week, but they still don't want to be shot up on the ground. Their life in São Tomé; too much drink, not enough women. They are saving the money for trips to Lisbon or to buy a car in Glendale, California.

The pilot I called the Forceps Baby (smashed short from both ends, bulging and deformed fat, bermudas, white socks, black shoes, an alligator sports shirt) stands looking at the mad blackout, moonlit scene of trucks, shouts at the work gangs, "Those bastards, they don't wanna work. They're animals, they'll grab that Formula 2 right off the runway—yecch, filth—and stuff it in their mouths. Christ, the pigs, I wanna get out of here in five minutes." And shouts, "Get me outta here! I'm leaving in five minutes, — — — it!"

Father Finukin, three hundred pounds of first-sergeant beef, is shrieking at the men sliding the bags down and hoisting them into trucks, "Quick now! Get it off! Hurry up, quick, you lazy boys!"

And to me he says, "They work hard, poor devils. They're tired. . . . Back up the lorry, you, back it up! Quick, quick, quick!"

Forceps Baby: "Niggers'll eat anything."

Jack Frost winces: "Hell, if he saw those little tykes, you know, the kwashi-kwashi kids, those cute little geezers, he wouldn't say that."

The men looked like gray ghosts, exhausted, bone-tired. They work all night. I remember their cheerful song of greeting to us: "Welcome to Bi-afra, welcome!"

The kwashiorkor children were being loaded from trucks in the dark onto planes bound for Libreville. These were kids I had seen earlier, about seventy of them, for whom these was hope of survival. I met a sister from the hospital. "So you're here now!" she sang in her Irish lilt. And the Princesse de Bourbon-Parma: *"Bon soir, monsieur."* She was nervous as a doll in her crisp fatigues, fatigue hat, crucifix gleaming as she leaned to talk with Father McGlade. Having met repeatedly during the past ten days, we are old friends and she tells me how good my French is and I, somewhat maliciously, tell her that her French is also very good.

A line of bloodied soldiers passes by: Are they too being shipped to recover in Gabon? Bandages, casts, crutches; and they help each other.

The seminarians are helping load the children. I see the one who said, *"En-emy plane,"* the day of the air raid, who has given me a pin which says, "Hail Biafra." I show him that I'm wearing it. "How are the children?" I ask. He grins. "Fair," he says. I promise to send him books through Caritas.

Father McGlade promises us again: "I'll get you on." "Thank you, Father, I'll see you're redeemed."

Paul Emeku, our friend from State House, keeps repeating, as the night passes, his favorite refrain: "There are some difficulties really in these times. . . ." There are pearls of sweat on his nose, unmoving, it seems, all the week long; the orange dust of Biafra in his hair; a look a gray exhaustion beneath his smiling, obliging, attentive face. "There are really some difficulties in these times."

At last we find a plane, a Joint Churchaid ("Jesus Christ Airlines") Stratocruiser, bound for São Tomé. Leslie and I say goodbye, kiss Miriam and Dianna, and scramble aboard. The huge tube smells of fish, grain; there are mites and bugs which shuttle back and forth with the food. A hilarious crewman looks at us disgustedly (we must be filthy, we are bearded, we are probably journalists or do-good creeps): "Welcome aboard the Flying Formula Two. If you will proceed into our Starlight Lounge, the stewardess will be serving cocktails and stockfish. . . . Hurry up, we got to get out of here before 'Intruder' comes back."

The doors clang shut and there's nothing for Leslie and me to do. Goodbyes are over; goodbye, Biafra. Engine road and flash: Max power! Lights blink. In the dark, we lumberingly move and rise, hoping again to be too slow and low for the Migs to track us. Only two planes flew from São Tomé that night. One other had been shot up on the ground and the Canadair plane has suffered an engine failure. It was the one we came in on; I remember those blinking warning lights, telling of an overheated something-or-other. (We later learned that one of the Red Cross planes we had chased across the field was shot down that night by the Nigerians; no survivors.)

In the past few weeks, in their hurry to get at the cargoes, get the planes off the ground, several men had walked through propellers. One plane had been bombed on the ground and the pilot had broken his foot jumping out. Another had lost its landing gear and crash-landed.

Blacked out, we were droning over Nigeria now. The airmen were passing a jug of lemonade back and forth. One of them was telling me about San Francisco. "What I do in San Francisco," he said, " I go to Johnny Han's for Chinese and the Domino Club for steak. That way I never do get disappointed. . . ."

The plane smelled of stockfish, I was covered with a sticky paste—flour, sweat, dirt. Down below, there were orange bursts like rotten tangerines in the air-anti-aircraft fire searching irritably for us, but of course all they had to go on was the sound of the engines.

I was thinking that the good Catholics of Biafra have the joy of believing in God, which means that they can curse Him. Now I return to San Francisco and all I can curse is mankind—but first, of course, I'd like to join my pilot at the Domino Club. I have left the starving behind and am thinking of food. They, despite their hunger and suffering, are thinking mostly of victory. Hail Biafra!

[From the Washington Post, Nov. 14, 1969]

HOW MANY CHILDREN DYING IN BIAFRA? NO ONE CAN SAY

(By Jim Hoagland)

OWERRI, BIAFRA.—Drifting out of the morning mists that rise in the palm tree forests, the naked and ragged children of Biafra fill the roads and walk to the relief feeding centers.

Some carry pails, hoping to bring back a little stock-fish soup that they get three times a week. Others carry their brother or sister, too weak to walk, on their backs.

Since June 5, they have found less stockfish at the feeding centers. Since March, they have found less food growing in the fields, because of Biafran losses of territory. In the meantime, they have begun to die again in large numbers.

"How can I tell you how many children are dying a day?" Dr. Aaron Ifekwunigwe, Biafra's leading child specialist, asked with exasperation. "Pick any number you like and I'll say it. The point is they are dying."

He spoke after walking through the grim last hope ward at the Santana Hospital, which houses 600 children suffering from Kwashiorkor, the killing protein deficiency disease.

Nine children died last night, a young French nurse told the Biafran doctor. The usual death rate at the hospital over the past few months had been three a night.

Dr. Ifekwunigwe and dozens of relief workers interviewed here report a new pattern of death is emerging in the tiny, land-poor African enclave which has been blockaded by Nigeria for 28 months.

The problem is not so much Kwashiorkor as Marasmus—in layman's terms, plain starvation, said Dr. Ifekwunigwe. "We're getting in a little more protein than at the worst times of 1968, but we don't have the carbohydrates available we had then. We don't have as much land to farm."

Marasmus is a slower death than kwashiorkor. It is less sensational for photographs. But it is just as sure.

Nine days of traveling through the Biafran enclave found only isolated pockets of large numbers of children with distended stomachs, pinkish red hair and bloated hands and feet dangling from matchstick limbs—the classic signs of kwashiorkor.

Pictures of such children brought Biafra to the world's attention in September and October, 1968, when thousands of them were dying each day along the roadside.

Despite threats from Nigeria, which is locked in a civil war with Biafra, the International Committee of the Red Cross and religious bodies grouped as Joint Church Aid, flew in emergency relief supplies and brought kwashiorkor fairly well under control by late spring.

But on June 5 the Nigerians shot down a Red Cross relief plane. The Red Cross, which had supplied about 60 per cent of relief, suspended its flights and has not resumed them.

This partial relief stoppage brought predictions from many experts outside Biafra that the death rate of children would immediately shoot up again to the 1968 level.

This has not happened—yet. But many here view the next two months as the crisis period.

The church groups, which have continued to defy Nigeria, have been able to step up relief flights in the past two months and have filled some of the gap left by the Red Cross.

They are now making between 15 and 20 flights a night when Nigerian bombing of the airstrip at Uli is not intense.

But is not nearly enough, says Father Angus Fraser, a Catholic priest who supervises one of the 47 relief camps around Etche. There are 97,000 persons in the camps.

They, like most of the estimated 2 million other refugees in camps scattered around Biafra, receive three relief meals a week.

A relief meal averages out for each person at about an ounce of stockfish (a high protein dried fish from Iceland) mixed into a cornmeal mush reinforced with vitamins.

These are the lucky ones, says Father Fraser. Across the Otimiri River from Etche are 40,000 refugees who are in even more serious trouble. Relief supplies must be ferried by canoe to them and then head-carried seven miles through the jungle.

The priest estimates that the situation in Etche, which is 30 miles southeast of Owerri, is much like that at other refugee camps—more deaths in the past few months, but not as many as in late spring.

Kwashiorkor is rampant in Etche, which has provided many of the 4,000 Biafran children who have been flown to Gabon for special treatment.

Weeping mothers crowd around Father Fraser, holding up children that are little more than skeletons, begging him to send them to the Gabon hospital. He can only take a handful of the worst cases. Then the mothers weep even more at the thought of being separated from their children. One night recently after he had selected 20 children, seven of them disappeared, taken back by their mothers.

Another 4 to 6 million people are estimated to be jammed into the Biafran enclave with the 2 million refugees. At least 3 million of them have been dependent on the hundreds of feeding centers set up separately by Caritas, the World Council of Churches and the Red Cross.

Before the June stoppage, the Red Cross operated 904 feeding centers with 500 persons getting three meals a week at each.

The church groups have donated 10 per cent of the relief they fly in to keep the Red Cross centers open. It is now clear that the effort is failing and the Red Cross is on the verge of closing down its food operation.

It has pared down the number of persons being fed in each center to the 100 worst cases. Asked what happens to the other 400, ICRC representative S. E. Naucler said, "I do not know. There is nothing else we can do."

The Red Cross is in the process of handing over 200 feeding centers to the church groups to operate.

Local foodstuffs grown under the Biafran army's land plan are dwindling rapidly. Another harvest is not due until January. November and December are the danger months of the current shortage.

"We thought we had saved a whole generation of children," said one Catholic priest. "Now we are almost back where we started. It is not only the food itself, but the fact that the relief was coming in that gave people enough hope to go on living, waiting for more. Now that hope is fading, and they give up."

How many are dying of starvation, is as Dr. Ifekwunigwe pointed out, an almost unanswerable question in a wartorn society that has little time for statistics. The low estimate seems to be about 400 a day, with other current estimates being 1,000 and 2,000.

Four hundred miles away, on the flyspeck island of Sao Tome that is the jumping-off point for the relief flights, an impatient Catholic priest named Anothy Byrne paces daily inside a large warehouse where 10,000 tons of relief food is stored.

"We have the food," Father Byrne says. "We just cannot get it to them. These children know nothing about secession, economic blockade, political involvement. They only know they are starving."

ADDITIONAL DEATHS OF CALIFORNIANS IN VIETNAM WAR

Mr. CRANSTON. Mr. President, between Saturday, November 8, 1969, and Friday, November 14, 1969, the Pentagon notified 10 more California families of the death of a loved one in Vietnam.

Those killed were:

Lance Cpl. Stephen E. Bayles, son of Mrs. Billie Bayles, of Ben Lomond.

Pfc. Michael A. Bustamante, son of Mr. and Mrs. Felix Bustamante, of Pacoima.

Pfc. Jose C. Carrillo, son of Mr. and Mrs. Joe Carrillo, of Los Angeles.

Boatswain's 1 Charles P. Geisert, husband of Mrs. Setsuke Geisert, of Long Beach.

Lt. Patrick J. Donovan, brother of Mr. William A. Donovan, of Arcata.

Maj. Howard B. Henry, husband of Mrs. Jacqueline D. Henry, of San Clemente.

Sp4c. Ariel J. Smith, husband of Mrs. Fannie J. Smith, of Santa Ana.

Sp4c. Daniel J. Smith, husband of Mrs. Linda Smith, of Los Altos.

Capt. James J. Stroble, son of Mr. and Mrs. Walter W. Stroble, of Winton.

Pfc. Raul J. Vargas, son of Mr. and Mrs. Ralph C. Vargas, of Orange.

They bring to 3,874 the total number of Californians killed in the Vietnam war.

A STUDY OF 177 AMMUNITION PURCHASERS FROM TWO MARYLAND GUN DEALERS

Mr. DODD. Mr. President, just 1 month ago the Senate voted to weaken seriously the ammunition recordkeeping requirements of the Gun Control Act of 1968, when it adopted the Bennett ammunition amendment to the Interest Equalization Tax Act. This amendment eliminated recordkeeping for rifle ammunition and shotgun shells.

In effect, the Senate said to felons, fugitives, narcotics violators, and juvenile delinquents: "Go ahead and purchase all the rifle and shotgun ammunition you want for whatever nefarious activity you may be planning."

The so-called sportsmen of the Nation argued, and the Senate accepted the argument, that rifle and shotgun ammunition is only used by sportsmen in bagging deer or some other sporting activity.

I submit that all one need do is read the daily newspaper and the fact becomes clear that these weapons are also used in crimes of violence, including homicides, assaults, and armed robberies.

I deplored the action taken by the Senate on October 9, and today I am more convinced than ever that this body acted in a precipitant manner, urged on by the gun lobby and the ammunition manufacturers.

The Senate bought the allegation that recordkeeping on the sale of ammunition was tantamount to registration.

The Senate accepted the argument that requiring records on ammunition sales was a burden on the law-abiding sportsmen, upon the firearms dealer, and upon the Treasury Department.

The Senate agreed with the gun lobby view that the recordkeeping requirements are a waste of time and effort and that they serve no law enforcement purpose.

I knew then that the Senate made an error in accepting these positions.

Since then I have determined that the Senate's action was a tragic error.

The Gun Control Act had been in effect less than 1 year when the Senate voted to remove the ammunition recordkeeping requirements concerning rifles and shotguns.

In such a short period of time the effect of those provisions, as a part of the overall crime deterrent nature of the act, could not be truly measured. This was basically because of the fact that the Treasury Department had done absolutely nothing to effectively enforce these ammunition control provisions.

They said as much in testimony before the Juvenile Delinquency Subcommittee on July 24, 1969.

However, there was no question over the deterrent effect of similar recordkeeping provisions of the act, concerning the sale of firearms. Representatives both of the Treasury Department and the Internal Revenue Service testified

that the provisions had been of substantial aid to law enforcement even in the brief period of time that the act had been in force.

It was with the testimony of those officials in mind that I directed the staff of the Juvenile Delinquency Subcommittee to examine the records of ammunition dealers in the Washington, D.C., suburbs with the goal of determining just how many nonresidents were purchasing ammunition and what, if any, criminal backgrounds such persons had.

This record check is of particular significance because under District law, residents must comply with firearms registration requirements in order to buy ammunition in Washington.

As in the firearms investigation, I asked, "Why does a District resident travel a great distance to buy ammunition that he would have access to within a few blocks of his home?"

The answer in many cases, as documented by the records that I will soon discuss, is that he is a criminal.

He does not have his gun properly registered in Washington.

He cannot buy ammunition here.

So, he skirts the local law and buys his high-powered bullets and shells in other jurisdictions.

Previous subcommittee investigations had documented that one of the major sources of the crime gun was through over-the-counter, nonresident purchases. This means a resident of one jurisdiction who for one reason or another was prevented from purchasing a gun where he lived traveled to a nearby State, bought the gun and subsequently used it in the commission of a crime in his own backyard.

In view of this past record of criminal evasion of local firearms laws, I directed subcommittee investigators to compile the names of District of Columbia residents who had purchased ammunition in suburban Maryland from the effective date of the Gun Control Act through the month of October 1969.

This was done, and the names of 177 purchasers were submitted to the Federal Bureau of Investigation for criminal record checks.

The results of those record checks leave no doubt in my mind as to the value of recordkeeping on the sale of ammunition as a law enforcement aid.

Of the 177 persons whose names, addresses, and dates of birth were submitted to the Federal Bureau of Investigation, 66 or 37 percent had criminal arrest records.

Included in these records were 203 misdemeanor convictions. This is a minimal figure as some cases are current and still before the courts, and in other cases, no disposition was recorded.

Seventeen arrests involved firearms.

Our study revealed that ammunition was sold to persons convicted for murder, armed robbery, assault, assault with dangerous weapons, rape, grand larceny, and a variety of firearms charges.

A summary of the major charges against these ammunition buyers includes: Two murders; one attempted murder; 38 assaults, including 14 assaults with dangerous weapons involving at least five guns; 11 grand larcencies; five rapes; eight "carrying dangerous weapons"; seven robberies, including two armed robberies; one sale of marihuana; seven housebreakings; two "fugitive from justice" charges; 136 drunk charges and related offenses; one possession of a gun after conviction of a crime of violence in the District of Columbia; one interstate transportation of firearms; eight auto thefts; and eight carrying dangerous weapons charges, including at least two guns.

A closer look at the records of some of these "hunters" and "sportsmen" reveals a pattern that should shock those who advocate free access to ammunition. I will briefly describe the more flagrant cases of the sales of bullets and shells to some of the unsavory characters who patronized Maryland gun dealers.

A fugitive from justice, fleeing his parole in April of this year, bought ammunition in May. His record includes convictions for crimes of violence and for possession of a gun after being convicted of violent crimes in the District of Columbia. Since his purchase in May, this ex-con was arrested in August for breaking and entering and in October, just last month, he was arrested for armed robbery.

An ex-convict with arrests for assault with intent to rape, a 12-year conviction for murder, and other assault charges, bought ammunition in February 1969, and was arrested for armed robbery in August.

On June 10, 1969, one man purchased ammunition and 10 days later was arrested for the sale of marihuana.

Arrested previously for assault with a deadly weapon and for enticing young children, another individual bought ammunition in January 1969 and was arrested in August for assault with a gun.

Another man bought ammunition in March of 1969 and was arrested in August for assault with a gun.

A man with arrests for assault with a gun in 1964 and for 2d degree murder in 1967 bought supplies to make his own handgun cartridges on three visits to the Suitland Trading Post in April and May of 1969.

Still on probation for a conviction of assault with a gun, one man bought ammunition on July 15, 1969. He had two other charges for assault with guns in 1946 and 1949, the latter a conviction on a reduced charge of assault.

Out of prison exactly five months, a man convicted of interstate transportation of firearms and gambling paraphernalia purchased ammunition on February 22, 1969. His record also includes a conviction for robbery in 1950 and an arrest in 1956 for breaking and entering.

Known to be violent, with a record of assault with a razor, this individual bought ammunition in March 1969 and was picked up in April for carrying a deadly weapon, a gun.

The information I have just recited took a subcommittee investigator a matter of hours to obtain.

Is it so unreasonable to suggest that Treasury agents could do the same and supply this information to local police departments?

For example, we know that crime is essentially a big-city problem.

We know that the major cities in the United States require a permit or license to purchase or possess firearms.

And, we know that big-city ammunition purchasers who travel great distances to buy bullets are in a high crime risk category.

Mr. President, this condition is precisely the reason we wrote into the Gun Control Act provisions for cooperative arrangements between Federal and local law-enforcement agencies.

Spot checks by Treasury agents on ammunition sales could result in significant law enforcement information being passed on to local police departments.

And, these checks would put the dealers on notice that the law is being enforced and that they had better exercise extreme care in selling these deadly items.

Clearly, the Senate has made a grievous error.

How can one fail to accept the fact that recordkeeping is an essential law enforcement aid, when all one need do is examine the results of the above records inquiries.

Obviously, the maintenance of records on the sale of ammunition is not a waste of time and effort.

It does not represent an undue burden upon sportsmen as claimed by the gun lobby.

It is not a registration scheme, as has been darkly claimed by the gun runners.

The maintaining of records on the sale of ammunition represents a reasonable effort to prevent killers, robbers, and teen-age punks from purchasing ammunition and to aid law enforcement in detecting law violators.

Mr. President, the Senate has acted hastily and I would only hope that the other body will not react in the same emotional manner.

The congressional spokesmen for the gun runners have publicly announced this is the first step toward a total dismantling of the 1968 Gun Control Act.

I urge Congress not to lend itself to this conspiracy.

I urge our colleagues in the other body to drop the Bennett amendment from the Interest Equalization Tax Act.

I ask unanimous consent that two tables, entitled "District of Columbia Residents Purchasing Ammunition at the Suitland Trading Post, Suitland, Md., from December 16, 1968, through October 10, 1969," and "District of Columbia Residents Purchasing Ammunition at Apple Hardware, Chillum, Md., from December 16, 1968, through October 17, 1969," be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DODD. Mr. President, the RECORD should also include observations made by the press concerning the gun lobby's influence on Congress in this firearm ammunition matter.

For example, the October 11, 1969, edition of the Everett, Wash., Herald headlined the story on removal of ammunition from the Gun Control Act this way: "Key Provisions on 1968 Act Riddled—

Gun Fans Performing Surgery on Federal Controls."

The Houston, Tex., Chronicle said on September 23, 1969, "Ammo Repeal Bill Sneaks in on Rider."

On September 10, 1969, the Worcester, Mass., Gazette told the story this way: "Gun Control Opponents Score Again."

The Louisville, Ky., Courier-Journal on October 12, 1969, observed in an editorial that "The gun lobby is hard at work again," and, it said, "We hope the House turns down this irresponsible repealer. It would be a crime to approve it."

Community newspapers are close to the feelings of the people of the community. Congress should be aware of the comments in the Observer, in Charlotte, N.C., on October 10, 1969, concerning this legislation. It said "Good Act Undone."

The Greensboro, N.C., News on October 12; "The Gun Boys Win Another."

The Manchester, N.H., Union Leader on October 16," Gun Laws Need Backing."

The Charleston, W. Va., Gazette on October 14, "Proper Controls Do Keep Firearms From Outlaws."

The Trenton, N.J., Times on October 5, 1969 hit the nail right on the head when it said:

The country needs more and tougher gun control laws. It doesn't need any weakening of the hard-won control it has now.

Bob Cromie, a columnist in the Chicago Tribune, on November 6, 1969, stated the problem of the vast majority of Americans who believe that they have a right not to be shot when he said in his column that the gun lobby's argument that if guns are taken from private citizens, the Communists will move in, "is phony."

This is the majority who would like to live out their lives without getting their heads blown off.

Mr. Cromie said:

Such an argument, it seems to me, overlooks the rather glaring fact that the right to live your life without being shot by some idiot with a handgun or a rifle also would seem an inherent one . . .

Mr. President, I ask that these items be printed in the RECORD.

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

[From the Louisville (Ky.) Courier Journal, Oct. 12, 1969]

THE GUN LOBBY IS HARD AT WORK AGAIN

Gun control legislation that was in a sense, put on the books with the blood of two Kennedys and Dr. Martin Luther King is being undermined by the gun lobby and its servants in Congress. The Senate has voted to remove federal controls on 30 per cent of the ammunition sold in the United States each year. This shabby effort to weaken gun controls has the support of the Nixon administration, whose dedication to "law and order" apparently was only campaign deep.

The ammunition controls, adopted last year, require those who buy ammunition to identify themselves to sellers and record their names and addresses. Those who wanted to repeal this requirement used the sneak approach. Their case was so weak that they did a lot of footwork to avoid public hearings in the Senate. Senator Wallace Bennett of Utah, the sponsor of the repeal, attached his discreditable repealer as an amendment on a non-controversial tax measure.

We hope the House turns down this irresponsible repealer. It would be a crime to approve it.

[From the Charlotte (N.C.) Observer, Oct. 10, 1969]

GOOD ACT UNDONE

Just about a year ago—it was Oct. 10, 1968—Congress completed action on a gun control bill which, among other things, required the seller of ammunition to record the purchaser's name, age and address. Congress is now in the midst of exempting most ammunition from that requirement—including .22 caliber rimfire bullets.

This type of ammunition is used frequently in pistols that police describe as "Saturday night specials." They are cheap and thus easily obtained handguns.

The Senate Finance committee voted the exemption Sept. 19 and, to speed congressional passage in time for the fall hunting season, attached it to an unrelated House-passed bill (H.R. 12829). Sen. Wallace F. Bennett (R-Utah), one of 46 Senate sponsors of the amendment, explained that the present record-keeping provision is a burden on sportsmen. Spokesmen for the Nixon administration have said it will not push for a national gun-registration and licensing law because the record-keeping would be a burden to law enforcement agencies.

Meanwhile, the FBI disclosed in its latest semi-annual report that armed robberies increased 17 per cent during the first half of 1969 compared with the same period of 1968. In Washington, D.C., the increase was 46 per cent.

[From the Paterson (N.J.) News, Oct. 1, 1969]

REPEALING GUN CONTROLS

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This type of ammuntion is used frequently in pistols that police describe as "Saturday night specials." They are cheap and thus easily obtained handguns. Until the 1968 law plugged the import market, those found in the United States were likely to be foreign-made. But American gun manufacturers have taken up the slack. Donald E. Santarelli, the associate deputy attorney general, told a Senate Judiciary subcommittee last July 24 that American production of cheap handguns might reach 700,000 this year, compared to 60,000 in 1968.

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Meanwhile, the FBI disclosed in its latest semi-annual report that armed robberies increased 17 per cent during the first half of 1969 compared with the same period of 1968. In Washington, D.C., the increase was 46 per cent indicating the growing seriousness of the problem.

[From the Camden (N.J.) Courier-Post, Oct. 17, 1969]

GUN CONTROL LAW UPHELD

New Jersey has what is said to be one of the most restrictive gun control laws in the nation. Many sportsmen and gun collectors say it is too restrictive.

Among other things, the law denies licenses for buying firearms to convicted felons, drunkards, narcotics addicts, lunatics, or minors. It also requires a gun purchaser to fill out a questionnaire that requires him to state whether he has ever belonged to an organization advocating the violent overthrow of the state or federal government.

A North Jersey gun collector objected to this provision, calling it an infringement on his freedom of political association and of speech. He attacked the law in the courts after he was denied a certificate allowing him to buy a gun because he refused to answer the question.

The American Civil Liberties Union joined him in carrying the case to the New Jersey Supreme Court. It held that the questionnaire should confine itself to a person's current membership in the organizations to which it referred, but that with this qualification it was a reasonable measure for the state to employ in an effort to keep weapons out of the hands of criminals or subversives.

This decision of the state Supreme Court was then carried to the U.S. Supreme Court, which now has refused to review the state court's finding, thereby affirming it.

The decision seems sound and justified in confining a gun buyer's questioning to present membership in subversive organizations, and not digging up his past. But it also seems entirely sound and justified in upholding the state law with that proviso.

As the present law continues to operate we believe it will more and more prove its worth and that fewer attacks on it will be made. It is true that state laws cannot solve the whole problem so long as would be gun purchasers can cross a state line, or buy weapons through the mail in order to evade them. But they at least will do some good in preventing guns to fall into the hands of irresponsible persons, and hopefully national legislation will come some day that will do a better job.

[From the Vincennes (Ind.) Sun-Commercial, Oct. 20, 1969]

ON GUN CONTROL

We are in the midst of a years-long argument over control of guns and ammunition in the United States. Each side accuses the other of pressure on legislatures and unfair propaganda. There are flurries of activity and publicity on each side, and it probably is going to go on for a long time yet.

Those who are contending for fewer instead of more stringent controls will find that events such as that in Bedford's Otis Park last week brings new vigor to their opponents.

Two hunters drove their red pickup into Bedford's public park and killed and carried away one of the semi-tame squirrels which make their home in the park and are favorites of youngsters of that neighborhood.

Of course the hunters were violating all kinds of state and city laws, such as firing off firearms inside city limits, hunting near a public thoroughfare and hunting on land without permission of the owner. Bedford was indignant, but the deed was done. Unidentified hunters had killed and carried away one of the park squirrels.

The Otis Park case, and the cases of recent months in Knox county when motorists have shot from cars at dogs and horses, are the plague of the conscientious hunter who mourns the possibility that the continued growth of gun-control laws will someday spoil his sport. It is high time that those who are interested in hunting and having relative freedom in the purchase and use of firearms join in a serious effort to keep their foolish brethren from antagonizing the public unnecessarily.

[From the Charleston (W. Va.) Gazette-Mail, Oct. 14, 1969]

PROPER CONTROLS DO KEEP FIREARMS FROM OUTLAWS

The enthusiasts who display bumper stickers saying "When guns are outlawed only outlaws will have guns" ought to take a look at the experience in Toledo, a city of 400,000 on the western tip of Lake Erie which was once known as the gun capital of the Midwest. The Wall Street Journal did take a look, and what it found is rather startling.

Toledo got its reputation because firearms of all kinds could be bought at jewelry stores, gasoline stations and pawn shops. Gun dealers hawking pistols for as little as $4.95 vied for choice locations along roads leading in from Detroit, where gun controls were stricter. The crime rate soared.

The Ohio legislature declined to restrict the trafficking in lethal weapons despite repeated appeals from Toledo officials. So in August, 1968, the city council enacted an ordinance aimed especially at the sale of "Saturday-night specials"—cheap guns toted by holdup men to terrorize merchants on busy weekends. The ordinance prohibits anybody in the city from keeping or obtaining a pistol, revolver or other hand guns without a license from the police.

Surely the Toledo experience should have a message for the Ohio General Assembly, as well as legislatures in other states. If a city ordinance can have such a dramatic impact on reducing crime, certainly state laws—which would extend beyond city boundaries in controlling the gun problem—should have even greater impact.

As to be expected, however, the Toledo story is having little effect on those who oppose gun controls. Woodson D. Scott, a New York lawyer who is president of the National Rifle Assn., the foremost opponent of gun control, says: "The statistics only prove that the statistics are down, in terms of cause and effect, it doesn't prove a thing." Whatever that may mean.

What the gun lovers should recognize, on the basis of what has happened in Toledo, is that proper controls do keep guns out of the hands of outlaws—and at the same time do not interfere with legal possession by law abiding citizens.

At the time, notes the Journal, few law officers believed the ordinance would reverse the city's mounting crime rate; unlicensed residents can still buy guns outside the city limits. But whether because of the gun-control law or because of other anticrime measures or even mere chance, crime is abating in Toledo while still surging higher in most cities.

This development shows up most dramatically in statistics released late last month by the FBI. For the nation, the violent crimes of rape, murder, robbery and aggravated assault—armed or otherwise—rose nine per cent in the first six months of 1969 over the like period last year. But in Toledo these violent crimes dropped 31.5 per cent from the first half of 1968. John J. Burkhart, the city's chief counsel, said "We're the only major city which shows such a dramatic decrease."

Delving into Toledo's experience, the Journal found these amazing results:

In the year before the ordinance was adopted, Toledo's police counted 422 aggravated assaults, with guns and without; these include shootings, stabbings, and other attacks intended to maim or kill. In the year after enactment, the number of such attacks dipped nine per cent to 385. But the assaults with guns dropped much more steeply—from 152 to 83, or 45 per cent.

In the year before the ordinance, 36 people were murdered, 22 by hand guns; in the following year, murders totaled 14, of which eight were by gun.

Robberies both armed and unarmed dropped from 1,188 in the year before gun control to 798 in the next year, a decline of 33 per cent. But gun robberies dropped even more sharply—from 350 to 160, or 54 per cent.

The unexpected crime statistics have sent Burkhart scrambling to recheck them. "I've gone over every possible angle to see whether there might have been a mistake," he said adding "I can't find any."

Still somewhat puzzled, Burkhart explained that Toledo enacted its ordinance primarily to persuade the legislature that gun controls can be imposed with little inconvenience and minimum intrusion on citizens' rights. "It was really an effort to sell general assembly," he said. "I didn't think we'd be able to make an impact on crime in less than three or four years."

[From the Pocatello (Idaho) State Journal, Oct. 21, 1969]

AN ARGUMENT FOR GUN CONTROLS

Some of the 62 per cent that responded recently to Rep. Orval Hansen's poll on the federal gun control law by saying that the law is too restrictive may have noted the recent arrest of a 33-year-old escapee from State Hospital South.

The incident is a graphic illustration of the need for the Idaho Legislature to pass a more comprehensive gun control law.

After escaping (He was later registered as "discharged" by the hospital!) The patient walked into a local sports shop, purchased a .22 pistol, and walked out again. The suspicious proprietor called police—after he had sold the gun, however.

Fortunately the police were able to quickly spot and arrest the patient. But not before the gun had been fired once, and the patient had led police on a chase in which innocent bystanders easily could have been hurt.

Idaho has no separate gun statute as such, though the Idaho Code forbids sale of firearms to minors under 16, or the shipment of loaded firearms through the mails, for example. Hence, the Federal Gun-Control Act of 1968 regulates the purchase and sale of arms within the state.

While the act did cut down considerably on the mailorder business, and does specify that a form be filled out when one purchases a gun, many law enforcement agencies feel that the law is not nearly strong enough.

For example, the law specifies no waiting period on the purchase of a firearm. If there were a short waiting period, applications for firearms could be checked with police records.

The 1968 federal act also prohibits the sale of firearms to previously convicted criminals and mental incompetents. Needless to say, the mental competence of an escapee from State Hospital South is questionable. A simple waiting requirement would have prevented the escapee from purchasing a firearm on the afternoon of his escape.

A state gun control law could improve upon the federal law by requiring the registration of all firearms, submission of a "proof-of-need" form when applying for a gun, and stipulation that each time a firearm changes hands, it be registered.

A registration requirement is not unreasonable. One's car is classified as a "lethal weapon" by the law, and has to be registered. One's rifle or pistol is a lethal weapon and should be registered.

The stipulation that a firearm be re-registered each time it changes hands would be of obvious advantage to law enforcement agencies, for it would greatly facilitate the tracing of any weapon involved in any criminal case.

The murder rate per 100,000 people is less in states that have their own strict gun-control laws, and higher in those that have either no specific law, or a weak law. States in the former category, such as Pennsylvania and Massachusetts, have 3.2 and 2.4 murders respectively, per 100,000 people. States in the latter category, such as Nevada and Texas have 10.6 and 9.1 murders, respectively, per 100,000 people.

What is most puzzling, however, about those that are most adamant in their opposition to strict gun-control legislation, is that, by and large, they are also those that are most adamant in their opposition to the growing centralization of federal power. They fail to realize that their opposition is contributing all the more to the process.

Abraham Lincoln once observed "that it is the duty of the Federal Government to do for the people that which the people cannot do for themselves." This is basically what has happened and been the underlying principle in the increase of federal power since the turn of the century. It can be seen in operation today, and the national gun-control law testifies to its validity.

Unfortunately, once again the vocal opposition to a stricter state law will undoubtedly focus on the negative, when there are a multitude of positive improvements that can be made, and should be made, as demonstrated graphically in our own recent incident.

[From the Hackensack, (N.J.) Record Call, Oct. 15, 1969]

BULLETS UNLIMITED

The timing of a Senate vote the other day made for an interesting anniversary and a sobering comment on the drift of the national temper. Just a year ago—it was October 10, 1968—Congress completed action on a gun control bill requiring among other things that the seller of ammunition take down a written record of the purchaser's name, age, and address. Just now the newspapers of Oct. 10, 1969, have recorded a vote in the Senate, 65–19, to exempt from this requirement most ammunition, including the low-caliber kind used in the cheap pistols that police characterize as Saturday night specials.

Sen. Kennedy of Massachusetts, brother of two men shot down by assassins using cheap guns, pleaded against thus weakening the law. He did not once refer to the murder of John or Robert Kennedy; instead, addressing the Senate in the language that is its mother tongue, he argued that this was the right way procedurally to deal with a matter involving national policy on crimes of violence. The Senate Finance Committee voted the exemption in mid-September and, in order to enable action in time for the fall hunting season, attached it to a totally unrelated House bill having to do with taxes.

The supporters of the amendment protested that to make dealers keep a record on ammunition purchasers would merely harass sportsmen and burden the dealers. The point is respectable. Also worth grave consideration is the testimony before a judiciary subcommittee in July of Donald E. Santarelli, associate deputy attorney-general, that production of cheap handguns in the United States this year will total something like 700,000 as against 60,000 last year. The 1968 gun law stemmed the flood of foreign imports. But the demand for pistols, which are used to an appreciable extent in only one kind of hunting, never dried up, and it is being met. The revulsion that peaked after the Kennedy and King murders has leached away. The Administration will not press for national gun registration and licensing, because that too would entail onerous bookkeeping for law enforcement agencies. In its latest semiannual report the Federal Bureau of Investigation found that armed robberies increased 17 per cent over the first half of 1969 as compared with the comparable period in 1968. The increase was 46 per cent in Washington. Perhaps not enough harassment of the Saturday night special market is being done.

[From the Terre Haute (Ind.) Tribune, Oct. 24, 1969]

HASTY SENATE ACTION

Less than a year ago the United States Senate, responding to strong public sentiment, approved the 1968 Gun Control Act.

Proponents of gun control regarded it as a welcome, though not overly strong, move toward the goal of placing gun ownership under sensible regulation.

Now the Senate, in its wisdom, has in part rescinded its earlier action. This time around it scrapped the requirement that anyone who buys certain shotgun or rifle ammunition must give the dealer his name, age and address.

This is objectionable on both substantive and procedural grounds. The action is a step backward in the matter of trying to keep guns and ammunition as much as possible out of the hands of criminals, juveniles and psychotics. The back door way in which this was accomplished undermines sound legislative procedure.

Those in favor of removing controls on purchase of ammunition did not meet the issue headon. Instead, the measure was offered in the form of an amendment to a wholly unrelated tax bill. This is a cute legislative trick, but not one that meets the requirements of sound lawmaking.

It also is pertinent that this legislative action was taken without benefit of hearings, at which the case for and against removing ammunition controls could have been presented. The Senate, in short, has acted hastily and without careful deliberation on a matter of some importance.

[From the Ravenna (Ohio) Record Courier, Oct. 11, 1969]

GUN LAWS IN TOLEDO

Mention gun control legislation and you're liable to start a fist-fight between the "for-ers" and "aginners" in your group, so high do feelings run on the issue.

Those who oppose gun controls of any type feel that it's a man's right to own a gun, and that registering firearms is a dangerous practice. Those for it consider it a necessity before we all end up shooting each other.

Fortunately Ohio has a case study on the subject—the City of Toledo—the only city in the state and one of the few in the nation to pass gun control legislation, having done so in August of 1968.

How has it worked? Let's check a few statistics. Cleveland has twice as many people as Toledo, and yet during the first six months of this year had 19 times as many slayings (117 to 6).

Toledo officials report that during the first year the ordinance has been in effect the city's homicide rate has dropped 61 per cent, robberies 33 per cent and robberies committed with handguns 54 per cent. Pretty impressive statistics during a period where crime has been on the upswing in large cities throughout the nation.

Toledo's law requires all handgun owners to obtain an identification card with their picture on it from the Police Department.

Gun dealers must purchase licenses and send monthly reports to police on who purchased weapons and other facts.

The city's judiciary has been given much credit for the law's effect by meting out stiff penalties by violators.

Gun legislation in Toledo provides some pretty substantial food for thought, doesn't it?

[From the Binghamton (N.Y.) Sun-Bulletin, Oct. 16, 1969]

GUNS FOR ANYBODY

The tragic death of a promising young policeman in Owego Monday afternoon bears fresh witness to Americans' amazing permissiveness in keeping firearms available to everyone.

The man charged in the slaying, Edward J. Finley, was at the time free on bail, awaiting trial for illegal possession of a firearm, the result of an "incident" in an Owego tavern last June. Nothing wrong with that, no. That charge involved a .22-caliber rifle with the barrel sawn off, and the police quite properly confiscated it. But in the interim, while awaiting trial, it appears that the suspect was able to obtain a 12-gauge shotgun, saw off the barrel, and precipitate more serious tragedy.

In fact, the sawing-off of the barrel—which renders a "long gun" an illegal weapon, useless for legitimate sporting purposes and implicitly turning it into what our armed forces delicately term an "anti-personnel weapon"—surely should finish off one argument put forth by gun apologists. That is that long guns—rifles and shotguns—are plainly sporting weapons, with little "anti-personnel" potential because of their cumbersomeness, making them hard to conceal.

Owego police say the murder weapon that laid their colleague low was sawn off crudely—all you need is a hacksaw and some energy. They also say they are doing their best to discover how Mr. Finley, a suspect awaiting trial on a prior gun charge, was able to get another gun. They may succeed, but if they do it is unlikely that any charge will follow. There simply are no laws on the books to control the spread of guns in this country. And every attempt to introduce one draws the wrath of sportsmen, the National Rifle Association and its allied lobbyists on behalf of gun sellers.

Meantime, the slaughter goes on. Like that on an Owego street last Monday afternoon.

[From the Greensboro (N.C.) News, Oct. 12, 1969]

THE GUN BOYS WIN ANOTHER

The United States Senate may be grabbing headlines with its inquiry into the illegal traffic in Army weapons, but it has quietly gutted one provision of the law passed last year to tighten restrictions on the sale of guns and ammunition.

By a vote of 65 to 19 the Senate has weakened the ammunition-sales provision of the Gun Control Act of 1968. If its action is approved by the House, certain rifle and shotgun ammunition will be exempt from the requirement that purchasers must provide their names, addresses, and ages to dealers, as well as show identification.

The exemption was pushed by the two senators from Utah, Frank Moss (the fellow who runs the anti-smoking crusade) and Wallace Bennett. They waved stacks of letters from constituents, who objected to the requirement—the angered citizens said it harasses "sportsmen" without stopping criminals from getting ammunition.

How they can prove that, we do not know. Nor de we understand how it is "harassment" to require that purchasers of deadly ammunition provide the basic information the law requires. It strikes us as no more harassing than the laws in many states which require that similar information be provided by purchasers of paregoric or codeine—mild narcotics which hardly pose the public danger of indiscriminately-distributed ammunition.

Our position from the outset of the gun-control controversy has consistently been that responsible sportsmen have nothing to fear from stringent controls. When people raise a stink about providing their names and ages and addresses and showing their driver's licenses, we can only assume they feel they have something to hide. Why else would they be so frightened by a law which, if anything, is entirely too lenient?

[From the Fresno (Calif.) Bee, Oct. 1, 1969]

GUN LOBBY GATHERS FORCES

The gun lobby has opened fire on Capitol Hill in an effort to shoot more holes in the federal firearms law passed by Congress in 1968.

Current target is the requirement that purchasers of rifle and shotgun ammunition give their name, age, and address, and show some sort of identification.

Without such a rule, there could be no enforcement of the ban on ammunition sales to convicted felons, minors, dope addicts and other restricted categories included in the legislation.

But to Sen. Wallace Bennett (R-Utah), these are simply "burdensome" questions that sportsmen should not have to answer. Such inquiries, said Bennett, also amount to gun registration, since the ammunition purchased would indicate the kind of firearm owned by the buyer.

This ridiculous contention got nowhere in the House nor in the Senate Judiciary Committee. Sen. Bennett thereupon persuaded the Finance Committee to eliminate the ammunition curbs by means of an amendment tacked on—of all bills—the Interest Equalization Act of 1969.

The basic bill, of course, has nothing to do at all with firearms control. It would increase the cost of domestic borrowing to correspond to the expense of making loans abroad. In the case of Sen. Bennett's amendment, it is simply a convenient legislative vehicle.

But surely the Senate will reject this effort to weaken already inadequate firearms regulations, despite gun lobby pressures. As experts have pointed out, ammunition exempted by the Bennett amendment could be used in .22-caliber handguns, one of the principal weapons in U.S. crime.

The Times urges Congress to strengthen not soften, the restrictions upon firearms and ammunition. Only criminals and those unfit to possess firearms would find such regulations "burdensome."

[From the West Palm Beach (Fla.) Post, Oct. 14, 1969]

SUCCESSFUL GUN LAW

In the nation, violent crimes rose 9 per cent for the first six months of 1969. In Toledo, Ohio, violent crimes dropped 31.5 per cent for the first six months of 1969. The Toledo city council enacted a gun control ordinance in August, 1968.

Now it may be that Toledo's sudden decrease in crimes of rape, murder, robbery and aggravated assault was the result of good luck, good police work or favorable vibrations from the North Star. But it is more likely that the gun law was a factor.

For years, Toledo was arms supplier to Detroit, and the weekend trade in $5 pistols was brisk and profitable. Now, nonresidents can't buy guns in Toledo unless they have permission from their local sheriff or police chief. The out-of-town trade has been stopped cold.

For Toledo residents, it is not a tough law. It merely requires people to shell out $3 for a "handgun owner's identification card" if they own, or plan to buy, a handgun. These licenses are refused only to minors, fugitives, criminals, drunks and drug addicts.

The toughness is in the enforcement of the ordinance. Police require stores to keep careful records of their firearms sales, and judges impose stiff fines and jail terms for persons convicted of possessing unlicensed handguns.

Local gun laws, locally administered and enforced, can never be as effective as state or federal legislation. But the Toledo experience seems to show they are better than nothing. Thirty-one-point-five per cent better.

[From the Decatur (Ill.) Review, Oct. 11, 1969]

TOLEDO GUN LAW EFFECTIVE

Toledo, Ohio, according to a story in the Wall Street Journal, was once known as the gun capital of the Midwest, something which those in other areas might dispute.

But now it is hard to get a gun in Toledo. And this has resulted in a number of benefits. For one thing violent crimes have

dropped, something which can be said about few other areas of the nation.

One reason is the fact that gun owners in the city must register with the police. Another involves the quick way in which violators—that is people with guns but without a registration card—are sent off to jail.

One city official told the Wall Street Journal reporter that, Toledo is becoming known as a bad place in which to carry a gun.

Some of the statistics reported by the Journal are interesting. For instance in the last year before the gun ordinance went into effect, there were 422 reported aggravated assaults with both guns and other weapons.

In the following year, the total number of assaults of this type dropped 9 per cent to 385. But the number in which guns were involved went down nearly 50 per cent from 152 to 83.

Obviously, an assault with a gun is much more dangerous than one with a knife or simply with fists. Robberies in which guns were used declined some 54 per cent from 350 to 160 from one year to the next.

What the law has done is to prevent people from buying a cheap gun and then using it to pull two or three quick night time robberies of service stations and all night restaurants.

No one can say that the more stringent gun laws—and their enforcement—are completely responsible for the reduction in crime.

But it certainly seems to have given the police another strong weapon in the pursuit of law and order.

[From the Albuquerque (N. Mex.) Tribune, Oct. 6, 1969]

CONCON AND GUN "RIGHTS"

Delegates to the New Mexico Constitutional Convention conducted themselves with dignity and with balance throughout the session.

It was not only what they did but how they did it. They said no to the "all-outers" who would force upon the Convention their own extremist view.

It's a shame that in the closing minutes of the session, the very last day, they let the gun fanatics—than which there is no whicher—stampede them into a silly clause.

The proposal is that the Constitution says that the use of guns for hunting and recreation is a basic human right. And the delegates even went further by saying that no future Legislature could even pass laws affecting citizens' rights to carry weapons for lawful hunting and recreational use.

This clause is entirely out-of-keeping with the reasonable approach that delegates have taken throughout their proceedings.

Oh, well! We suppose even delegates to a Constitutional Convention, being human, are entitled to commit one boo-hoo.

And it should not cause voters to look critically at the rest of the document.

[From the Trenton (N.J.) Times, Oct. 5, 1969]

WEAKENING GUN CONTROLS

A year ago this month, Congress passed a firearms control law which, among other things, required the seller of ammunition to record the purchaser's name, age and address. Now a strong attempt is being made to exempt most ammunition from that provision—including .22 caliber rimfire bullets of the kind that killed Senator Robert Kennedy.

The Senate Finance Committee voted the exemption September 19 and, to speed congressional passage in time for hunting season, attached it to an unrelated House-passed bill. Senator Wallace F. Bennett, R-Utah, one of the 46 Senate sponsors of the amendment, explained that the present record-keeping requirement is "a burden on sportsmen."

With the U.S. production of cheap handguns expected to increase by over 1,000 percent this year; with armed robberies up 17 percent in the first half of 1969 over the same period of 1968—the country needs more and tougher gun-control laws. It doesn't need any weakening of the hard-won controls it has now.

[From the Los Angeles (Calif.) Times, Sept. 25, 1969]

SENATE SHOULD NOT SPIKE GUN LAWS

Issue: Will the Senate agree to further weakening of the already inadequate federal gun control legislation enacted last year?

The gun lobby has opened fire on Capital Hill in an effort to shoot more holes in the federal firearms law passed by Congress in 1968.

Current target is the requirement that purchasers of rifle and shotgun ammunition give their name, age, and address, and show some sort of identification.

Without such a rule, there could be no enforcement of the ban on ammunition sales to convicted felons, minors, dope addicts and other restricted categories included in the legislation.

But to Sen. Wallace Bennett (R-Utah), these are simply "burdensome" questions that sportsmen should not have to answer. Such inquiries, said Bennett, also amount to gun registration, since the ammunition purchased would indicate the kind of firearm owned by the buyer.

This ridiculous contention got nowhere in the House nor in the Senate Judiciary Committee. Sen. Bennett thereupon persuaded the Senate Finance Committee to eliminate the ammunition curbs by means of an amendment tacked on—of all bills—the Interest Equalization Act of 1969.

The basic bill, of course, has nothing to do at all with firearms control. It would increase the cost of domestic borrowing to correspond to the expense of making loans abroad. In the case of Sen. Bennett's amendment, it is simply a convenient legislative vehicle.

But surely the Senate will reject this effort to weaken already inadequate firearms regulations, despite gun lobby pressures. As experts have pointed out, ammunition exempted by the Bennett amendment could be used in .22-caliber handguns, one of the principal weapons in U.S. crime.

The Times urges Congress to strengthen, not soften, the restrictions upon firearms and ammunition. Only criminals and those unfit to possess firearms would find such regulations "burdensome."

[From the Champaign (Ill.) Courier, Oct. 15, 1969]

A BAD PLACE TO CARRY A GUN

Toledo, Ohio, according to a story in the Wall Street Journal, was once known as the gun capital of the Midwest, something which those in other areas might dispute.

But now it is hard to get a gun in Toledo. And this has resulted in a number of benefits. For one thing violent crimes have dropped, something which can be said about few other areas of the nation.

One reason is the fact that gun owners in the city must register with the police. Another involves the quick way in which violators—that is people with guns but without a registration card—are sent off to jail.

One city official told the Wall Street Journal reporter that Toledo is becoming known as a bad place in which to carry a gun.

Some of the statistics reported by the Journal are interesting. For instance in the last year before the gun ordinance went into effect, there were 422 reported aggravated assaults with both guns and other weapons.

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No one can say that the more stringent gun laws—and their enforcement—are completely responsible for the reduction in crime.

But it certainly seems to have given the police another strong weapon in the pursuit of law and order.

[From the Atlanta (Ga.) Journal, Sept. 11, 1969]

GUN REGISTRATION WILL OF THE PEOPLE

The Editors: John Crown's recent column in The Journal bore the heading, "Antigun People Have Come Out Into the Open." In the opinion of many responsible citizens this is exactly what antigun spokesmen should be doing: speaking their views and addressing their congressmen on the need for rigorous gun control.

Those who have a legitimate need for arms can be licensed to retain them. Licensing gun owners, may help to insure that persons who should not be entrusted with such weapons will not obtain them. The very act of requiring such people to appear before a public agency to obtain a license for gun ownership should help to discourage the reckless, the mentally ill or the juvenile from obtaining guns.

We seem unwilling to recognize the destructive power of guns and the danger they represent. The principle of registration and licensing has been practiced with automobile ownership for years. Americans take this requirement for granted. It is difficult to understand why any group would oppose similar legislation for gun ownership. Proposed federal legislation does not advocate abolition of guns and firearms, merely that there be compulsory registration and licensing to provide a record of gun ownership.

It is impossible to understand how the ordinary sportsman and hunter would suffer if he had to obtain a permit for the gun and ammunition he needs for his hobby or how this would interfere with target shooting and pistol matches.

Just recently Atlantans were horrified at a high school football event where a juvenile shot a spectator. Gun control legislation may have protected this and many other innocent victims. Several public opinion polls have indicated that a substantial majority of those questioned favor a gun registration law. If it is the will of the people why then do our congressmen fail to act?"

When one examines the groups who are opposed to gun control laws, perhaps the very nature of their opposition is a recommendation for the passage of such laws. Those of us who are "antigun people" and feel strongly that the possession of guns should be officially recorded, have an obligation to so inform our congressmen.

BARBARA B. FRIEDLAND,
President, B'nai B'rith Women, Atlanta Chapter.

[From the Lexington (Ky.) Herald, Oct. 12, 1969]

SENATE APPROVES WEAKER GUN CONTROLS

The Senate has done the country a disservice by weakening the currently insufficient laws controlling the sale of ammunition which were included in the Gun Control Act of 1968.

By a 65 to 19 vote, the Senate approved an amendment sponsored by Utah Sen. Wallace Bennett to scrap the requirement that a buyer of some rifle and shotgun ammunition

provide his name, address, age and identification to the dealer selling the ammunition.

While there was a successful effort made to exclude .22-caliber and all pistol cartridges from the amendment it is most unfortunate that the restraints have been lifted on the sale of shotgun and high-powered rifle ammunition which can now be purchased without identification under the Senate amendment.

Not only is the amendment itself a weakening of the law, the way in which it was presented to the Senate represents a step backward in the legislative process.

Instead of allowing the proposal to go through committee concerned with such matters, it was tacked onto a tax bill, which was passed, along with the ammunition amendment on a voice vote.

If the Senate or any other legislative body sets up committees to study various areas of the law, it is important that legislation in those areas should first be studied by the committees and time allowed for all interested parties to present their views on the matter.

Railroading the offensive measure through the Senate by tacking it onto an unrelated topic does a grave disservice to the legislative process. It is to be hoped that the House of Representatives will kill the weakened ammunition regulation when it appears before that body.

[From the Denver (Colo.) Rocky Mountain News, Aug. 31, 1969]

THE RISING WAVE OF HOLDUPS

A high tide of holdups in the waning days of August have Denver police and the general public deeply concerned.

Police records in the past dozen days show more than 30 holdups. Two of them were tragic incidents. A small motel owner was shot and killed in an early morning stickup in East Denver. On Capitol Hill a small grocer was shot to death when he opened his store to accommodate two hoodlums who posed as customers. On Thursday night a woman liquor store operator was clubbed with a pop bottle.

The recent stickups are termed by police "cheap." They are cheap because they involve a piddling amount of money or merchandise. But they become tragically dear when victims are terrified, slugged, stabbed and shot.

Police note that most of these holdups are being carried out by youths—some of them barely into their teens. They note, too, that most of the suspects are described as being hopped up on drugs or speed pills, crutches to bolster courage and fuses that sometimes bring the destruction of life.

It is an appalling situation that has caused small businessmen to close up business, has caused taxicab drivers to quit their jobs.

The situation is not unique for Denver. It is the bane of urban living today. And harried police, their hands filled with problems of every nature, do everything but throw them up.

Police officials and sociologists are properly concerned over the situation. They have sought deterrents—curfews, an accelerated drive to combat drug peddling and use, stronger gun laws. Each of these is a strong factor that has opposition from many segments of today's society.

A curfew could help curb the roving bands of young hoodlums who prowl the streets at night. But they also strike in broad daylight.

An amazing number of sociologists and moderns proclaim that the use of pot, speed pills, psychedelic drugs are harmless and the fulfillment of the grand experience. But one night at the police station watching the parade of offenders, their eyes bloodshot from drugs, their actions uncontrollable, would convince them otherwise.

A strict control of hand guns, now available to almost anyone on a dime-store basis has been sought. But opposition has come from groups of sportsmen who claim that strict controls are an invasion of their rights.

We don't want to take rifles and shotguns used for hunting out of the hands of sportsmen. About the only sport involving pistols is target practice. But for every pistol used for target practice, hundreds are used in holdups, in assault with a deadly weapon.

It is a sad and serious situation. Solutions are hard to come by. Limiting the use of drugs and strong controls on hand guns seem to us to be imperative if we are not to become a city of lawlessness and terror.

[From the Mitchell (S. Dak.) Republic, Sept. 30, 1969]

EASING GUN LAW

Just under a year ago, Congress completed action on a gun control bill which, among other things, required the seller of ammunition to record the purchaser's name, age and address. Congress is now in the midst of exempting most ammunition from that requirement—including .22 caliber cartridges.

This type of ammunition is used frequently in pistols that police describe as "Saturday night specials." They are cheap and thus easily obtained handguns. Until the 1968 law plugged the import market, those found in the United States were likely to be foreign-made. But American gun manufacturers have taken up the slack. Donald E. Santarelli, the Associate Deputy Attorney General, told a Senate Judiciary subcommittee last July that American production of cheap handguns might reach 700,000 this year, compared to 60,000 in 1968.

The Senate Finance committee voted the exemption Sept. 19 and, to speed congressional passage in time for the fall hunting season, attached it to an unrelated House-passed bill (H.R. 12829). Sen. Wallace F. Bennett, R–Utah, one of 46 Senate sponsors of the amendment, explained that the present record-keeping provision is a burden on sportsmen. Spokesmen for the Nixon Administration have said it will not push for a national gun-registration and licensing law because the record-keeping would be a burden to law enforcement agencies.

Meanwhile, the FBI disclosed in its latest semi-annual report that armed robberies increased 17 per cent during the first half of 1969 compared with the same period of 1968. In Washington, D.C., the increase was 46 per cent.

[From the Salem (N.J.) Standard Jerseyman, Oct. 1, 1969]

REPEALING GUN CONTROLS

Just above a year ago—it was Oct. 10, 1968—Congress completed action on a gun control bill which, among other things, required the seller of ammunition to record the purchaser's name, age and address. Congress is now in the midst of exempting most ammunition from that requirement—including .22 caliber rimfire bullets.

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In the continuing campaign against gun controls it is quite common to give a false impression that guns are "forbidden." No law forbids guns. Even the most stringent state law simply requires that the ownership of each gun be registered, just as the ownership of each automobile is registered. Both are deadly weapons.

[From the Manchester (N.H.) Union Leader, Oct. 16, 1969]

GUN LAWS NEED BACKING

While Congress argues and acts on the spending of billions of dollars for the defense of America, let's not lose sight of some issues that may in the end be as important to the preservation of this nation as the ABM and aircraft carriers.

The Gun Control Act of 1968, presented as a measure to curb crime, now has been in effect three-fourths of a year—and there has been no indication that it has reduced crime in any way. In fact, crime and violence appear to be continuing to increase throughout the nation, with those citizens blocked by state laws from possessing firearms often being the victims.

The Gun Control Act, as we predicted, is only harassing sportsmen and other law-abiding citizens, and through its meticulous record-keeping on all guns and ammunition is laying the groundwork for nationwide registration and eventual confiscation of all firearms.

When the public is disarmed, the slavering wolves of subversion and revolution will move—and missiles and aircraft carriers will be of little effect against such attacks from inside the nation.

There can be no better time than now to write to our congressmen and senators to urge that they act quickly to end this ridiculous and perilous situation.

There are no less than 69 bills before the House and Senate to exempt ammunition from Gun Control Act—an indication of the extent to which the act's harassment of gun owners has been brought to the attention of our legislators.

There are 12 bills for the outright repeal of the Gun Control Act, showing a growing realization among the congressmen that the act is having no effect on crime and is a grave infringement on the rights of the citizens.

These bills to end the ineffective but dangerous Gun Control Act deserve the strongest support of all citizens, even those who do not themselves wish to own firearms but who do want this nation to continue free and strong, guarded by the legal right of Americans to keep and bear arms.

[From the Chicago (Ill.) Tribune, Nov. 6, 1969]

DEFENDS GUN CONTROL LAWS

(By Bob Cromie)

Memo to all who oppose a strict gun-control law:

On Monday, in Washington, an official of the Federal Home Loan Bank board was shot and killed by a disgruntled assistant. The killer used a gun.

Also on Monday and in Washington the killer of a pair of FBI agents was sentenced to a pair of consecutive life-terms to begin

after he finishes an 18 to 54 year sentence for armed robbery. The killer used a gun.

Sunday, in Chicago, a young Minnesota man, in town to attend the Rod and Custom Car show, was slain by an unknown assailant as he pulled his car away from the curb on 51st St. The killer used a gun.

Last Sunday, at Youngstown, O., one man was killed and several others injured during violence attendant upon a Republic Steel corporation strike. The killer used a gun.

And in Northfield, Minn., a 22-year-old coed was found dead Sunday in a cornfield by two youths in quest of Halloween decorations. She had been shot in the head.

Finally, and the list of such tragic incidents could be multiplied many times during a week's time, two gun-bearing holdup men took over a Brooklyn gas station and had robbed seven customers when an off-duty policeman broke it up and captured one of the criminals.

The point is that despite such hilarious bumper-stickers as "When Guns Are Outlawed, Only Outlaws Will Have Guns," if guns were outlawed, and made difficult for criminals to obtain and—since they wouldn't know the ropes—even harder for the suddenly-murderous but previously non-criminal to lay his hands on, such crimes of violence would decline with startling suddenness.

Statistics, I believe, will bear out the statement that many murders are crimes of impulse, brought on by a quarrel or some personal cause, in which the killer knows his victim and has no previous record. Surely crimes of this sort would be cut almost to the vanishing point if guns were difficult or impossible to obtain.

The National Rifle Association is one of the groups which has consistently lobbied against any meaningful gun laws, even after President John F. Kennedy, Medgar Evers, the civil rights leader; Dr. Martin Luther King, and Sen. Robert Kennedy were shot and killed. The expressed reason for opposition is that all Americans have the constitutional right to bear arms—altho lawyers will tell you that this is a debatable interpretation—and that if guns are taken from private citizens the Communists will move in.

Such an argument, it seems to me, overlooks the rather glaring fact that the right to live your life without being shot at by some idiot with a handgun or rifle also would seem an inherent one. Further, that no one, so far as I know, has suggested that the disarmament classes of any gun bill should apply to the armed services.

If you care for the macabre, let me add that a Chicagoan killed himself by accident a day or so ago when a pistol—a trick one with barrels facing in both directions—caught him by surprise. This dandy little weapon had been purchased by the victim from a mail-order firm.

How about amending those misleading bumper stickers to read:

"When Guns Are Outlawed, Fewer Outlaws Will Have Guns—and More People Will Live Their Normal Span?"

NRA house organ please copy.

[From the Terre Haute (Ind.) Tribune, Oct. 9, 1969]

UNDERMINING GUN CURBS

The National Rifle Association wants Congress to authorize half a million dollars in the military budget to finance civilian marksmanship practice. Congress should say no. Approval of this questionable enterprise would be a retreat from a relatively enlightened congressional position on the problem of guns in our society.

Another retreat from that position, taken at long last in response to public sentiment aroused by political assassinations, also is being proposed. A bill now pending in Congress would undo some of the work accomplished in gun curbs: it would remove federal controls over the sale of ammunition, in particular .22 caliber rimfire cartridges. This too, would be a step backward from the goal of placing guns and ammunition under reasonable regulation.

On the face of it, the NRA plea cited above may seem unexceptionable. The rifle group is not asking for anything new; it simply wants Congress to restore a marksmanship program long jointly sponsored by the NRA and the Army until the Army backed out a couple of years ago. Under this program, Army surplus rifles and ammunition were furnished—at very low cost—to civilian rifle clubs.

To restore this program now, however, would be in effect simply to shrug off the impact of successive assassinations—President Kennedy, Martin Luther King, Sen. Robert F. Kennedy—on public opinion. The same goes for removing controls on ammunition sales. Over a period of years the American public became convinced, by an overwhelming majority, that reasonable curbs on possession of guns and ammunition were essential. That led to a good start on corrective measures. An attempt is now being made, on more than one front, to undermine this advance. Such moves ought to be firmly rejected by Congress.

[From the Louisville (Ky.) Times, Oct. 14, 1969]

GUN-SHY TOLEDO—CRIME RATE DROPS AFTER CITY RESTRICTS SALE OF WEAPONS

(By Jerry Landauer)

TOLEDO.—This city of 400,000 on the western tip of Lake Erie was once known as the gun capital of the Midwest.

Firearms of all kinds could be bought at jewelry stores, gasoline stations and pawn shops.

Gun dealers hawking pistols for as little as $4.95 vied for choice locations along roads leading in from Detroit, where controls were stricter.

The crime rate soared.

The state legislature declined to restrict the trafficking in lethal weapons despite repeated appeals from Toledo officials. So in August 1968, the city council enacted an ordinance aimed especially at the sale of "Saturday-night special"—cheap guns toted by holdup men to terrorize merchants on busy weekends.

The ordinance prohibits anybody in the city from keeping or obtaining a pistol, revolver or other handgun without a license from the police.

At the time, few law officers believed the ordinance would reverse the city's mounting crime rate; unlicensed residents can still buy guns outside the city limits. But whether because of the gun-control law or because of other anticrime measures or even mere chance, crime is abating here while still surging higher in most cities.

STATISTICS DROP DRAMATICALLY

This development shows up most dramatically in statistics released last month by the FBI. For the nation, the violent crimes of rape, murder, robbery and aggravated assault—armed or otherwise—rose 9 per cent in the first six months of 1969 from the like period last year. But in Toledo those violent crimes dropped 31.5 per cent from the first half of 1968.

"We're the only major city which shows such a dramatic decrease," exults John J. Burkhart, the city's chief counsel.

Indeed, crime in most other cities that have adopted gun controls, such as Washington, D.C., continues to move up pretty much in step with the national pattern. "Even if firearms were totally eliminated," contends a gun-control foe, "other weapons would be substituted."

However, crimes committed with a gun in Philadelphia have dropped since that city adopted a licensing law in 1965, even though the law exempts firearms owned at the time.

In New York, Mayor John Lindsay credits gun laws with keeping murder rates low; despite its rising crime, New York often ranks lowest among the 10 largest U.S. cities in number of homicides per 100,000 population.

But Toledo's experience is unique. It may be traceable in part to special restrictions on gun dealers as well as owners, to a tough, well-publicized court crackdown on violators of the control law and to other city efforts against crime.

Whatever other factors may enter in, gun-control advocates insist that a close look at developments in major crime categories here supports their case:

In the year before the ordinance was adopted, Toledo's police counted 422 aggravated assaults, with guns and without; these include shootings, stabbings and other attacks intended to maim or kill. In the year after enactment, the number of such attacks dipped 9% to 385. But the assaults with guns dropped much more steeply—from 152 to 83, or 45%.

In the year before the ordinance, 36 people were murdered, 22 by handgun; in the following year, murders totaled 14, of which eight were by gun. (Because murders with other weapons dropped at roughly the same rate as murders with guns, it's possible that some factor other than the control law may be at work.)

Robberies, both armed and unarmed, dropped from 1,188 in the year before gun control to 798 in the next year, a decline of 33%. But gun robberies dropped even more sharply—from 350 to 160, or 54%.

Statistics can be tricky, of course, Woodson D. Scott, a New York attorney who is president of the National Rifle Association (NRA), an opponent of most gun controls, says: "The statistics only prove that the statistics are down. In terms of cause and effect, it doesn't prove a thing."

The unexpected crime statistics have sent city counsel Burkhart scrambling to recheck them.

"I've gone over every possible angle to see whether there might have been a mistake. I can't find any," he reports.

"I'm as much puzzled as anybody." Burkhart adds, noting that Toledo enacted its ordinance primarily to persuade the legislature that gun controls can be imposed with little inconvenience and minimum intrusion on citizens' rights.

"It was really an effort to sell the General Assembly. I didn't think we'd be able to make an impact on crime in less than three or four years."

STANDARDS FAIRLY LENIENT

His caution in checking and interpreting the statistics arises partly from the gun law's relatively lenient licensing standards.

Unlike New York's Sullivan Law, the Toledo plan doesn't require residents to show good cause for possessing a gun. Instead, the police must issue a numbered "handgun owner's identification card" costing $3 and good for three years to all applicants except fugitives, minors under 21, certified mental cases, narcotics addicts, habitual drunks or people who have been convicted twice in the past year of crimes involving the use or threat of force.

So far, the police have issued 16,000 ID cards; roughly 10 applications have been rejected. It also seems likely that some people have been deterred from buying guns because, for various reasons, they did not want to apply to the police for a license.

Police Chief Anthony Bosch reports the law has had a harsh effect on gun dealers who formerly sold to almost any cash customer.

One such dealer ran Toledo's biggest gun store in a seedy neighborhood on Jackson Street just five minutes from Interstate

Route 75 linking Toledo and Detroit. In one nine-month period, his register rang up sales of 16,000 guns, including 5,500 to residents of Michigan who couldn't legally buy at home without a police permit (the revolver used in the highly publicized 1966 synagogue slaying of Detroit Rabbi Morris Adler came from Toledo). But now, along with perhaps half the other gun outlets in town, the big store stands abandoned.

Besides the Toledo gun law's licensing provision, it requires detailed monthly gun sales reports to the Toledo police. It also prohibits selling to out-of-towners who aren't armed with authorization from their local police chief or sheriff.

"The sale of cheap guns is down to nothing," Chief Bosch says. "The punk who walks down the street, buys a gun and knocks off a gas station—that's all been eliminated."

STIFFER PENALTIES CITED

In municipal court, Judge George M. Glasser says severe sentencing of violators may be another reason for the gun law's apparent effectiveness. Already court records show, city judges have packed 37 people off to jail (the average is 90 days), mainly for possessing a gun without a license. In addition, judges have imposed 27 fines ranging from $25 to $1,000.

"The word is out that you can't just carry a gun around here without doing days in the workhouse," says chief counsel Burkhart, praising newspapers, radio and television for publicizing the court crackdown.

(In contrast to Toledo, crime-ridden Washington can impose penalties no harsher than 10 days in jail or a $300 fine—the maximum allowed by Congress. So far there have been no prosecutions.)

In the mayor's office here, square-jawed ex-Marine William J. Ensign cites other measures that may have helped bring crime down. He points to improved street lighting; an expanded, improved police department; an active program to prevent juvenile crime; an ordinance making it a crime to harass or abuse school children or newsboys; more effective probation and parole procedures, and a 4,000-member citizens' group that distributes cards pledging people to cooperate with the police whenever possible.

Mayor Ensign also feels sure that the gun law helps a lot.

"You just know that the unavailability of guns has got to be a big factor," he observes.

Officials in other cities think so, too. The drop in crime here is drawing inquiries about the Toledo ordinance from Wichita, Los Angeles, Dayton, Cleveland, Baltimore and Cincinnati.

As these inquiries suggest, the gun-control controversy may be shifting to the cities, while anti-gun agitation in Washington and in state capitals is losing steam. Last year, of course, Congress banned mail-order sales of all firearms across state lines except to licensed dealers and prohibited dealers from selling handguns over the counter to out-of-state customers. One hope was to encourage state and local governments to enact stricter controls.

One federal official who has urged local authorities to act is FBI Director J. Edgar Hoover. He has said: "I see no great problem to the individual in requiring all guns to be registered, if the owner has nothing to hide and if he is a law-abiding citizen."

But some local policemen oppose municipal gun controls, Deputy Chief Lloyd Forbus of the Columbus, Ohio, police force, for example, asserts that the possible crime-curbing effects of local gun-control laws don't justify violating a cardinal principle of the National Rifle Association—that restrictions should be aimed only at those who misuse firearms. Forbus is an NRA member and serves as a sales manager for a gun wholesaler in his spare time.

Many hunters, marksmen and gun collectors remain convinced that ordinances such as Toledo's will eventually disarm the law-abiding citizenry. Insists Walter W. Schumacher, speaking for the League of Ohio Sportsmen: "This is the first step toward total disarmament."

But for the foreseeable future the civilian population will surely remain heavily armed. According to the National Commission on the Causes and Prevention of Violence, headed by Dr. Milton Eisenhower, probably 30 million guns were added to the civilian stockpile during the last decade, bringing the total to 90 million—35 million rifles, 31 million shotguns and 24 million handguns.

EXHIBIT 1

DISTRICT OF COLUMBIA RESIDENTS PURCHASING AMMUNITION AT THE SUITLAND TRADING POST, SUITLAND, MD., FROM DEC. 16, 1968, THROUGH OCT. 10, 1969 [1]

Kinds of offenses (including attempts)

Felonies	Arrests	Convictions	Misdemeanors	Arrests	Convictions	Total Arrests	Total Convictions
Murder	2	1	Assaults (2 guns)	12	11		
Assault with dangerous weapon (3 guns)	6	1	Carrying dangerous weapon	3	1		
Assault	2	1	Lacivious carriage	1			
Armed robbery and burglary	3	1	Fighting on street	1			
Rape	1		Unknown misdemeanor	1			
Grand larceny	7		Investigation and suspicion	8	2		
Car theft	4		Juvenile court commitment	1			
Fugitive from justice	1		Fraud	1			
			Petty larceny	5	5		
			Distributing pornography	1			
			Immigration laws	1			
			Articles of war	1	1		
			Unlawful entry	2	2		
			Drunk, disorderly, vagrancy	136	126		
Total	26	4	Total	174	148	200	152

DISTRICT OF COLUMBIA RESIDENTS PURCHASING AMMUNITION AT APPLE HARDWARE, CHILLUM, MD., FROM DEC. 16, 1968, THROUGH OCT. 17, 1969 [2]

Murder	1		Carrying dangerous weapon	6			
Assault with dangerous weapon	8		Robbery	6			
Rape	3	1	Petty larceny	2			
Grand larceny	4	2	Unlawful entry	2			
Armed robbery	1		Receiving stolen goods	6	2		
Robbery	2	2	Liquor law violations	2	1		
Selling drugs	1		Intoxication, vagrancy	2	1		
Car theft	4		Disorderly conduct	2	1		
Postal laws	1	1	Degeneracy	3	3		
Fugitive from justice	1		Contributing to delinquency of a minor.	1			
Possession of gun after conviction of crime of violence.	1		Investigation, suspicion	1			
Housebreaking	2	2	Unlawful weapon	1	1		
Interstate transportation of firearms	1	1					
Total	30	9	Total	29	9	59	18

[1] Number of District of Columbia purchasers; 84; Number of arrest records, 35; Percent of District of Columbia purchasers with arrest records, 42 percent.

[2] Number of District of Columbia purchasers, 93; Number of arrest records, 31; Percent of District of Columbia purchasers with arrest records, 33⅓ percent.

ARE PESTICIDES THE CAUSE OF THE DISAPPEARANCE OF THE PELICANS FROM THE GULF COAST?

Mr. YARBOROUGH. Mr. President, the September issue of the magazine of National Audubon Society, contains an article written by Mr. George Laycock in which he discusses the mysterious disappearance of the brown pelicans from the gulf coast of the United States. These beautiful and interesting birds were once found in great numbers along the coast of Louisiana and Texas. In fact, the Legislature of Louisiana in 1902 designated the brown pelican as the State bird.

In recent years, however, the number of pelicans that live in the gulf coast area have been reduced drastically. What has caused the disappearance of these birds? Mr. Laycock suggests that DDT, dieldrin, and other pesticides may be causing the deaths of the pelicans. If this is so, the brown pelican as well as many other species of marine and wildlife may be in danger of becoming extinct.

Mr. President, the article is so timely and penetrating that I ask unanimous consent that it be printed in the RECORD.

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

WHERE HAVE ALL THE PELICANS GONE?

(By George Laycock)

Along the coast of Louisiana there has occurred what must, at least from a pelican's point of view, be classed as a disaster. By 1962 all that remained of the state's once-flourishing population of perhaps 50,000 breeding brown pelicans had vanished.

To citizens of Louisiana the disappearance of the state's pelicans is especially distressing. In 1902 legislators there declared the stately but slow-witted brown pelican Louisiana's state bird. Pelicans were known everywhere along the Gulf Coast. They escorted fishing vessels, rested on pilings along the waterfronts, and generally ranked as prominent fellow citizens.

Inland, where pelicans seldom ventured, their high official status was constantly impressed upon the human mind by the picture of the pelican on automobile license plates. The bird was also known to all who saw the Louisiana Great Seal, which carries a likeness of a nesting pelican flanked by the words, "Union, Justice, Confidence."

Understandably, the sudden disappearance of the pelican raised pressing questions in Louisiana. Here was a state holding up as

its symbol a bird that had obviously proved its inability to survive in the modern Louisiana environment. Even the governor wanted to know what had happened.

Southward along the Gulf Coast of Texas, where thousands of pelicans had once raised their young, the story was much the same; only a few pelicans remained. This catastrophe in the ranks of one of America's most interesting birds was to lead to several developments. One of particular importance was a wide-spread research project aimed at solving the mystery of the disappearing pelicans. The same project may ultimately help restore them to portions of their former range.

Wildlife specialists began to realize that despite the long and close association between pelicans and people, we knew surprisingly little about these birds.

"There has been tremendous public interest in the pelican recently," I learned from Lovett E. Williams, Jr., biologist for the Florida Game and Fresh Water Fish Commission. In his Gainesville office he told me, "We are especially concerned because of the speed with which they disappeared from all the range west of Florida. We realized that unless we gained a better understanding of where Florida pelican colonies are and keep track of them, they could vanish before we were aware that they were in trouble."

What killed off the pelicans along the Gulf Coast? A number of professional wildlife workers do not hesitate to place the blame on pesticides. They point out that during the years when pelicans were decimated along the coast of Louisiana, there were also massive fish kills in the Mississippi, kills attributed to insecticides.

Other workers, especially those at Patuxent Wildlife Research Center in Maryland, say there is no conclusive proof that pesticides killed the Gulf Coast pelicans. Only a small number of dead pelicans have been checked for pesticide residues. Only one carried enough endrin in its brain to have caused death, and it was found dead in the Everglades.

The Florida Game and Fresh Water Fish Commission put Williams to work in 1966 setting up a pelican research project. Nor did Florida sportsmen object to this use of hunting and fishing license money. In this state a large percentage of such funds go for protection of another nongame species, the endangered American alligator, victim of Florida's persistent poachers.

One of Williams' first aims was to census the pelicans—to learn how many adult breeding pelicans populated the coasts of Florida, and how successful they were at raising young. For two days early in May 1968, Williams and biologist Larry Martin flew the Florida coast in their first annual pelican count. They covered the coast along the Atlantic, around the Keys, and up to the mouth of the Suwannee. There are no breeding pelicans farther west along the Florida coast. They flew over nesting colonies at 200 feet, apparently without disturbing the breeding birds. And the two biologists estimated that the two largest colonies, near St. Petersburg and at Boca Grande Pass, contained 900 nests each.

Their total count of 6,700 nests—not including earlier nests missed in the Keys—leads Williams to figure there must be more than 20,000 pelicans in Florida. Fifty percent of the nests were on small islands between St. Petersburg and Fort Myers. This pioneering pelican count thus gives Florida biologists a base against which to judge census figures in the future. Each year, at the peak of the nesting season, a biologist will now fly the coastal areas to recheck the colonies, watching for the first sign of any serious threat to the last stronghold of the brown pelican in the United States.

The range of the four subspecies of the brown pelican extends along the East Coast from North Carolina southward, around the Gulf Coast and southward to Brazil. On the Pacific Coast it reaches from central California southward to the coast of Chile. The distribution and movements of these birds have never been well understood. One phase of the new research program will involve careful analysis of the hundreds of banding records collected over the years by the U.S. Fish and Wildlife Service.

It was during the 1967 convention of the National Audubon Society in Atlantic City that the pelican research idea took a major step. Alexander Sprunt IV, research director for the National Audubon Society, discussed the pelican's plight with John S. Gottschalk, director of the Bureau of Sport Fisheries and Wildlife. "Why not," asked Dr. Gottschalk, "do something about it?"

Sprunt then conferred with wildlife biologists in the Louisiana Wildlife and Fisheries Commission. They quickly agreed to call a conference of all agencies and organizations concerned about this threatened bird.

For two full days, January 16–17, 1968, wildlife biologists met for the initial session of the "Pelican Committee." The meeting, called by Dr. Leslie L. Glasgow, then director of the Louisiana Wildlife and Fisheries Commission and now Assistant Secretary of Interior, brought 24 authorities to the Rockefeller Wildlife Refuge in Louisiana. Among them were representatives of the National Audubon Society, U.S. Fish and Wildlife Service, Welder Wildlife Foundation, and eight state wildlife agencies from North Carolina to Texas. With Sprunt serving as chairman, they set up a detailed plan to help rescue the pelican.

The best-known nesting colony of the eastern brown pelican is Pelican Island, in the mouth of the Indian River across from the village of Sebastian on Florida's east coast. It is a three-acre patch of mangroves that, except for the birds, looks no different from other nearby islands. This breeding center for pelicans was well known to early Florida naturalists and pioneering wildlife photographers.

There came to Sebastian in 1881 a seventeen-year-old immigrant who was to play a major part in protecting this colony of birds from the vandals who frequently disturbed them. Paul Kroegel, born in Germany, had been brought to this country by his father. At Sebastian he came to know the pelicans and other birds common along those shores and around the mangrove islands in the mouth of the river. He noticed also that vacationers aboard passing cruisers and sailboats frequently shot into the flocks of nesting pelicans. With no use for dead pelicans, they left them where they fell. Kroegel was hired near the turn of the century by the American Ornithologists' Union to guard the birds of Pelican Island. But he had no authority other than what he carried in his old ten-gauge shotgun. A boat-builder by trade, he traveled at first in a little yellow sailboat called the Yellow Kid, and later in an outboard-driven skiff.

In 1903, President Theodore Roosevelt named Pelican Island a national bird reservation. It was the first of the national wildlife refuges, a far-flung system of lands and waters which today totals more than 300 areas scattered throughout the United States. Kroegel, by Presidential order, became the first warden on a national wildlife refuge. His daughter, Mrs. J. T. Thompson, who still lives in Sebastian, told me recently that her father's pay was $15 a month, from which he purchased his own outboard fuel. During those years he arrested many who molested or destroyed the pelicans, including Andrew Mellon, caught shooting pelicans from a boat on the Indian River.

Kroegel knew, as ornithologist George Nelson once explained it, that when the pelicans were disturbed on the island they would rise and fly very rapidly in great circles. "This is the alarm flight of the pelicans," Nelson said, "and can be seen for more than a mile. It is one of the warden's most reliable signs that the pelicans have unwelcome visitors."

Early in the 1920's, the pelicans abandoned the island, and by 1926 Kroegel was out of a job. The mangroves were gone—victims of overuse by the birds. Today the mangroves grow there again and the pelicans have returned.

In 1963, Pelican Island was designated by Secretary of the Interior Stewart L. Udall as a National Historic Landmark, the first wildlife refuge to gain this recognition. It now has a warden again—and he makes more than $15 a month. Lawrence Wineland is a veteran refuge manager with the U.S. Fish and Wildlife Service. I accompanied him out to Pelican Island one day recently.

We crossed Indian River, launched our boat, and cruised around the point of a small island lying directly offshore. After that there was no problem picking out the famous island. Across the bay many of the big brown birds could be seen passing back and forth, while some rested on the shallow waters and others perched in the tops of the mangroves.

Wineland has found that the birds nest nearly eleven months of the year. Consequently, there were nests in all stages of production. Some held eggs. Others contained newly-hatched nestlings so young they could not hold their heads up. Some were crowded with down-covered youngsters making great demands on their fishing parents. Mingled with them were pairs of nesting cormorants and great blue herons standing in the tops of the tallest trees on stilt legs. There were also egrets and Louisiana herons. Offshore, drifting leisurely on the calm surface, was a tight little raft of two dozen of the brown pelican's wintering white cousins, relaxing in the Florida sun.

It was difficult on this stronghold of the brown pelican to imagine that elsewhere these birds are in dire trouble. Their nests occupied every available mangrove. Cruising pelicans cast swift shadows over us constantly. Here was the place to see how the pelican lives.

Although the brown pelican is, as the name implies, mostly brownish the name scarcely does justice to his appearance when you see him clearly in good light. The adult pelican is no drab creature, but wears an intricate pattern of rich colors. The adult males and females are marked alike, and the pattern and colors vary with the stage of the nuptial molt. The underparts are a rich brown, but the upper surface of the wings and the back are silver tinged or grayish. The neck colors vary from white to chocolate, and the top of the head may be either white or bright yellow, with a patch of matching yellow on the breast.

Of all the pelican's equipment, men have marveled most often at that utility bag carried beneath its bill. Using this elastic pouch of strong and tough tissue attached to his lower mandible as a fish net, the pelican is successful in catching his prey about one time out of three. This is efficiency enough to keep adults and young in food.

With each young pelican consuming up to four pounds of fish per day, the adults rank as mighty fishermen, and they have standardized their methods. As they fly over their fishing grounds, that long bill rests on the pelican's chest and points at the water beneath him while he scans the water for that flash of color or movement that reveals the location of food.

His dive is not the world's most graceful. If there is a noticeable wind, the pelican dives with the wind behind him pushing. His heavy body thumps against the water and showers the silver spray up and over him. Usually he does not submerge.

But if he should dive underneath the sur-

face, he executes a turn which brings him up facing into the wind. By this time his "fish net" is bulging beneath his face like the air sac of a singing tree frog. The weight of the water is considerable, and his first task is to drain the liquids from the edibles. By holding his head high with the bill pointing downward he allows the water to run out the corners of his mouth, and he continues to drool until it is gone.

By this time his thieving neighbors, the laughing gulls, may have invited themselves to dinner. They may even land on the top of the pelican's head. As he lifts his bill to swallow the fish for which he has worked hard, the gull may grab it and be on the wing and away. The pelican, thus robbed, can only go fishing again.

He takes off by facing into the wind and beating his wings heavily a few times until airborne. Once on the wing, however, he no longer seems clumsy. Those strong wings, with a tip-to-tip spread of 6½ feet, make even, powerful strokes and carry him forward at speeds which commonly reach 26 miles per hour. Pelicans often fly together—lined up in strict formation, moving their wings with a military precision, alternately gliding and cruising, as they cross a bay or move down the coast to their feeding grounds. When they fly with the wind, they may cruise at considerable altitudes, sometimes a hundred feet or more above the water. But flying with a strong wind in their faces, they come down until the formation scarcely clears the wavetops.

Although pelicans seek the company of others of their kind, and nest in colonies that are sometimes large and compact, they do not always get along peacefully. They will, when opportunity presents itself, pirate nesting materials from each other, and even consume the young of neighbors that might neglect their babysitting.

The nest is not large for a pelican-sized bird, but is a collection of sticks, grass, and reeds only 4 or 5 inches deep and 20 to 24 inches across. Into this structure goes a clutch of white eggs, usually three in number. Then for 29 or 30 days the parents take turns incubating.

To the average human eye there is little of beauty in the newly-hatched pelican. He is the color of a blood clot, too weak to hold his head up, and so naked his parents must hover above him to shade him from the killing sun. But when two weeks old the young have begun to acquire a covering of fluffy white down. Although young pelicans make grunting noises, adults are mostly silent. Those hatched in nests on the ground walk from the nest when they are about five weeks old, while young born upstairs in the mangroves are confined to the nest for another month until they are able to fly.

From their first days the young are fed their lifelong diet of fish, eating from the parent's pouch. A young pelican will consume about 150 pounds of fish in the nine weeks during which the parents transport his food to him. These fish are species not commonly used as human food.

During their two days of meetings at the Rockefeller Refuge, the biologists of the Pelican Committee divided into smaller committees to pursue different lines of research. They had listed eight aims which they would pursue in their efforts to understand and manage pelicans better.

First was the location of present populations of pelicans. In the past, any pelican counts from the air had been incidental observations made in the course of other work. Now the research group drew up plans for a system of aerial censusing to cover the birds' entire range and to yield figures on their total numbers. The flying chores will be shared by the states and the U.S. Fish and Wildlife Service.

Then, with all known breeding colonies mapped and censused, biologists will measure the annual production. Nestlings are being banded and colonies periodically rechecked. If production falls, the fact should be known to researchers while there is still time to seek the cause. Meanwhile, the capturing and color-marking of adult pelicans at selected colonies will fulfill another committee goal—the mapping of pelican movements.

There is special interest in a flock of about 100 apparently nonbreeding pelicans living along the Mississippi coast. Are these remnants of a Mississippi flock? Or are they migrants from Florida? Might their travels, once understood, lend some clue to what has happened to the vanished colonies along the Gulf Coast west of Florida? To keep tabs on this flock, David Peterson, manager of Gulf Island National Wildlife Refuge, plans to capture and color-mark every individual. They will then be recognizable through binoculars wherever birdwatchers see them.

There are at least two ways to capture large numbers of adult pelicans. "One plan," Williams explained, "is to give them a harmless anethesizing drug. We plan to make some tests of alpha-chloralose over at Cedar Key. Why don't you join us?"

On a chilly, gray morning a few days later I met Williams and biologist Mike Fogarty at the Cedar Key launching ramp.

At the fish market in town Williams purchased a dozen mullet measuring twelve to fourteen inches. While we cruised into the bay watching for pelicans, Fogarty busily prepared the fish for the unsuspecting pelicans. Very carefully he measured the anesthetic onto the strips of fish which had been rubbed with vegetable oil to help them retain the white powder until the pelican could grab the fish from the water.

Soon a pelican saw our boat and came cruising over, prospecting for a handout. Williams stood in the boat, holding one of the drugged strips of fish in his hand and waved as he might if tossing fish scraps into the water. Then he tossed the strip of fish directly beneath the watchful bird.

Before the fish had time to sink from sight the pelican was on it. Soon he lifted his bill to the sky and swallowed. "Nothing to do now but watch and wait," Williams said. "It should take about twenty minutes." Other pelicans joined the first one, which drifted contentedly on the gentle waves. After awhile we were able to tell which of the small group of pelicans was the hand-fed bird. He seemed about to take an afterdinner nap. His head settled low on his chest. He recovered briefly and shook his head. Then his wings spread clumsily out of control as he tried to maintain his balance. It was no problem to move close and carefully gather him up.

This may not be the ultimate method the committee will employ to capture adult pelicans. "The cannon trap should work well," Williams told me. "We can watch a flock of resting birds on the beach and find out where they stand in relation to the tide. Then we can set the trap and time our trapping to capture them the following day in the same place. We should be able to take sizable groups at one time."

To trace wandering pelicans to their home grounds, plastic patagial wing tags in a variety of colors—and in some cases colored leg bands—will be attached. The wing markers, 6 by 1½ inches in size, "can be seen a mile," and a uniform color key, with different hues for different localities, has been devised. A pelican wearing orange comes from South Carolina. Yellow means the east coast of Florida, purple Gulf side. Pink identifies Mississippi, blue Texas. Marking began in earnest this past nesting season with the tagging of 375 young birds at Cape Romain National Wildlife Refuge in South Carolina. Any sightings of orange-tagged pelicans should be reported to Sprunt at Box 231, Tavernier, Florida. State conservation officers should be notified if any dead pelicans are found.

Eventually, observations of color-coded pelicans should give biologists a better understanding of the birds' age at sexual maturity, their travels, and whether they are loyal to their original nesting areas.

Meanwhile, the search is on for the killer of the Gulf Coast pelicans. Both diseases and parasites will be investigated, and any occurrence of environmental pollution near pelican colonies will be closely watched. Birds found dead will be rushed to laboratories for analyses.

But the real cause of the disappearance of pelicans from Louisiana and Texas may never be known with certainty. Such pesticides as DDT and dieldrin, both widely found in the marine food chain, have long been suspected, however. And now reports from the Pacific Coast—where the brown pelican also seems doomed to extinction—has tightened the net of evidence against agriculture's biocides.

The California disaster was documented this past spring by a visit to Anacapa Island in the Channel Islands National Monument by a research team led by Dr. Robert W. Risebrough of the University of California's Institute of Marine Resources. Anacapa's cliffs have historically held large nesting colonies of pelicans, their numbers estimated as high as 2,000 pairs in past years. When Dr. Risebrough and his colleagues visited one nesting site in March, they counted 298 pelican nests which contained fresh plant material. Intact eggs were found in only twelve.

More pointedly, 51 nests each held a single broken egg—the shells spongy and flaking and containing little or no calcium carbonate, the membranes exposed. The weight of the nesting bird, Risebrough suggested, would likely be enough to cause breakage. And around each of the remaining 235 fresh nests were scattered one or more broken eggs, apparently discarded by the parent birds. One broken egg with its yolk intact has since been analyzed for chlorinated hydrocarbons. Its DDE content was equal to 68 ppm of the total wet contents of the egg, 296 ppm of the yolk, and 522 ppm of the yolk lipid.

A second visit by biologists to another Anacapa pelican colony produced much the same findings. While 600 adult birds were counted and many were sitting on nests, only 19 of 339 nests contained intact eggs. Other scientists visiting brown pelican colonies off the Pacific side of Baja California told similar stories.

Asked how many young pelicans were raised in California this year, Dr. Risebrough replied, "At most five!

"Their local extinction appears inevitable," he adds, "unless DDT levels in the sea decline over the next few years." The brown pelican, he points out, preys only on marine fish, which in the coastal waters of Southern California are more contaminated with chlorinated hydrocarbons than most freshwater fish in the state.

Other seabirds breeding on California islands, notably petrels and cormorants, are also in trouble from abnormally thin-shelled eggs. And added to the woes of Anacapa birds has been harassment by camera-carrying visitors come to witness the nesting disaster. To reach the pelicans, intruders first marched through the cormorant colony. The disturbance, Risebrough believes, speeded nest destruction among the pelicans. Conservationists will ask the National Park Service to declare the island off limits during future nesting seasons to protect the birds—at least from deathbed visits by humans come to witness the sad fate of a species they have fatally poisoned.

And the white pelican also seems imperiled by insecticides, but—at least immediately—to a lesser degree. Nesting as it does on inland waters and wintering along

the coasts, it faces a different pattern of exposure from that confronting its brown cousin, though some white pelicans do feed at times in DDT hotspots.

The normal thickness of a white pelican's eggshell is .68mm. Researchers recently have found eggs measuring down to .40mm. But only rarely have the eggs collapsed because of abnormal thinness.

"The thinness of shells in white pelican eggs is mathematically significant," says James O. Keith of the Interior Department's Denver Wildlife Research Center, "but it is not yet biologically significant."

And even in South Carolina and Florida, where brown pelican colonies apparently remain healthy, reductions in eggshell thickness ranging from 7 to 18 percent have been found in comparison with eggs laid before 1947.

Meanwhile, during each of the past two summers, 50 fledgling pelicans have been captured at flourishing Florida colonies by state wildlife workers. The young birds have been about 50 days old and within five days of being able to fly. From Florida they have been hauled by truck to Louisiana to fulfill another goal of the Pelican Committee—the reestablishment of the brown pelican in that Gulf Coast state, as well as to study more closely the bird's life history.

Of the first 50 birds brought to Rockefeller Refuge in 1968, half were later freed at Grand Terre Island. Some were wing-clipped, others full-winged, and all were marked with white wing tags. The free-flying birds were soon observed feeding normally in the Gulf, and a year later the Grand Terre pelicans are reported to be thriving. Unfortunately cold weather in March caused a loss of most of the remaining birds kept at Rockefeller Refuge.

And if pesticides were not trouble enough, there are still instances where pelicans are victims of the thoughtless and ill-informed. There is need for better laws to protect pelicans throughout most of their range. Even Louisiana does not have a specific law protecting its official bird. The Pelican Committee hopes that, with the help of concerned citizens, legislation can be passed soon establishing penalties for killing pelicans or destroying their nests.

Hopefully, as we learn more about these peculiar, yet dignified birds of our Southern coastline, and when programs in their behalf are fully in operation, we may possibly prevent the pelicans from vanishing from still more of their range.

But if pesticides are the problem, as now seems unquestionable, then the pelican's future is truly bleak.

REVENUE-SHARING—ADDRESS BY SECRETARY OF THE TREASURY KENNEDY

Mr. MUNDT. Mr. President, in recent years there has been a growing concentration of power and responsibility in this country at the Federal level of government. The Nixon administration, however, has strongly and persuasively argued for a new federalism in which power and influence would be returned increasingly to State and local governments. It is, of course, by no means an easy task to reverse the trend toward centralized power and, in the process, achieve the new federalism which we desire. However, it is an absolutely essential undertaking if this country is to preserve its unique political heritage.

One of the most important new federalism proposals of the Nixon administration is that of revenue sharing. Under this proposal the Federal Government will return a certain share of its tax collections to State and local governments for use as those governments see fit. There are, of course, numerous grant-in-aid programs currently in existence which result in a movement of Federal funds from Washington to States and municipalities. However, the Federal strings attached to these programs are so numerous and comprehensive that the Federal Government's influence over the programs carried out at State and local levels is extremely pervasive. The revenue-sharing proposal is specifically designed to avoid this unfortunate side effect.

In a recent speech before the Greater South Dakota Association, Secretary of the Treasury David M. Kennedy outlined in detail the administration's revenue-sharing proposals and the impact this program will have in moving us significantly along the road toward the new federalism.

I ask unanimous consent that his significant statement, which is of great importance to the future fabric of American life, be printed in the RECORD.

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

THE FISCAL SIDE OF THE NEW FEDERALISM

(Remarks by the Honorable David M. Kennedy, Secretary of the Treasury, before the greater South Dakota Association, Mitchell, S. Dak., Nov. 13, 1969)

Tonight I want to discuss a subject in which President Nixon is vitally interested—the future of our American Federal system. This Administration is firmly convinced that our progress as a free and progressive society depends importantly on the health and vitality of government at all levels—Federal, state, and local. The President is deeply disturbed over the imbalance that now exists among these partners in federalism.

The story of American government in the 20th century has been one of increasing concentration of power and responsibility at the Federal level. This flow of power to Washington was induced and stimulated by major wars, both hot and hold, and by economic crises. In recent years it has been accelerated by a variety of efforts to cure major domestic ills through the force of Federal programs and Federal money. The remarkable capacity of the Federal tax system to generate revenues has sustained and even encouraged this transfer of power.

But this expansion in the scope of Federal influence and responsibility has produced an undesirable imbalance in the American public sector. Our State and local governments have been asked to deliver an ever growing quantity of vital domestic services, but they lack efficient and productive systems of taxation to respond adequately. In short, they have been unable to play their rightful role in our Federal system.

The traditional functions of State and local government—education, welfare, police protection, health and hospitals, highways, sanitation—are more important today, on our scale of national priorities, than ever before. Over the years, the Congress and the Federal executive branch have recognized the importance of these local services, and have considered it essential that they be provided to our citizens. As a result, Federal grants-in-aid to State and local governments have grown enormously—from $1 billion in 1946 to a level of $25 billion this fiscal year.

But this significant rechanneling of Federal tax dollars to our states and localities has not been as succesful in increasing the scope and quality of state and local public services as one might hope. The transfer of Federal funds has been accompanied by an ever growing maze of program authorizations, restrictions, formulas, matching provisions, project approval requirements, and a host and variety of administrative burdens.

Over a period of years the Federal system of assistance to States and communities has evolved in piecemeal fashion. Federal, State and local officials are today confronted with over 600 programs for narrow categorical grants. Many of these programs are extremely cumbersome and each is equipped with its own array of administrative procedures and its own set of requirements to be levied upon State and local governments.

In drawing upon several funding sources to help finance one neighborhood project, for example, a local official may be confronted with a series of application forms weighing several pounds, a tortuous application process which may require many months to elicit a "yes" or "no" response from the Federal government, and a continuing process which may burden that community with hundreds of reports to the Federal government which are rarely read. Further, the local official may have to work with Federal people located in three or four different States in the course of putting this one project together.

I am told that a single program may require over a hundred different kinds of forms and reports, and that it may take over a hundred pages merely to list the administrative steps involved in the processing. We have found instances in which Federal, State and local governments make scores of independent studies in the same community without one knowing what the other is doing or having an opportunity to share in the results of the other study efforts.

On March 27th, President Nixon undertook a major three-year program to simplify Federal assistance. He has mounted a multi-pronged attack on the mass of red tape which is smothering the efforts of our three levels of government to work together effectively. Initial results are encouraging, and I am confident that in three years the President's efforts will have resulted in the elimination of many of these costly procedures and requirements which today burden our public officials and limit their ability to respond to public needs.

Against this background, the President also has come forward with a bold and challenging new domestic policy program designed to restore balance to American federalism while strengthening government's ability to deliver needed public services as efficiently as possible. This "New Federalism" seeks to redefine and redirect the role of the Federal Government toward those public functions where its capacity and effectiveness are unquestioned. It will move to restore to our states and localities the decision-making power rightfully theirs.

At the heart of our New Federalism is the proposal for sharing Federal revenues with State and local governments. The Treasury has had a major hand in drafting this revenue-sharing proposal, and we will be working very hard in the coming months to secure its enactment by the Congress.

I would like to take this opportunity to outline for you the main features of this revenue-sharing plan. It can be conveniently discussed in terms of its four major provisions.

First, the annual revenue-sharing appropriation will be a stated percentage of personal taxable income—the base on which Federal individual income taxes are levied. For the first year of operation, this percentage will be modest, yielding about $500 million. But in 1976 we will be sharing a full one percent of the tax base, or about $5 billion. In subsequent years, the revenue-sharing appropriation will automatically respond to the growth in taxable income. This

is only one more reason why our State and local governments have a strong stake in seeing a healthy national economy—a point which I will turn to shortly.

Second, the state-by-state distribution of funds will be made on the basis of each state's share of national population, with a small adjustment for revenue effort to provide an incentive for maintenance of local taxing efforts. This adjustment will mean that a state like South Dakota, whose revenue collections in relation to state personal income are 24 percent above the national average, would receive a 24 percent bonus above its basic per capita portion of revenue sharing.

Third, each State government must distribute a portion of these revenue-sharing payments to all its general purpose local governments, regardless of size. Some alternative proposals would only include our larger cities and counties in direct revenue sharing. We strongly believe that all local governments are faced with fiscal pressures and that all deserve specific inclusion in this program.

The total amount a state must share with all its cities, counties, and townships will depend on the existing division of public financing responsibilities within each state. An individual local government will receive a fraction of each revenue-sharing payment which corresponds to the relative role which its general revenues bear in relation to the total of all state and local general revenues. We use this basis for allocating funds among local governments because a per capita distribution cannot distinguish between the importance of overlapping jurisdictions.

Fourth, state and local officials will receive not only the funds, but also the decision-making authority over the use of those funds. This is perhaps the most important feature of revenue sharing, and one which clearly distinguishes it from the Federal government's existing grant-in-aid system. Without the Federal program or project "strings," state and local authorities are free to initiate ideas which respond directly to the particular needs and interests of their jurisdictions. Only simple accounting and reporting requirements will be in force.

This revenue-sharing program represents an important new direction in the relationships between Federal Government and State and local governments. It gives our Federal system both a sound financial center and a needed decentalization of control. It will serve as an important supplement to our existing categorical aid programs. I am especially pleased to have this opportunity to describe the major features of our proposal to you, since Senator Mundt, as a long-time supporter of revenue sharing, was one of its sponsors when the plan was introduced in the Senate. We greatly appreciate the strong support and interest he has given us.

As I noted earlier, the size of the annual revenue-sharing appropriation will be primarily determined by the level and growth of the American economy. Therefore, the State and local governments will be vitally interested in seeing our Nation maintain a steady and healthy rate of economic expansion. Of course, these governments have always had a strong stake in our economic good health, particularly as the state of the economy affected their tax receipts, operating expenses, and borrowing costs. With revenue sharing there is even more to be gained by State and local governments from non-inflationary economic growth.

The responsibility for national economic policy is one public function which the Federal Government cannot delegate to the states and cities. It can only be exercised from Washington. However, when the Nixon Administration took office last January, the economy was suffering from several years if failure by the Federal Government to exercise that responsibility in a timely and effective manner. As a result, a serious inflation had been permitted to work its way deeply into the fabric of our economic life. We moved quickly and firmly to bring the policies of the Federal Government in line with our urgent need to halt the spiral of rising prices, and we are now beginning to see some hopeful signs of success.

But inflationary pressures are currently much too strong for us to assume any complacency. Our policies of economic restraint—especially our efforts to achieve a significant budget surplus—must be maintained until inflation is brought under control. For this we must depend on the Congress to approve the revenue measures we recommended last April. Without the extension of the income tax surcharge at the reduced rate of five percent for the first half of 1970, plus the repeal of the investment tax credit and the extension of certain excise taxes, we stand to lose about $4 billion in urgently needed revenues.

A revenue loss of this magnitude would have two serious impacts. First, we would lose most of our fiscal restraint in the budget—a restraint which is only moderate without the revenue loss. This is not the time to bring about an abrupt easing of fiscal policy. Second, and perhaps even more significant, this $4 billion shrinkage in Federal revenues would mean an equivalent strain on our already tight financial markets. This would be most unfortunate at a time when we might hope that interest rates could begin to ease from their historic high levels. These extraordinarily high interest rates have had a particularly severe impact on the flow of funds into housing and State and local government projects.

It is quite clear, therefore, that our State and local governments have a strong interest in seeing the income tax surcharge extended and the other revenue-raising measures enacted. For a shift in the mix of economic policies to even tighter monetary measures because of an easier fiscal position would seriously upset the essential borrowing efforts of states, cities, and counties.

Thus, at the Treasury we are engaged in two very important efforts to strengthen the fiscal structure of our American Federal system. On the one hand we are working hard to enact a program of revenue sharing—to provide both the encouragement and the resources for local and state officials to exercise leadership in solving their own problems. On the other hand, we are striving to exercise our unique Federal responsibility for restoring the American economy to a prosperous, growing, and stable condition. Both these efforts are vital to our national well-being, and I hope you will join me in encouraging the Congress to move forward on both fronts.

My remarks this evening would be incomplete if I did not outline for you the relationship between these two efforts which occupy so much of our attention at the Treasury, and the Administration's total package of domestic policy initiatives. President Nixon's new domestic program has been described by many observers as the most significant Presidential proposal for domestic reform in recent decades. It is significant both for qualitative and quantitative reasons, both for the number of new ideas it presents and for the boldness with which they were conceived. The President's package of proposals included the most striking conceptual change in the history of the welfare program, the most sweeping administrative change in the history of manpower training programs, and this entirely new and different approach to the fiscal relationship between the Federal Government and the states and localities which I have described to you.

Each of these proposals was historic in its own right. Yet the President chose to discuss all of them together, for he saw them as component parts of a single strategy. "They make both a package and a pattern," he observed. "They should be studied together, debated together and seen in perspective."

I look forward to the time, hopefully quite soon, when we have this exciting new package of proposals fully implemented. Their institution will signal a new direction and a new hope for effective government performance. That is an objective which we all must share.

CORRECTIONS REFORM CITED AS PRIORITY ISSUE FOR CONGRESSIONAL ACTION

Mr. GOODELL. Mr. President, the recognition that corrections reform legislation must be an urgent priority for this Congress is becoming increasingly apparent. As we continue to hear more and more about "law and order," it is time for us to face up to one essential fact. The primary answer to criminal recidivism is a national commitment to the creation of a corrections system that has a genuine chance to work.

Last week, the Joint Commission on Correctional Manpower and Training, created by Congress in 1965, issued its long-awaited report to the President, the Congress, and the Governors of the States.

It has furnished to the Nation recommendations for action in the area of manpower training and recruitment for the corrections component of our criminal justice system—only one aspect of the broader crisis facing the Nation's correctional agencies.

The report deals in detail with corrections manpower development, educational resources, and opportunities, training and staff development, recruitment, personnel policies and practices, management and organization development, research, public attitudes, and expectations toward corrections, and roles for national leadership.

The members and staff of the Joint Commission are to be commended for compiling the most comprehensive set of facts ever assembled on correctional manpower. As one indicia of the thoroughness of the report, I should like to point out that the Joint Commission surveyed every adult and juvenile Federal and State correctional institution, and every State-level probation and parole agency in the country.

In addition, a national sample of local-level probation was selected and studied to gather information about these varied and diverse agencies.

As a broad conclusion, the Commission found that "corrections suffers from multiple problems: apathy, piecemeal programing, totally inadequate funding, and a lack of public support and understanding."

We must move decisively against these difficulties, if we are ever to secure these difficulties, if we are ever to secure our society against the fear and destruction wrought by the high volume of serious crime.

In its lead editorial last Wednesday, the Washington Post emphasized the

need to make corrections reform part of the so-called "crime war." Pointing out that a national poll indicated public awareness of the need for corrections reform, the Post said:

It remains for national leaders to catch up to the public, to accept the vital importance of prison reform in the context of a comprehensive, across-the-board assault on crime, to begin, in short, to care.

Last Thursday, President Nixon announced that he had directed the Attorney General to make recommendations within 6 months on the subject of prison reform. I welcome this initiative. I hope that we will have the full support of the administration for effective and comprehensive corrections reform this year.

Mr. President, on September 18, I introduced in the Senate a comprehensive corrections reform bill, S. 2919, the Criminal Offender Rehabilitation and Crime Prevention Act. I am pleased to note that many of the very goals and recommendations proposed by the joint committee last week are already included in my bill.

I call upon every Member of Congress to give immediate and careful attention to this issue in all of its aspects—manpower training and recruitment, corrections rehabilitation services, including job training and job placement, the need for regional crime and delinquency centers, corrections education services, and construction and renovation of correctional rehabilitation facilities.

The danger of street crime concerns us all. It is real and it is nationwide. It is, therefore, the responsibility of every Member of Congress to make corrections reform a high priority for comprehensive legislative action now.

Mr. President, I ask unanimous consent that a summary of the recommendations of the Joint Commission on Correctional Manpower and Training and the Washington Post editorial to which I referred be printed in the RECORD.

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

SUMMARY OF THE RECOMMENDATIONS OF THE JOINT COMMISSION ON CORRECTIONAL MANPOWER AND TRAINING

THE JOINT COMMISSION STUDIES

Recommendation: Correctional administrators must take the initiative at federal, state, and local levels to ensure a greater degree of coordination and cooperation among the police, prosecutors, courts, and correctional agencies. In addition to informal working relationships, participation of representatives from all sectors of the criminal justice system in conferences, workshops, and training seminars must be encouraged at all levels of government.

CORRECTIONAL EMPLOYEES TODAY

Recommendation: A comprehensive nationwide recruitment program using brochures, television, magazines, and other mass media should be developed immediately. A major public information program is required to change the present low image of corrections as a career choice. The national program should be supplemented at state and local levels by tours, job fairs, campus recruitment, and other kinds of person-to-person contacts.

Recommendation: In order to attract younger persons to the correctional field, a concerted effort should be made to encourage high school, junior college, and college counselors to channel students into correctional careers. Summer work-study programs, which place students in correctional agencies to test career decisions and thereby promote recruitment of young people, should be expanded.

Recommendation: Correctional agencies at all levels of government should intensify efforts to recruit more Negroes, Mexican-Americans, and other minority group members into correctional work. Training programs should be developed to ensure that they have opportunities for career advancement in the field.

Recommendation: Opportunities for women should be expanded. Work roles should be reassessed to determine the maximum feasible utilization of females.

Recommendation: Recruitment programs for careers in corrections should capitalize on such findings by stressing the feelings of satisfaction and service to society which are possible in correctional work.

Recommendation: Patterns of supervision and administrative control must be constantly reexamined to guard against overly restrictive supervision of employees. To a great extent the ability of corrections to attract and keep competent personnel will depend upon the employee's perception of his potential for self-fulfillment.

Recommendation: Correctional agencies, especially those in the community, should adopt more flexible work schedules in order to utilize better their manpower and facilities. A rigid nine-to-five office schedule is a needless constraint on personnel time. Greater latitude in scheduling such things as conferences, contacts, home visits, and report writing can also result in a more meaningful level of service to offenders and the community.

Recommendation: Corrections must make provision for greater advancement opportunities in order to attract and retain high-quality personnel. Systems should be opened to provide opportunities for lateral entry and promotional mobility within jurisdictions as well as across jurisdictional lines.

Recommendation: To encourage mobility, provisions should be made for relocation expenses of prospective employees at supervisory, middle-management, top-management, and specialist levels.

Recommendation: Uniform job titles should be developed in correctional institutions and probation/parole agencies to provide a meaningful basis for lateral mobility between agencies and across jurisdictional boundaries.

Reccommendation: The establishment of a national retirement fund, which would permit correctional workers to transfer from one jurisdiction to another without loss of pension rights, should be a major goal of every agency and association seeking the betterment of correctional services.

Recommendation: The age of entry into some correctional jobs should be lowered to 18. Many correctional tasks can be performed by persons at that age, especially when job assignments are coupled with agency training or are part of a work-study program. Similarly, provisions should be made for lateral transferability at all ages, but particularly for persons in the 35–50 age group. Consideration should also be given to a uniform mandatory retirement age of 70.

Recommendation: Inflexible height and weight requirements should be eliminated and replaced by appropriate physical examinations to assess physical fitness and agility required by particular positions in corrections. Persons with correctional vision and hearing defects should not be excluded solely on the basis of these conditions.

Recommendation: Correctional agencies should examine their hiring policies in order to maximize the potential of those with physical handicaps.

Recommendation: Modifications should be made in prevailing civil service and merits system policies, including:

Elimination of written tests for entry into correctional work except for those positions where tests can show demonstrable evidence of measuring capacity to perform the functions required. Oral interviews and evaluation of work, educational, and life experience should be substituted as the basic screening device and should be conducted wherever recruits are available. Greater hiring authority should be granted to correctional administrators, including provision to delegate final hiring decisions to the lowest practicable level of administration and to allow freedom to choose final applicants from any position on a roster of eligibles.

Lowering of legal and/or administrative barriers to hiring ex-offenders in corrections, as well as in other governmental agencies.

Elimination of written tests for promotions, with greater emphasis attached to the evaluative considerations of promotion review boards.

Recommendation: Salaries, retirement plans, and other employee fringe benefits should be continually assessed and efforts made to keep them in line with comparable positions in the government and industry in the same geographical area. Annual cost-of-living increases should be made an integral feature of salary negotiations.

Recommendation: A top priority should be given to the education and training of correctional managers in the areas of collective bargaining and labor-management relations. Corrections should borrow heavily from the work accomplished by the private sector in this area. Correctional administrators can also take advantage of a number of training programs already existing in the field of management.

RESOURCES AND STANDARDS

Recommendation: the undergraduate degree should become the standard educational requirement for entry-level work in probation and parole agencies and for comparable counselor and classification positions in institutions. Preferred areas of specialization should be psychology, sociology, social work, criminology/corrections, criminal justice, education, and public administration. Correctional agencies must join actively with institutions of higher education in furthering the development of these programs and should provide suitable field placements for their undergraduate students.

Recommendation: A career ladder, which affords an opportunity for those with high school education or less to enter the field and make their way to journeyman levels through a combined work-study program, should be adopted by the field of corrections.

Recommendation: The two-year community colleges should expand their programs for correctional personnel. These schools are an excellent resource for corrections, particularly in the development of special program for custodial and group-living staffs, case aides, and community aides.

Recommendation: Experimentation with various kinds of work-load determinants should be encouraged as a more desirable alternative to the fixing of precise caseload standards. Further promulgation of standards must be based on research findings.

Recommendation: Correctional agencies, community colleges, four-year colleges, and universities as well as private and nonprofit organizations involved in the education and actively seek funds from federal programs concerned with corrections. Where existing legislation and/or guidelines are not adequate to meet correctional needs, amendments and new guidelines, which would specifically earmark funds for use by correctional agencies, educational institutions, and organizations associated with corrections, should be vigorously advocated. The federal government and organized corrections must provide greater coordination of existing programs.

Recommendation: A comprehensive educational financial assistance program should be established in an appropriate federal agency, in order to provide support for persons in or preparing to enter the field of corrections. Such a program should include provisions for: scholarships, fellowships, guaranteed loans, research and teaching assistantships, work-study programs, educational opportunity grants for students from disadvantaged, low-income families, forgivable loans to help defray the costs of college education and to help provide an incentive for further work in the field.

Recommendation: A federally supported grant program should also be created to provide sabbatical leaves for correctional administrators, so that they may attend a college or university full-time for an academic year, with salaries, tuition, and other instructional costs provided. Such a program should also furnish opportunities for educators in relevant disciplines to take sabbatical leaves in correctional agencies in order to conduct research, participate in staff training activities, and furnish general consultation to the agency.

USE OF SPECIAL MANPOWER GROUPS

Recommendation: Corrections, in cooperation with the national professional association representing the disciplines and fields involved with it, should restructure roles in correctional organizations, so that optional uses may be made of the training and skills brought to the agency by specialized manpower.

Recommendation: Graduate-level training should be encouraged and supported in the academic fields from which correctional agencies draw their specialized manpower. Courses of study and agency field placements should reflect the creation of specialist roles designed to maximize the unique expertise of those areas of specialization.

Recommendation: Correctional agencies should press for sufficient funds to purchase the service of specialized manpower. In addition to the specialists commonly associated with corrections, a concentrated effort should be made to secure the services, as needed, of persons who are skilled at handling intergroup relations, community development, public information, and other kinds of activities designed to link the correctional agency more closely to the broader community.

Recommendation: Correctional agencies should adopt a multi-faceted research strategy which would include (a) in-house evaluation projects; (b) collaborative research ventures with institutions of higher education, private industry, and non-profit research organizations; and (c) cooperation with national, regional, and state efforts to disseminate research results. There should be a greater sharing of research findings among agencies and across the various levels of government. National, regional, and state efforts in correctional research should be more closely coordinated and, where deemed appropriate, clearinghouses should be established and information repositories should be created from which may be derived guidelines for new correctional programs and the means for evaluating their effectiveness.

Recommendation: Greatly increased funding at national, regional, state, and local level will be required to provide correctional agencies with an adequate level of research capability. Particularly critical is the need for funds to recruit and train research personnel and to purchase or lease the latest data-processing and storage equipment.

Recommendation: Correctional agencies should expand their use of volunteers. To ensure success, such programs require administrative commitment so that adequate screening, training, supervision, and evaluation can be provided. Efforts should also be made to include more Negroes and other minority group members in organized volunteer programs.

Recommendation: Correctional agencies should reexamine their policies and practices regarding the employment of offenders and ex-offenders. Criminal records should not automatically prevent persons from being considered for employment in corrections. Increased experimentation is encouraged to delineate further the special contributions which can be made to corrections by those who have been through the system.

Recommendation: Arbitrary bonding restrictions now commonly imposed upon offenders and ex-offenders, which prevent employers from hiring persons who are otherwise qualified, should be lifted. Bonding restrictions should be related specifically to the individual position rather than serving as a blanket indictment of all offenders and ex-offenders.

PERSONNEL DEVELOPMENT

Recommendation: Staff promotional policies of correctional agencies should be reassessed to place a greater stress on the possession of knowledge and skills in management processes. Candidates for promotion should also have a demonstrated ability to apply new knowledge and should be oriented toward the implementation of research and planned change.

Recommendation: Correctional agencies must develop, in conjunction with colleges and universities as well as the private sector, a range of management development programs including degree-oriented course work in administration and management seminars, workshops, and institutes. Efforts should be made to incorporate the latest techniques and technology in these programs.

Recommendation: To broaden the perspectives of promising young correctional administrators, staff development programs should facilitate experience in such special activities as legislative committee work, comprehensive planning, university research, community development, and administrative and management consulting.

Recommendation: The federal government should make funds available to the states to finance management development programs. Similarly, states should subsidize management development activities in local jurisdictions.

Recommendation: Correctional agencies at all jurisdictional levels should adopt sound management development programs. In addition to a variety of training and development approaches to increase the knowledge and skills of present staff, consideration should be given to creative management trainee positions with on-going development activities built in.

Recommendation: A net work of national, regional, and state training centers should be created to develop training programs and materials as well as to provide technical assistance and other supportive aids to correctional agencies. Such centers should have manpower development rather than a limited definition of training as their focus, and should develop close working relationships with colleges and universities as well as with private training organizations. Federal and state funds are urgently required for the development and on-going support of these centers.

Recommendation: Greatly increased federal and state funding should be made available to those correctional agencies already sponsoring training units to allow for the expansion of training libraries, the development of training materials, and the securing of part-time faculty and guest lecturers in order to give greater depth to the training.

Recommendation: Colleges, universities, and private organizations with experience and capabilities in the training field should develop "training of trainers" programs in order to meet the emergent need for adequately prepared training staffs in correctional agencies. Such programs should be financed through federal and state funding. Funds should also be made available for the development of special programmed instruction materials suitable for use by correctional agencies.

Recommendation: Federal and state funds should be made available to agency training units to provide for the purchase and/or lease of modern training equipment.

A LOOK AHEAD

Recommendation: State and local agencies providing such basic services as education, employment assistance, job training, vocational rehabilitation, vocational education, health, and legal aid should expand their programs to insure that a greatly increased level of service is made available to offenders in the community and in correctional institutions. Where required, legislative amendments should be sought in order to insure that federally sponsored programs earmark funds for explicit use in increasing the scope and depth of such services to offenders.

Recommendation: Whenever feasible, future correctional facilities should be located near centers of business, commerce, and eduducation, in order to facilitate linkages between offenders and the community and its resources.

Recommendation: Correctional agencies should contract with schools of law and individual faculty members to conduct training programs, seminars, and institutes for all correctional employees who work directly with offenders which would include basic legal concepts of due process, offenders' rights, and recent legal trends.

Recommendation: Law schools should be encouraged to expand their curriculum to include courses in crime, delinquency, corrections, and juvenile court law for those students desiring to pursue careers in legal work within or relating to corrections. Internship programs should be established in conjunction with correctional agencies.

Recommendation: Correctional agencies should add legal specialists to their staffs, not only to serve as agency advisors but also to provide legal assistance to offenders regarding civil matters.

Recommendation: A model code of correctional procedure should be formulated and its adoption pursued. The code would provide the necessary guidance for correctional decision-making processes involving offenders. A panel to draft such a code should include judges, lawyers, correctional administrators, academicians, and lay citizens.

Recommendation: Correctional agencies should utilize more fully the resources of private industry. In areas such as management development, research, basic education, and job training for offenders, the private sector may be able to provide considerable assistance to corrections. Federal and state funding should be made available to correctional agencies to facilitate contracting for those services which might better be performed by private industry.

Recommendation: The private foundations should be encouraged to take a greater interest in the problems of corrections and in the education and development of its manpower. Financial assistance for the development of innovative programs should be sought from the foundations.

Recommendation: Correctional agencies should make a concentrated effort to inform the community at large, and community groups in particular, about corrections' goals, needs, and problems, and enlist their cooperation in working together to create

the social climate necessary for offenders to assume meaningful roles in society.

Recommendation: Correctional agencies at all levels of government should establish units of community relations and public affairs staffed with public information specialists, in order to provide for a free and constant flow of information to the public.

[From the Washington (D.C.) Post, Nov. 12, 1969]

THE CRIME WAR: PRISON REFORM IS A VITAL PART OF IT

Almost three years ago, the President's Crime Commission made it plain enough that the national crime problem is not going to be solved by just passing new laws in random fashion or by just hiring new policemen or by tackling any one of the many elements that are involved in preventing crime and handling criminals—or all of them one at a time. The whole range of things, from bad homes and unemployment to prisons in which inmates learn how to commit more crimes, must be attacked simultaneously, the commission said, and in a comprehensive way.

The Joint Commission on Correctional Manpower and Training, created by Congress three years ago, has now underlined that finding. It has recommended, to sum up its conclusions in somewhat harsh language, that national and state leaders put their leadership and tax money where their mouths are. Its point is very simple: the number of men who make a career out of crime is not going to be reduced until the institutions of the correctional process (jails and prisons, parole and probation agencies) have the funds and the personnel to rehabilitate—rather than just confine or harass—those convicted of crime. "The public and their legislators most understand," the report says, "that there can be no solution to the problem of recidivism as long as harsh laws, huge isolated prisons, token program resources, and discriminatory practices which deprive offenders of employment, education, and other opportunities are tolerated."

The commission points out that the ability of a man who has committed a crime to stay out of trouble once he is released is directly tied to his ability to get and hold a job. Yet the success of prisons in training convicts for jobs and their ability to get one in the field of that training has been notoriously low. Coupled with this has been the inability of the entire correctional process to get either the money or the staff to do the kind of work it ought to be doing. There are, of course, bright spots in the field of corrections, as we noted a few days ago, but not enough young people have been drawn to it as a career and not enough innovative work has been encouraged.

The response of Congress a year ago to the Crime Commission report was to establish and finance a federal program to help states improve their police forces and law enforcement agencies. Its response to this report ought to be to do the same thing for state and local correctional operations. Since less than 10 per cent of all such operations are in hands of federal agencies, this appears to be another area in which President Nixon's "creative federalism" could produce worthwhile results.

The Joint Commission, however, put its finger on the real problem. It addressed its report to the President, Congress, the Secretary of Health, Education and Welfare, and the 50 governors. For anything worth while to happen, it said, the people in the correctional field "about whom this report is written—and those to whom it is addressed—*have to care.*" The results of a national poll show that 72 per cent of the public 'cares"—or at least believes that the primary goal of correctional institutions is rehabilitation, while only 7 per cent thinks it is punishment. So the public support is there. It remains for national leaders to catch up to the public, to accept the vital importance of prison reform in the context of a comprehensive, across-the-board assault on crime, to begin, in short, to *care.*

REVERSION OF OKINAWA TO JAPAN

Mr. INOUYE. Mr. President, I read with great interest an editorial published in the Washington Evening Star of November 13 on the reversion of Okinawa to Japan. The editorial speaks to two important points involved in the Okinawa problem.

First, it questions the timing of a Senate resolution calling for alteration in the status of Okinawa without the "advice and consent" of the Senate. It questions the timing of this resolution which comes as negotiations between the two countries are being finalized and only 2 weeks before Premier Eisaku Sato's visit to Washington.

Second, the editorial focuses on the crux of the issue involved in the reversion of Okinawa to Japan. That issue is, indeed, that in dealing with the Okinawa problem, political considerations are more important than military ones. Critical to deciding on the status of Okinawa is the fact that stability in Asia will depend on four powers: United States, Soviet Union, Japan, and Communist China. This consideration makes maintaining a cooperative relationship with Japan, from the standpoint not only of economics but also military security, vital to our national interest.

In view of the Senate's consideration of the Okinawa question, I ask unanimous consent that the editorial be printed in the RECORD.

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

OKINAWA AND THE SENATE

The "sense of the Senate" resolution calling for no alteration in the status of Okinawa without the "advice and consent" of the upper house could not be more poorly timed.

U.S. and Japanese negotiators have been working for six months in Tokyo to hammer out the details of an accord which reportedly would return the island to Japanese control in 1972. Premier Eisaku Sato will be visiting Washington next week to win President Nixon's final approval.

Okinawa is the keystone of our Pacific defense system. Both countries are agreeable to continued U.S. use of the island's bases. But restoration of full Japanese sovereignty would mean that, as in the home islands, the U.S. would have to consult with Japan before using the bases to launch any attacks.

And the "nuclear allergy" of the Japanese people, arising from the 1945 atomic bombing of Hiroshima and Nagasaki, makes it politically impossible for any government in Tokyo to sanction the storage of nuclear bombs on Okinawa.

Loss of Okinawa as a nuclear base would be a serious but not necessarily fatal inconvenience. South Korea already has expressed its willingness to provide such facilities. Other Asian countries might well do so.

But the real point is that the political considerations in this case are more important than the military ones. Most immediately, the ten-year Japanese-American security treaty will have run its course next June 23. It will continue in force after that date unless either party elects to abrogate it.

Both the U.S. and Japan want the treaty. But the humiliation which Sato will face if he returns to Tokyo without Okinawa in his pocket could endanger the treaty and almost certainly would result in the fall of his pro-American government.

Nor does the occupation of a part of Japan correspond to the realities of geopolitics. Japan, with its burgeoning economy and bouyant currency, is the West Germany of the Far East. It can no longer play the role of economic giant and political dwarf.

The danger exists that the Senate might try to wring from Tokyo economic concessions such as the lifting of Japanese restrictions on the importation of American automobiles and control of Japanese textile exports to this country.

These are legitimate subjects of negotiation—the U.S. deficit in the $7 billion annual trade between the two countries exceeds $1 billion—but they should be kept separate from the larger political question. The future of Japanese-American relations is more important than cars or cloth. The presence in Japan of a stable, moderate government is essential both to this country and to the rest of the Far East.

The Senate has its proper place in the conduct of foreign relations. But to bring up the matter at the end of the negotiations and two weeks before Sato's visit is to trifle with a delicate and crucial question.

ARLINGTON CONSERVATION COUNCIL ENDORSES 100,000-ACRE BIG THICKET NATIONAL PARK

Mr. YARBOROUGH. Mr. President, the Arlington Conservation Council of Arlington, Tex., recently passed a resolution endorsing the proposal to create a 100,000-acre Big Thicket National Park as set out in S. 4, which I introduced in January 1969. By endorsing this proposal, the Arlington Conservation Council joined the many other civic and conservation groups which are supporting this bill.

Never has the need for such a park been greater. The Big Thicket area of southeast Texas is rapidly vanishing. This beautiful and unique natural wonderland once covered more than 3.5 million acres. Today, the Big Thicket consists of less than 300,000 acres. As a result of the careless and insensitive practices of some special interests the Big Thicket is disappearing at the shocking rate of 50 acres a day.

If the alarming destruction of this beautiful area is to be stopped, it is necessary that Congress act, and act soon. My bill, S. 4, if enacted, would preserve at least 100,000 acres of the Big Thicket for the use and enjoyment of future generations.

Mr. President, I ask unanimous consent that the resolution by the Arlington Conservation Council be printed in the RECORD.

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

POLICY STATEMENT ON BIG THICKET NATIONAL AREA

We favor a Big Thicket National Park or area which would include not only the minimum of 35,500 acres proposed in the Prelimi-

nary Report by the National Park Service study team, but also the following modifications and additions:

1. Extend the Pine Island Bayou section southward and eastward down both sides of Pine Island Bayou to its confluence with the Neches River.

2. Extend the Neches Bottom Unit to cover a strip, a maximum of three miles, but not less than four hundred feet, wide on both sides of the Neches River from Highway 1746, just below Dam B, down to the confluence of Pine Island Bayou.

3. Extend the Beaumont Unit northward to include all the area between the LNVA Canal and the Neches.

4. Incorporate a Village Creek Unit, comprising a strip up to one mile wide where feasible, and no less than 400 feet wide on each side of Big Sandy-Village Creek from the proposed Profile Unit down to the Neches confluence. Wherever residences have already been constructed, an effort should be made to reach agreement with the owners for scenic easements, limiting further development on such tracts and preserving the natural environment. Pioneer architecture within these areas should also be preserved.

5. Incorporate a squarish area of at least 20,000 acres so that larger species such as black bear, puma and red wolf may survive there. An ideal area for this purpose would be the area southeast of Saratoga, surrounded by Highways 770, 326 and 105. Although there are pipeline crossings in this area, they do not destroy the ecosystem; therefore the National Park Service should revise its standards pertaining to such incumbrances, in this case, leaving them under scenic easement rules instead of acquiring them.

6. Connect the major units with corridors at least one-half mile wide, with a hiking trail along each corridor but without new public roads cutting any forest. A portion of Menard Creek would be good for one such corridor. The entire watershed of Rush Creek would be excellent for another.

Such additions would form a connected two-looped green belt of about 100,000 acres (there are more than 3 million acres in the overall Big Thicket area) through which wildlife and people could move along a continuous circle of more than 100 miles.

We recommend that the headquarters be in or near the line of the Profile Unit.

We are absolutely opposed to any trading or cession of any National Forest areas in the formation of the Big Thicket National Park or Monument.

In addition, but not as a part of the Big Thicket National Monument, we recommend: (a) the establishment of a National Wildlife Refuge comprising the lands of the U.S. Corps of Engineers around Dam B, (b) a state historical area encompassing communities of typical pioneer dwellings, farms, etc. such as that between Beech and Theuvenins Creeks off Road 1943 in Tyler County, and (c) other state parks to supplement the national reserve.

RESOLUTION OF THE ARLINGTON CONSERVATION COUNCIL ON THE BIG THICKET NATIONAL AREA

The Arlington Conservation Council does hereby adopt the Policy Statement on The Big Thicket National Area, a copy of which is attached hereto and made a part hereof for all purposes, and urges the President of the United States, the Congress, the Department of the Interior, the U.S. Corps of Engineers (as to Dam B), and the appropriate state agencies (as to supplemental state and historic parks) to take appropriate action to implement this policy as soon as possible.

C. C. HALL,
President.

ARLINGTON, TEX.

HALF THE STORY IS TOLD ON TELEVISION

Mr. DOLE. Mr. President, the Vice President is not alone when he questions the objectivity of television news. Even before he made his speech last week, others also were questioning that objectivity.

The Columbia, S.C., State was one of them. I ask unanimous consent that its editorial of November 8 be printed in the RECORD.

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

TELLING HALF THE STORY

On repeated occasions last week, the evening news on NBC television contained shocking reports of brutality on the part of South Vietnamese troops. Viet Cong captives were shown being kicked, beaten and otherwise abused. One report showed a prisoner being knifed in the stomach.

No one can shrug off this kind of inhumanity. It violates every principle of civilized behavior, to say nothing of the Geneva Convention on prisoners of war. To the extent that it is able to do so, the American command in Saigon should see that such abuses are stopped. This is an American responsibility, since America has assumed responsibility for the war.

But there are other responsibilities as well, and it is something less than clear that NBC television appreciates the fact. For example, there is the responsibility of a television network to the public, a responsibility that entails, among other things, fairness and balance.

Where are the television pictures of Viet Cong atrocities, NBC? Anyone who has talked with returning GIs knows that American forces constantly are coming upon whole villages whose inhabitants the Viet Cong have tortured and killed. Newsreels of this devastation, presumably, are sent to the networks. Might we see them, please?

No one is saying NBC should have suppressed the footage showing South Vietnamese outrages. No one is saying, either, that balanced reporting of the war is easy. All we are saying is that NBC News should change its name to NBC Propaganda if it intends to give the public half a story night after night.

PEACE WITH HONOR

Mr. MUNDT. Mr. President, last week during the observances held on Veterans Day in city after city, in virtually every community in the Nation, and in schools, churches, and wherever people desired to gather to show their love of country by paying just tribute to those Americans who made the supreme sacrifice for this Nation, Arlington Cemetery, across the Potomac River from Washington, was again the site where most Americans looked for the remembrance which was national in spirit and which set the tone for commemorative events held everywhere.

Measuring up to the fullest expectations for that significant ceremony last Tuesday—Veterans Day—is the address which was delivered by a very logical person to speak on this day of honor, the Administrator of Veterans' Affairs for our country.

The Honorable Donald E. Johnson, who heads the Veterans' Administration, and who comes to this office with his own record of great and distinguished service both as a member of our Armed Forces and later as the national commander of one of our great veterans organizations, the American Legion, delivered an eloquent address which I am pleased to bring to the attention of the Senate and to be made a part of the permanent record of this body and, equally important, I believe, of the events of last week.

I ask unanimous consent that Mr. Johnson's remarks be printed in the RECORD.

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

PEACE WITH HONOR

(By the Honorable Donald E. Johnson, Administrator of Veterans' Affairs)

President Nixon has given me the high honor of representing him at this Veterans Day National Ceremony.

President Nixon's Veterans Day proclamation—and the separate Veterans Day message which he sent to all of our hospitalized veterans—bespeak more eloquently than any words of mine his great esteem for America's veterans, his constant concern for their welfare, and his firm resolve that their government shall care for them and for their widow and their orphan.

I do not bring you President Nixon's message. And I do not presume to speak for him. However, I do know how dedicated he is to the task of achieving the theme of Veterans Day 1969, peace with honor.

And we all know of his fervent hope for the understanding, the support, and the prayers of the American people.

Thus, as we pause today to remember, and to thank America's veterans of all wars for their service and sacrifice that all of us might live in freedom, let us ask ourselves:

What can we do—we citizens, Americans all—what can we do to help achieve peace with honor?

We can begin by recognizing the truth.

No American can quarrel with the noble and eternal goal of peace with honor.

But some of our people disagree today over the means—the strategy, if you like—of achieving this goal in Vietnam.

To those who may think—or would have others think—that they alone understand and abhor the suffering and savagery of war, to them I say now that they do an injustice to America's 40 million veterans, living and dead.

And they deceive themselves.

For America's veterans there has never been a "popular" war, nor a cause for which they eagerly sought to die.

Our honored war dead desired and deserved to live just as much as any citizen of our nation.

And our disabled veterans would welcome a moratorium in the pain and illness and injuries they now endure.

But they answered freedom's call because they understood freedom's cost.

In his inaugural address President Nixon said that the greatest honor history can bestow is the title of peacemaker.

He is right.

However, on this day when we recognize and applaud honor and courage and duty as exemplified by our veterans, on this day I would call the attention of all Americans to an inspiring inscription.

It is engraved on the Confederate War Memorial a short distance from this amphitheater in Arlington National Cemetery.

"Not for fame or reward; not for place or for rank; not lured by ambition or goaded by necessity, but in simple obedience to duty as they understood it, these men suffered all, sacrificed all, dared all, and died."

We, the living, also have a duty.

A duty to unify America. A duty to bring together our great and good people.

The unity that has always been the bedrock of America needs expression today more than at any time in the past century.

Not as a facade, but as the firm foundation for the future America of freedom and opportunity and justice which we must build for ourselves and for our posterity.

As we build this future—on a foundation of unity, not unanimity in our land—our citizens, Americans all, can learn from the veterans we honor today.

In battle our veterans freely admitted the toughness of their enemy.

But they summoned forth the courage to attack him.

And they gained the confidence to defeat him.

We, too, need candor and courage and confidence.

Candor to admit the toughness of the problems we face at home and abroad.

Courage to do the difficult, to bear the costs—in understanding and fortitude as well as in money—demanded by these problems.

And confidence that peace will be won—and the wrongs that make us a less perfect union will be righted—if we but carry on.

It is precisely because America's veterans have demonstrated their love of our country, their understanding of the cost of freedom, and their leadership as responsible citizens, that we can use this day set aside to honor them to call for a new depth—a new era—of unity.

Unity to save the America for which they have sacrificed so much—and which they have served, and still serve, so well.

Our veterans need no spokesman. For nearly two centuries their valor has been their valedictory.

But it is gratifying, indeed inspiring, to note that today in Veterans Day ceremonies throughout our land thousands of Americans are speaking up, proudly proclaiming their unashamed love of America, and urging the overwhelming silent majority of their fellow-Americans to join them in this declaration of love for and faith in our great country.

I believe sincerely that our honored war dead—to whom we pay special tribute today—would approve of this use of their "day."

The America they felt was worth fighting for is not a perfect America.

But only a united America can win the peace for which we all yearn—and for which we should all pray.

Only a united people will have the will and the strength and determination to curb inflation, combat crime, cleanse our waters and our air, alleviate poverty, end discrimination, train the undereducated, provide meaningful work for the underemployed, and cure the other ills that beset us.

On this Veterans Day, then, let us pledge and let us act to make our beloved country—in fact as well as in name—the United States of America.

To succeed in this difficult but vital task will be to insure that no veterans shall have served in vain.

ENVIRONMENTAL AND ECOLOGICAL EDUCATION

Mr. NELSON. Mr. President, on September 20, 1969, I proposed a national teach-in on the crisis of the environment. The purpose is to focus sharply on the vital concerns of this generation of youth about the environment it will inherit. The teach-in, scheduled for April 22, 1970, will take whatever form the students at a particular university decide—symposiums, convocations, and panel discussions. The proposal has steadily gained momentum on over 50 university campuses across the Nation.

The diversity and intensity of interest shown thus far has prompted me to introduce legislation on environmental and ecological education in the near future. The crisis to our environment is so severe that we must mount a continuous effort to enlighten our future citizens to the present and impending threats to the ecological balance.

Bold, innovative, and imaginative programs are needed if our school systems are to enhance the use of the environment as a teaching resources. A national strategy should encompass these programs and cover elementary, secondary, undergraduate, graduate, adult and community education and teacher training as well.

Every day after April 22 there should be a national teach-in on the crisis of the environment.

SELF-DETERMINATION AND THE STREETS

Mr. DODD. Mr. President, the leaders of the November 15 march on Washington according to this morning's papers, were ecstatic over the turnout at their demonstration. Certain commentators, columnists, and newsmen have also waxed ecstatic over the demonstration picturing it as a legitimate expression of the attitude of America's young people.

The size of the demonstration was indeed impressive. But no one has yet done an in depth analysis of its content. If such an analysis were done, I believe it would reveal that at least 50,000 to 60,000 of the demonstrators were hard-core Communists, Trotskyites, Maoists, and extremists of other varieties; that another 75,000 at least were hippies; and that the remaining 100,000 consisted of well-intentioned pacifists, misled liberals, and young people who came along partly because of a shallow and amorphous opposition to our Vietnam commitment, partly because the demonstration seemed like a wonderful lark.

In this connection, I want to call the attention of my colleagues to a nationally syndicated article by the prominent columnist, Joseph Alsop in newspapers of November 17, 1969, merits our attention.

Entitled "Salute to Nixon by Golda Meir Makes 'Kid' March Heartache," Mr. Alsop makes the point millions of Americans feel deeply and poignantly. Mr. Alsop says it and says it well.

He writes of the message sent to President Nixon by Mrs. Golda Meir, Premier of Israel. Having heard President Nixon's speech to the Nation on Vietnam, Mrs. Meir wrote him congratulations and her moral support.

Mr. President, this is an attitude not to be taken casually. Mrs. Golda Meir leads an embattled, little nation struggling to survive. She knows, firsthand, about the menace of Communist aggression and imperialism waged in the Middle East.

You will not find in Israel marchers and demonstrators for a unilateral "moratorium." Nor will you ever hear any outcry that adds up to "Better Red than dead."

Like every Israeli I have spoken to, Prime Minister Meir understands that the war in Vietnam is part of a global conflict between the forces of freedom and the forces of communism. She understands that if we are defeated in Vietnam, American credibility will be so deflated that we will lose much of the ability we now possess to impose restraint on the Mideast situation. She realizes, in short, that if we withdraw immediately from Vietnam as the moratorium leaders demand, it would place Israel in grave and immediate jeopardy.

Unfortunately, this is something that most of the demonstrators either fail to understand or refuse to understand.

There are those persuaded that they must never fight for anyone or anything. Liberty and free expression evoke sneers from them. They should ponder these words from Mr. Alsop:

To the convinced pacifists, fighting for your country is always wrong—even if the end result is to condemn men like Noam Chomsky to the fate of Yuri Daniel and Alexander Solzhnitsyn. And this surely would be the end result, and for independent-minded Americans of every kind.

I ask unanimous consent that Mr. Alsop's column of November 17, 1969, be printed in the RECORD.

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

SALUTE TO NIXON BY GOLDA MEIR MAKES "KID" MARCH HEARTBREAK

(By Joseph Alsop)

It was heartbreaking, somehow, to see "the kids" in Washington, and then to learn of the latest, least expected support for President Nixon's Vietnamese policy.

That mother in Israel, Golda Meir, seems to have walked, in sensible, archsupporting shoes, straight out of one of the heroic epochs of the Bible story. But as Prime Minister of a small, infinitely brave and viciously beleaguered nation, Golda Meir must be alert to all that passes in the present.

She heard and studied President Nixon's remarkable Vietnam speech. Whereupon quite spontaneously, without solicitation, to the vast surprise of the White House, Mrs. Meir sat down and sent the President a message of warm congratulation and strong moral support.

Among other things, she saluted the President for "encouraging and strengthening small nations the world over, striving to maintain their independent existence, who look to that great democracy, the United States of America." The highest Israeli sources state, without hesitation, that this was an indirect but emphatic reference to an obvious danger that Mrs. Mier now fears.

The fact is that Israel's peril will be much increased by the worldwide repercussions of the kind of American defeat that "the kids" clamored for here in Washington. It is very strange indeed, therefore, that this purposely significant message to the President should have received no attention to date, despite its high origin and easy public availability.

This reporter learned of Mrs. Meir's mes-

sage by sheerest accident over the weekend, days after its White House release, and just after escaping from a huge sidewalk eddy of "the kids." It was heartbreaking, simply because it so sharply pointed out the contrast between Mrs. Meir and the people she leads and the new breed of Americans those "kids" represent.

The word is put in quotations because it is time to protest the degrading sentimentality, the mush-headed permissiveness that lies behind this novel usage. In the Second World War, silly people used to call our troops "American boys" in the same manner. Yet they were not boys; they were American men, bravely fighting for their country, thank God and them, as men are sometimes called upon to do.

Today, it is far worse. A bearded, unwashed, 25-year-old Trotskyite is not a "kid." Neither is a lank-haired 24-year-old harridan of the same persuasion. Male and female storm troopers of the new left, perhaps; but "kids," no! And if you collect the facts about the brutality some of these alleged kids have actually resorted to, in the current New Left assault upon academic freedom, for instance, storm trooper seems a quite justifiable appellation.

Here, to be sure, we are speaking of a small though very influential minority. Idealism, ignorance and innocence, wallowing self-pity and simple fashion no doubt animated the great majority of the young people who marched in Washington at the weekend. But even the most empty-headed 18-year-olds were not "kids," they were at least proto-adults, with a duty to begin facing the world and the facts in a fully adult manner.

It is this refusal to face the world and the facts as adult Americans that mainly characterizes "the kids." It is also this refusal, one supposes, that their admirers have in mind when they call them "kids." And it is this refusal, once again, which sets these young Americans so far apart from the most beardless boy, from the most barely nubile girl among Mrs. Meir's people.

A kindly Providence has never called upon the American people to show the heroism, the hardihood, the unfailing will and resolution of Mrs. Meir's people. The Civil War, over a hundred years ago, was the nearest we ever came to a comparable test, and in the hard cold harbor-time, Abraham Lincoln and Ulysses S. Grant were among the few Americans who had not begun to lose heart.

The truth is that we Americans, because of our great good fortune, have always tended to forget the basic lesson that history is a harsh, remorseless process, in which few nations get a second chance. That is the lesson that has been cruelly rubbed in upon Mrs. Meir and her people, by over two millienia of dire experience with history's harshness.

To the convinced pacifists, fighting for your country is always wrong—even if the end result is to condemn men like Noam Chomsky to the fate of Yuri Daniel and Alexander Soltzhenitsyn. And this would surely be the end result, and for independent-minded Americans of every kind.

But unless the stormtrooper doings of the New Left minority provoke even worse reactions on the right, we can still count upon escaping that fate, providing we learn just a little from Mrs. Meir and her people.

"ISSUES AND ANSWERS"

Mr. HANSEN. Mr. President, the distinguished Republican leader (Mr. SCOTT) yesterday had occasion to discuss on the ABC television program "Issues and Answers" a topic both timely and important.

Senator SCOTT discussed with Bob Clark and Bill Gill, ABC correspondents, the question of fairness in television's presentation of the news.

The senior Senator from Pennsylvania made a most important point when he noted that what is required for television to maintain a good image with the American public is to separate editorial comment from what is known as hard, factual news.

I believe the transcript of Senator SCOTT's appearance on television concerning this matter is of significant interest to Americans. I ask unanimous consent that it be printed in the RECORD.

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

"ISSUES AND ANSWERS," NOVEMBER 16, 1969

Guest: Senator HUGH SCOTT, Republican, of Pennsylvania, Senate Minority Leader.

Interviewed by: Bob Clark, ABC News Capitol Hill Correspondent; Bill Gill, ABC News White House Correspondent.

Mr. GILL. Senator, welcome to "Issues and Answers."

Senator SCOTT. Thank you, Bill.

Mr. GILL. Last Thursday in a most impressive speech before the National Press Club here in Washington you said that the younger generation is rightly questioning our values now, and that while the threat of violence should not be tolerated, we can and should show a greater sensitivity and awareness as a government. Can you tell us just how can the Nixon Administration demonstrate compassion of more depth and willingness to understand?

Senator SCOTT. Well here, Bill, I think I am one of a good many channels. We in the Senate and the House spring directly from the people. We have a greater contact, perhaps, than the more isolated executive branch and I have been impressed by the genuine sincerity, the almost overwhelming decency of these young people; 98 per cent of them. There are the two per cent crazy, so-called.

I think we ought to be listening. I note that every parent wonders what's wrong with the kids. The kids are wondering why the parent doesn't take time from bridge or golf or something to sit down and realize that the young person has become adult in his concerns and he wants this war ended. This is the overwhelming first priority. He wants to get on with his chance to share in making a good life and a good country and I have urged this on many people. I do believe the President is listening and that people are listening. It is important.

Mr. GILL. In that most impressive speech you also said we should not resign government to the apathetic, the cynical or the coldly pragmatic.

In the light of recent events and statements by some government officials, were you speaking to members of the Administration as well as to parents?

Senator SCOTT. Well, I don't like to sound like a lecturer, although I have been that, as you know, in England. I am a special pleader, I guess. I am asking anyone who tends to dismiss the concern of the dissident, the concern of the protestor, as unimportant, or unworthy, really ought to pay more attention to them and I have asked people to cool their rhetoric a little too. So I am addressing it to all those in government who would listen, but I would like, in fairness, to make the point that I feel most people are listening. I played a small part in bringing together the peace seekers in this mobilization movement, the leaders and the Justice Department, so that they could sit down and work out Pennsylvania Avenue parades; they could work out the marshals who did a magnificent job; they could work out relationships with the police and they could tend to isolate and insulate the troublemakers, and I think that's the great story that came out of the moratorium march—that the public could see, and the television—I may say at last—that television did fairly report the distinction between the overwhelming majority of concerned people, expressing dissent but not such great dissent. They said "Peace Now," but if you asked them individually, they would say "Well, we know the President can't do it tomorrow. We just want to end it as soon as possible."

Mr. CLARK. Could we take it from this, Senator, that you were generally impressed by the way the peace march was carried out?

Senator SCOTT. I am impressed. Members of my own staff had relatives in this march. I talked to a number of these young people myself. They would say to me, "Do they understand what we are doing? Do they think we are all just wild men, and is it going to have an effect?"

Well, this is part of the great American democratic method of trying to move the mind of the man who makes the decisions and it is proper that people should seek to have an effect on the mind of President Nixon. I do myself. We all do, and I don't think anyone wants peace more than President Nixon. I don't think anyone is trying harder and he is the only man who can get it and this is perhaps my role, to say, "For Heaven's sake, listen to the dissenter, "but I say to the dissenter, "Please use a little reason as well as emotion to understand that the President is doing the best he can."

This puts me, at times, in the middle.

Mr. CLARK. You praised the Democratic leader of the Senate, Mike Mansfield, very highly for a speech he made on the Senate floor Friday that included these words, and Senator Mansfield said, "I don't want to see our people divided any further than they are. I want to see attempts made to keep our voices low. Divisiveness is well on the way to tearing this country apart."

Do you agree with this? Would you like to see a muting of the criticism on both sides of the Vietnam debate?

Senator SCOTT. No, and I don't think Mike Mansfield was asking for a muting of criticism; that he was asking for a reasoned analysis of whether there is merit in the criticism and that we should remember that we are all Americans whether we have one point of view or another on the war, and I got up and said to Mike: "I don't know what is going to happen to the two-party system if I continually have to agree with you so often when you make these very wise statements."

We respect each other.

Mr. CLARK. Do you think any members of your own party, and including Vice President Agnew—I want to talk with you more later about some of his remarks directed at television—but do you think members of your own party are guilty of adding to this divisiveness in the country or in Vietnam?

Senator SCOTT. All men are guilty to a degree when they raise their voices, or when they disallow respect for the other person's opinion. We are all guilty when we do that, but I don't think this Administration generally is contributing to divisiveness and I think if you look at the demonstrators in the right light, aside from the "Crazies", they are contributing to divisiveness either.

When I see a Viet Cong flag, I could not personally address a meeting in which people are waving enemy flags. This is where my own innate feelings would not permit it, but even the waving of an enemy flag, as unpleasant as it is to me, is permitted here, but what I often wonder is why the dissenters don't realize that you couldn't wave an American flag in Hanoi.

Mr. GILL. Senator, Could we go back to some of the "rhetoric" I believe is the term

that you used, concerning the Viet Nam war and the demonstrations.

What is the effect on both sides when we have the leaders of the demonstrators and spokesmen of the administration—again, Vice President Agnew—using select terminology in their confrontation? Do you feel that up to this point we have made earnest enough effort to lower the rhetoric and the cooling of temperatures that we were brought to expect from the administration?

Senator SCOTT. Well, Bill, I am very anxious not to be critical of personalities. The press and the television both jumped on the Vice President because he brought in the personality of Averell Harriman so I am not going to do that. I think that when Averell Harriman was brought on it was natural that someone would look for the man most antagonistic to Mr. Agnew. And I am sure that Averell Harriman will spend the rest of his life explaining why he wasn't able to pull off an end to the war. And that is all right. He has to be on the defensive. But I don't think I want to criticize Mr. Harriman's rhetoric, or Vice President Agnew's. I have my own style of rhetoric and I try to mute it as much as I can. I think the Vice President made a very sturdy, a very firm statement—when you leave out the discussion of personalities, here, as one side. What he said was firm, it opened up a dialogue, it found the television networks very defensive on the issue. There are people who say, in a rustic way, that it is the pig that is caught under the fence that squeels.

I think when Vice President Agnew brought out the issue that to a degree television isn't always objective, it is something that you could agree with. You aren't. And it isn't your role to be. But I think he has asked everybody in this country to look at television, compare it with the press and say to television: We hoped you would give us the straight news—as you and Bob do, and I enjoy your program—give us the straight news, but when you are editorializing, say so. Put up a little card that says "Editorial," or run something across the screen which says, "Now, we are giving our individual comment."

The average person outside of Washington and New York, where we are such sophisticates, does not know what a commentator is. Here in Washington, a commentator is a man who analyzes and interprets the news. Out in the country a commentator is a man who told them what just happened and it is necessary in all fairness to do what the press does, or you all should do: put the straight news on the first page, put the editorial on the editorial page.

I am against censorship with every part of my body I would oppose anything that censors television or any media. I am against government control. It is evil, it is vicious and it is tyrannical. But I think the Vice President opened up an honest, proper dialogue when he said, "Let's examine whether television always differentiates between straight news and editorializing. If you don't, why don't you?" That is a proper thing to bring out. That is all I am saying.

Mr. CLARK. The Vice President said in his speech, Senator—and I will quote from him directly—"It is time that the networks were made more responsive to the views of the nation and more responsive to the people they serve."

You are the ranking Republican on the Senate Communications Subcommittee. Now do you have any thoughts as to just how this could be done or should be done?

Senator SCOTT. Well, I don't think the networks or press should be responsible to anybody's views and to that degree I disagree. I think they should be only responsive to Pilate's question: What is the truth? They ought to search for truth and they ought to fight for truth and for their right to express it. Just as I want you to fight for my right to disagree with the networks and the pariahtistic statements of two of the three network heads, not ABC—and I mean that. I agree with a reporter for one of the local papers today who points out that this dialogue has served a purpose. He says "My day of channel hopping indicates to me that television's journalists have acquired a higher sense of self-restraint and a greater understanding of balanced fairness." Now he means that following what the Vice President said, so to that extent, if it has caused television to be more aware of its public responsibility, then he has performed a service.

Mr. CLARK. Do you think, Senator Scott, that there is a role in this for the Federal Communications Commission? And some people felt that the Vice President's remarks carried the threat of some coercion against the networks by the FCC.

Senator SCOTT. Yes, two of the network presidents implied that in highly pariahtistic statements. I got a little fed up with that sort of thing, too. But I don't believe that FCC has any role in exercising any form of control over broadcasting in the exercise of opinion, in the search for truth, or in the reporting of the news, except where there is of course a clear abuse. I mean if you had a fascist orator riding around there might be reasons to look into whether he should be indicted and thereby removed from the news media. But generally speaking, I think the role of the FCC is stated in the statutes and one of the statutes is wrong. That is Section 315. We ought to have more free time, we politicians, so that we don't have to pay such excessive rates for the time we buy. But we ought not to use the FCC as any form of club or threat over the freedom of speech of everybody in this country.

My father used to say "Your liberty stops where my nose begins." That is my guideline. I don't mind what you say to me and I don't mind what I say to you short of interfering with your right of saying what you think.

Mr. GILL. Senator, again on the Vice President's speech on television, following that speech it has now been widely reported that several of the Administration leaders, including Attorney General John Mitchell, spent a good deal of their time in fashioning the remarks that were to be spoken by the Vice President, and it has also been reported that the White House itself helped select a forum for Mr. Agnew to make his remarks.

I'd like to ask you, were you consulted in advance while the position was being formulated, sir, or did you have advance information on the content of the Vice President's remarks?

Senator SCOTT. I didn't even know the Vice President was going to speak until I turned that channel on while I was dressing to go out for some evening engagement and I saw the Vice President. It was the first I knew. The reason I turned it on is because I thought I was going to be on at that hour and I was to that extent disappointed.

No, I had nothing to do with it and I don't know who did and I don't know who drafted it or anything of the sort. It is natural for the Vice President to address party gatherings and this was a big one in Iowa where my friend Bob Ray is now Governor. And Bob fought with me for Eisenhower on the modern philosophy in this country, but the Vice President is much in demand at all of these gatherings.

Mr. GILL. On balance, following the Vice President's speech there has been expression of concern that there may be a tendency in government today to stifle dissent. With everything that has occurred and the various remarks and appraisals, do you see no danger at all of this?

Senator SCOTT. Well, I am a Jeffersonian. I went to "the" university, as some of your viewers will recognize, Mr. Jefferson's university, and he said this much "I have sworn upon the altar of God eternal opposition to every form of tyrany over the mind of man." That may sound a little pompous or a little didactic, but by God I mean it. I will fight any form of repression or interference with the right of freedom of speech.

CLARK. Senator, the Vice President, in his attack on Averill Harriman, puzzled some people with the comment that during the ten months Harriman served as chief negotiator at the Paris peace talks—and these were the Vice President's words—he called this "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."

Do you know what the Vice President was talking about?

Senator SCOTT. No, he may have access to the classified information that I don't have. He may have referred to the suspension of the bombing, for example. He may have referred to this rumored drawback which may or may not exist in the limitation of our offensive operations. He would have more information than I do, but I don't know what that is.

Mr. CLARK. Do you know of any sentiment within the Nixon Administration that suspension of the bombing was a great mistake?

Senator SCOTT. No. There is sentiment in the Congress between the hawks and the doves and the hawks think it was a mistake. I haven't heard that downtown particularly. The President is certainly no hawk and neither is Mel Laird, who used to be reputed to be one. He certainly is not.

Personally I am an owl. I don't believe in being a hawk or a dove.

Mr. CLARK. Would you call suspension of the bombing one of the greatest military concessions in the history of warfare?

Senator SCOTT. No, I would call it one of the greatest gambles for peace which may turn out to have been very good or very bad. We don't know yet. History hasn't told us.

Mr. GILL. Senator, on that basis of the Vice President's remarks concerning the statements of Ambassador Harriman, having gone over those remarks and knowing what he said now, is there anything in your mind that Averill Harriman may have said on that program that would in any way justify the description of the ancient mariner who had a compulsion to explain through eternity the failures of his efforts?

Senator SCOTT. Well, I didn't see more than about one minute of what Ambassador Harriman said. I have read since the reports. My own feeling is that Ambassador Harriman will have to write a book to explain all of the things that he did or did not do. But, having been the Ambassador at the time when peace efforts did not work and the war was escalated, it is very important for him, as a public official, somehow to convince the public that he really was more successful than in fact he was. Now, that doesn't mean I'd call Averill Harriman a lot of names for being defensive, but I think it is a fair observation to say that he is terribly anxious to prove that he did a better job than the record presently indicates that he did. But I don't think of him particularly as an ancient mariner. He does conjure up an amusing picture. Averill is such a dignified, aristocratic man that the thought of him carrying an albatross around his neck or something is funny.

Mr. CLARK. Senator, you have been one of the leading voices in Congress in the efforts to open up new paths toward a responsible disengagement from the war, and you proposed a month or so ago that we initiate a cease fire and hold to it until it was violated by the other side. Would you still like to see this approach tried?

Senator SCOTT. Well, Bob, I have felt that

one of these approaches was the unilaterally initiated cease fire whereby if we said that on a certain day we intended to stop firing, if they did, and then we set the 31st of something rather than the English phrase "the 17th of never," rather set the 31st of somewhere and say that on that date we intend not to fire. Now, on that date the sun dawns and we watch the enemy's batteries. If they don't open up, that is the answer to us. It doesn't have to occur at Paris or Saigon. It can occur in Danang or some place when the enemy does not fire back, and then if it continues you have a cease fire. That is all I was proposing.

Mr. CLARK. Would you still like to see this?

Senator SCOTT. I would still like to see it, but it is not the official position and therefore, as the party's leader, I do support the official position, which is a mutually supervised cease fire in accordance with the President's proposal of May 14th. I was simply trying out trial balloons of my own and I do have to warn you that not every trial balloon that Scott tries out is necessarily a Nixon trial balloon, you see.

Mr. GILL. Senator, there is a great debate. We might even call it legitimately an acrimonious debate in the Senate, as to whether or not the U.S. Senate may legitimately debate the subject of a nominee's political philosophy in determining whether to confirm his nomination, that being Judge Haynsworth. I would like to know what your feelings are on this subject. Is this man's political philosophy a reasonable subject of debate?

Senator SCOTT. To be one of the nine Justices of the Supreme Court involves, in the use of the advise and consent power of the Senate, the most searching examination of character, integrity, judicial competence and point of view because the President is dead right when he says he has the right to appointment of men who agree with him and if Judge Haynsworth's nomination should fall—I say if it should fall—and the President fully expects it to be confirmed—if it should fall, I would hope the President would name a strict constructionist. I would rather like him to name a southerner like Judge Dawson, or Oren Lewis, or Congressman Poff, just to take one state, or Walter Hoffman, judges or congressmen who are southerners and conservatives, because the court needs balance and the court has had a balance and I am not a conservative and therefore I believe the point of view is a factor among others.

Another thing that is a factor is whether or not a justice of the Supreme Court would continue to dissent from the edicts and the precedents of the court or whether he would not and I think that is the point made by Senator Javits, which is not totally governing on me, but ought to be mentioned.

Another point is pressure.

Mr. CLARK. If we could just mention your reference to Javits, he said in announcing his decision on the Senate floor this week to vote against Judge Haynsworth, that a vote for confirmation, or confirmation would be a staggering blow to civil rights. Is this something you are concerned about?

Senator SCOTT. I don't buy that entirely either. I think what is more important to be considered are, first, questions of judicial ethics. I have resolved those in my own mind.

Second, when I said point of view, will a judge abide by the precedents of the court; not just civil rights, because I have told the civil rights people, I have told the union labor people, I have told the chamber of commerce, and I have told the pressure people for Haynsworth that I am going to make up my own vote. My vote is my vote and I will cast it.

Mr. CLARK. You have made up your mind, Senator.

Senator SCOTT. I have made up my mind subject to change in the event of some unexpected development.

Mr. CLARK. Would you like to tell us what side you are going to vote on?

Senator SCOTT. I would like to but I won't.

Mr. CLARK. The Judiciary Committee of which you are a member said in its majority report this week that Judge Haynsworth is not guilty of any faintest ethical violation. Do you agree with that?

Senator SCOTT. I am inclined to think that this is a difficult point to answer, but it is one where the opponents, in charging ethical violations, have had the laboring oar and I think they have had a very difficult time in proving any actual ethical violation, Bob. They have tended more to prove what they call a certain insensitivity. But I think their case toward ethical violation has not been strongly stated.

Mr. CLARK. Senator, I am sorry to stop you here, but we have run out of time. It has been a great pleasure having you with us on "Issues and Answers."

Senator SCOTT. Thank you.

SUPREME COURT OF THE UNITED STATES

The Senate as 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 PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. METCALF. Mr. President, during the speech of the distinguished and able junior Senator from West Virginia (Mr. BYRD), he had a colloquy with the distinguished Senator from Mississippi (Mr. STENNIS). The Senator from Mississippi discussed his experience as a judge. I am going to begin my remarks with a similar personal experience because I once served as a judge on the appellate court of the State of Montana, the supreme court of the State. I am going to draw on my experience as a judge of that court in considering the nomination of Judge Haynsworth for another court.

When I first read of Judge Haynsworth's selection, I was pleased to learn that he had a greenhouse in which he grew flowers and propagated camellias. I was once a member of an appellate court in Montana and had a greenhouse to which I came home after the arguments and hearings and reading of decisions. I enjoyed the opportunity of making things grow from seeds and cuttings, although in that climate camellias were difficult. I felt I had an identity with Judge Haynsworth. Had I been required to vote immediately after his nomination, I would have voted for a circuit judge's elevation to the Supreme Court and for a fellow horticulturist.

When the nomination of Judge Haynsworth was first presented I read a few of the cases that he decided—the Logan case, *N.L.R.B.* v. *SS Logan Packing Co.*, 386 R 2d 562; the Deering Milliken case, *Deering Milliken, Inc.* v. *Johnston*, 295 F 2d 856; *Glendale Manufacturing Co.* v. *Local 520 ILGWU*, 283 F. 2d 936; *Sheppard* v. *Cornelius*, 302 F. 2d 89; and several others. I would not have come to the same conclusions that Judge Haynsworth reached, but the opinions were lawyer-like and well written. When I was a member of the Montana Supreme Court, I learned that two judges can take the same line on cases and come to different conclusions. I also learned that the judge who reached an opposite conclusion on one case was often the judge who cast the decisive vote to make your next opinion a majority one. After 6 years on an appellate court, I also learned that reversal of a lower court is not censure or disapprobation. As a former appellate judge, I approved the Haynsworth style—succinct, terse, and closely written opinions without the rhetoric or literary flourishes that constitute many decisions.

The people who are sponsoring Judge Haynsworth's confirmation are saying that he is a "lawyer's lawyer" and a "judge's judge." Nothing could be more absurd. Judge Haynsworth is obviously a competent lawyer and a pedestrian writer of opinions. But for innovative ideas, forward-looking concepts, there are opinions in every volume of the Federal Reporter that are better than Judge Haynsworth's.

However, not all of us can write as Learned Hand or Louis Brandeis do and for many of us on appellate courts a style that is not redundant and diffuse is welcome.

Therefore, I was prepared to vote to confirm Judge Haynsworth before the revelations of the hearings before the Judiciary Committee. I felt that here was a kindred soul who likes flowers and believes in short opinions and is lawyer-like in his analysis of the law. Despite disagreement with his conclusions I thought I should acquiesce in his appointment to the Supreme Court.

But when objections were raised and when revelations as to Judge Haynsworth's financial affairs began to appear in the press then I knew that in order to fulfill my own constitutional obligations I would have to await the results of the hearing and do some additional work and more careful consideration and analysis of his record.

I have never met Judge Haynsworth. I have based the following conclusions on the record just as he in his capacity as a judge of the Fourth Circuit based his decisions on the record of the case before him.

The duty of confirming the nomination of a Supreme Court Justice is different from that of advising and consenting to the appointment of a Member of the Cabinet, of Assistant and Under Secretaries, ambassadors, and others. The latter, whether they be Secretary of State or U.S. marshal, are only in office during the term of the President by whom they were appointed and the appointment is for a limited period.

Insofar as the judiciary is concerned the appointment is for the life of the judge. This is true at every level. Therefore, the oft repeated dictum that the President should have wide latitude in his appointments, and unless there is a showing of moral turpitude or lack of integrity the Senate should confirm, is not applicable to nominations to the judiciary. There is a higher standard for a judge. It is self-evident that Supreme Court Justices nominated by President Franklin D. Roosevelt more than 30 years ago are still sitting on the Court.

At age 56 Judge Haynsworth would be a member of the Court for 15 or more years. The concept that the President,

any President, should have the opportunity to appoint his advisers, and his bureau chiefs is not relevant to judicial appointments. Therefore, in carrying out this responsibility of ours, as Members of the Senate to advise and consent on the nomination to the judiciary, we have higher responsibilities and additional obligations in the case of a judicial nominee because the man we confirm may direct judicial trends for as many as the next three decades, long after the President who nominated him has left office.

This large responsibility is confirmed by a study of the origins of the constitutional provision for the advice and consent of the Senate in the approval of a Presidential nomination for Judges of the Supreme Court.

Article II, section 2 of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Judges of the Supreme Court." The original understanding, the practice of the Senate, and the status of the judiciary as a separate branch of Government all support the conclusion of the Senate has both the right, and the positive duty, to play an active role when it passes on a nomination to the Supreme Court.

First, until the final drafts of the Constitution, the Senate was given the sole power over Supreme Court appointments, with the executive to have sole power over all other appointments. Successive attempts to transfer the power to appoint Supreme Court Justices to the President were defeated. After those defeats the compromise pursuant to which the President nominates, and with the advice and consent of the Senate appoints both judges and other officials, was adopted—see, "The Debates of the Federal Convention of 1787," pages 39–40, 56, G. Hunt & J. Brown, Editors, 1920. Thus, from the first the particular competence of the Senate as to the Supreme Court nominations has been recognized.

Second, consistent with the original understanding, the Senate has repeatedly exercised its prerogatives in dealing with Supreme Court nominations. Of the 121 Presidential nominations to the Court, 22 have been rejected—nine by vote, 10 by senatorial refusal to act, and three by withdrawal in the face of anticipated Senate rejection. Thus, as the leading study in the field notes, very nearly one-fifth of the nominations have failed, a far higher percentage than for any other office—see J. Harris, "The Advice and Consent of the Senate," 303, 1953.

Third, the original understanding and Senate practice are a reflection on the unique status of the judiciary. The judiciary is not a part of the executive; it is an independent and equal branch of Government. Thus, there is no reason in policy to allow the President a wide discretion to mold the Federal courts to his own design. To the contrary, in the situation in which the Chief Executive errs, it is the Senate's duty to safeguard the prestige and reputation of the courts.

In sum, as the Senator from Michigan (Mr. GRIFFIN) stated in June of this year:

Under our Constitution the power of any President to nominate constitutes only half of the appointing process. The other half lies with the Senate.

The basic arguments against the confirmation of Judge Haynsworth's nomination are well known:

First, Judge Haynsworth has not shown the capacity to put aside the predispositions and prejudices derived from his private practice in order to render equal justice for all under law. His decisions show that he is insensitive to the legitimate interests of the black and working communities.

Second, Judge Haynsworth has not met the high standards of judicial ethics the Senate set as the first prerequisite for a potential Supreme Court Justice when it refused to confirm Abe Fortas as Chief Justice of the United States.

Third, Judge Haynsworth's testimony to the Judiciary Committee was shot through with ambiguity, evasion and misrepresentations. The picture that emerges from the record is a man with an abiding affinity for inaccuracy. His wholesale unwillingness or inability to deal accurately and straightforwardly with the various issues raised at the hearings is obviously a further disqualification for elevation to the Nation's highest court.

These deficiencies plainly call for the rejection of the nomination presently before us. However, rejection of the nomination in and of itself, as important as it is, is not enough. The Senate has a duty, to the Nation, to the Court, and to itself, to reaffirm two basic preconditions to the confirmation of a Supreme Court Justice.

There are indications that this nomination is not an isolated error. Reports emanating from the White House ascribe to the administration a determination to reshape the Supreme Court in its own image. In light of Judge Haynsworth's record, it is plain that this determination is premised on the view that the highest qualification for a seat on the Supreme Court is complete ideological identification with the reactionary tenets of the administration's southern strategy. Such a narrowly political viewpoint poisons the wellsprings of the nomination process and if allowed to succeed, will inevitably destroy public confidence in the integrity of our governmental processes.

The Supreme Court is the summit of our legal system. Its powers are of impressive proportions. The responsibilities placed upon the Justices are correspondingly weighty. It is meet and proper that only those who have demonstrated, and who have been generally recognized as having, truly extraordinary capacity should receive the highest honor that a member of the legal profession can attain. The country has the right to demand no less.

Thus, it is of the essence that only a nominee who is of the highest distinction—a man who has lived greatly in the law—be confirmed.

Excellence is always its own justification. But in this context, it is more—it is an absolute necessity if the Supreme Court is to remain above politics. From deToqueville on it has been recognized that our system of government entrusts greater responsibilities to the judiciary than any other. When the Court considers a constitutional question, or a question concerning the meaning of a major piece of legislation, it is faced with resolving vital conflicting interests and it is often guided by only the most general language or by statutory provisions that are subject to diverse readings. Those who have no faith in the judicial process take this to mean that the Justices are free to do as they please. On this basis they argue that ideology is everything. I do not share that view. There are objective truths to be discerned in answering the questions posed for decision in the cases, raising both constitutional and statutory issues, that come before the Federal Courts. The most revered of our judges, such as Cardozo, Brandeis, and Learned Hand, merit acclaim on the ground that their opinions are more faithful to the intent of the law than those of lesser judges, not on the ground that they were able to impose their prejudices on the law through the force of their office. The comparatively open texture of the law does mean, however, that ascertaining the true answer to the questions thus posed is a task of the most extreme difficulty and sensitivity. Great depth and breadth of knowledge, profound understanding, and complete self-discipline and detachment are required. For if a Justice does not possess these qualities, experience demonstrates that the results he reaches will tend to be an unmastered reflection of personal inclination rather than an attempt to capture the essence of right reason.

In light of the nature and importance of the Supreme Court's role, the only guarantee sufficient to safeguard the confidence of the people is a nominee of extraordinary stature. For the distinguishing feature of men of the highest caliber is that they are not of one piece. They cannot be captured in catch phrases such as "liberal" and "conservative." Their greatness as men, and as judges, lies in the fact that they see the complexity of vital questions and that they approach such questions as their own man, not as a champion of a narrow view, or of a sect, or interest group. In a true sense, it is their large-minded independence that insures that no group can capture the Court, and it is this assurance, and this assurance alone, which can save the nomination process from the corrosive effects of power politics.

It is true, of course, that several nominees of the highest caliber have been strongly attacked for their views, particularly Justice Brandeis, and Frankfurter and Chief Justice Hughes.

Let me add that I listened to the able speech of the Senator from West Virginia (Mr. BYRD). He quoted probably the greatest Member of the Senate who came from Montana prior to the elevation of our majority leader, Senator Walsh, who was defending the nomination of Justice Brandeis. In the Senate, I am one of the successors of Senator Walsh. I am in the line of succession. He was one of the outstanding lawyers to serve in the Senate. I concur in every-

thing he said and in everything that was quoted by the very able Senator from West Virginia. But he was defending Justice Brandeis, not Judge Haynsworth.

The important point is not the vehemence of these attacks, but that none of them had a substantial impact on the Senate. Its collective wisdom and restraint in passing upon distinguished appointments was demonstrated by the fact that these nominations were approved by wide margins.

The critical difference between those nominations and the present one is that on the record Judge Haynsworth is not a man of the highest stature.

Indeed, none of his adherents, from the President on down, claim that legal excellence was the reason for his nomination. Former Judge Lawrence E. Walsh, an ardent supporter of Judge Haynsworth, and a man who has served in this and the prior Republican administration, was able to state only that lawyers and judges in his area "will put him right at the top of those who would be eligible for consideration for this post from that circuit." Since there are only seven judges on the Fourth Circuit, this is hardly a sweeping endorsement. Moreover, even this faint praise is qualified to nothing by Judge Walsh's phrase "who would be eligible." Since all of these judges are eligible as a matter of law, it would appear that the committee whose findings Judge Walsh reported would have had to exclude the three members of the Fourth Circuit who are over 65 because of age, the two members of that court who have served less than 3 years for lack of experience, and, perhaps the remaining judge, Judge Winter, who has compiled a forward-looking record, because of philosophy. For the President has stated that "age, experience, background, and philosophy" all enter into his calculations. The unfortunate but inescapable truth is that even among the members of the bar who share Judge Haynsworth's philosophy, his performance has aroused no enthusiasm for his craftsmanship, or his depth of vision. The consensus was well stated by Anthony Lewis, a respected student of the court:

> 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 would call it a distinguished appointment . . . Those who feel [policy and ethical] 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 . . . In short, the argument against Clement Haynsworth is not that he is an evil man or a corrupt man, 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. Lewis, The Senate and the Supreme Court, N.Y. Times, Oct. 19, 1969, p. F–14

When a lawyer becomes a judge, his proper constituency is no longer the special interest group or groups he represented in private practice, but his constituency becomes the larger one of all people in every walk of life. He must put aside the predispositions and prejudices derived from his private practice, in order to render equal justice for all under law. Most judges do this successfully. We often see great growth in awareness of public problems and increased depth and breadth of vision on the part of judges who were identified with business, or other special interest groups, before appointment to the Bench. The history of the Court contains several notable instances of men of exceptional character, ability, and understanding who outgrew the more parochial concerns of their prior experience and brought to their tasks objectivity and disinterestedness.

In Judge Haynsworth's case, however, there is no reason to anticipate such growth. Not only has he failed to demonstrate the requisite technical skills of a great judge, but his record as a circuit judge reveals his inability to surmount the preconceptions which he brought to the bench. The most striking examples are in his decisions involving labor relations and civil rights. The law's basic policy in these areas was clarified well before Judge Haynsworth became a Federal judge. In 1935, in 1947, and again in 1959, Congress decided that peaceful concerted activity by working men and women, that it had not expressly declaimed illegal, should be protected by law. In 1954 the Supreme Court held that separate school systems divided along racial lines were unconstitutional. Thus, Judge Haynsworth was not required to anticipate new developments in these fields, all that was required was his acceptance of the authoritative commands of Congress and the Supreme Court. Yet, his labor decisions reflect partisan judicial activism curtailing the law's protection of concerted activity, and his civil rights decisions demonstrate a continuing refusal to follow either the spirit or the letter of the Supreme Court's decisions. Unlike the courageous courts of appeals judges in the South, who have enforced the law as set forth in Brown, and who have accommodated themselves to the national labor policy, despite the fact that neither are popular with that region's establishment, he has followed the path of convenience rather than the path of the law.

The only tenable conclusion is that the administration has chosen Judge Haynsworth precisely because of his demonstrated lack of growth while on the Fourth Circuit. It is zeal in the pursuit of its southern strategy is such that it appears unwilling to chance the appointment of a Justice who will decide vital issues of the day on the merits.

The recent controversy over the nomination of Abe Fortas to be Chief Justice of the United States established a second basic standard that every future nominee must meet. As the Senator from Michigan (Mr. GRIFFIN) has stated:

> The Senate's role has been clarified and strengthened. No longer is it limited merely to ascertaining whether a member of the Court is "qualified" in the sense that he possesses some minimum measure of academic background or experience . . . this solemn obligation includes ascertaining whether the nominee has sufficient sense of restraint and propriety. If the judiciary in general and the Supreme Court in particular are to remain secure against tyrannies of all persuasions, they retain the public's trust and confidence. The courts must not be scarred even by suspicions concerning the financial or political dealings of their members.

The ethics issue has been examined in depth during the hearings on Judge Haynsworth's nomination. The conclusion that Judge Haynsworth has not met the standards that the Senate set less than 2 years ago is inescapable. His failure to cut his financial ties to his professionable clients and to recognize the high standards of propriety required of judges, is part and parcel of his failure to achieve the detachment necessary to the proper effectiveness of the judicial function.

The documentation that Judge Haynsworth failed to respond to the black community, indeed that he was unaware of the legitimate demands has been made both prior to and after the decision in the Brown case.

I share the views that have been so ably presented in the committee and on the Senate floor as to Judge Haynsworth's failures in the civil rights cases. But so flagrant have been these failures that it is often overlooked that like failure to comprehend the social advancements and the national needs in labor law have been equally demonstrated. I shall try to document some of Judge Haynsworth's record of lack of recognition of the legitimate demands of America's working men and women.

The record of the Federal judiciary over the years in labor cases is one that significantly damaged the prestige of the Federal courts. It is set out in Frankfurter and Green, the Labor Injunction, 1930. The detrimental effects of generations of "government by injunction," of the misapplication of the Sherman Act, and of the overriding of the congressional will as embodied in section 6 of the Clayton Act, have not yet spent themselves. There is still widespread distrust of the courts among working people.

In light of this historical record, the majority report, and the memorandum prepared by Senators HRUSKA and COOK wisely avoids the position that a judge who has a record of hostility toward organized labor is fit to sit on the High Court. Instead, both Senators attempt to argue that Judge Haynsworth has not shown himself to be hostile toward labor. The record rebuts their position. It demonstrates that Judge Haynsworth's basic approach is characterized by an insensitivity to the needs and aspirations of workers, and to the plight of unorganized employees working for an antiunion employer in a local environment hostile to unionism. In marked contrast, he is instinctively overly sensitive to the views of employers, including rabidly antiunion ones.

Here, as in the critical areas of Judicial Ethics and Civil Rights, Judge Haynsworth has failed to demonstrate the highly developed sense of judgment and detachment which is of the essence for a nominee to the Supreme Court. He was an advocate for the textile industry before he went on the court of appeals, and he remained one after he got there.

I hope that the junior Senator from West Virginia, who has preceded me will analyze the following cases before he votes on Judge Haynsworth's confirmation, if he continues to hold his conten-

tion that Judge Haynsworth is not anti-labor.

The statistical basis for the view that Judge Haynsworth is hostile to organized labor is overwhelming. First, during his 12 years on the bench, Judge Haynsworth sat on seven cases involving labor-management relations that were reviewed by the Supreme Court:

NLRB v. *Rubber Workers (O'Sullivan Rubber Co.)*, 269 F. 2d 694 (1959), reversed per curiam 362 U.S. 329 (1960).

United Steelworkers of America v. *Enterprise Wheel and Car Corp.*, 269 F. 2d 327 (1959), reversed 36 U.S. 593 (1960).

NLRB v. *Washington Aluminum Company*, 291 F. 2d 869 (1961), reversed 370 U.S. 9 (1962).

Darlington Mfg. Co. v. *NLRB*, 325 F. 2d 682 (1964), reversed sub nom.

Textile Workers Union v. *Darlington Mfg. Co.*, 380 U.S. 263 (1965).

NLRB v. *Gissel Packing Co.*, 398 F. 2d 336 (1968).

NLRB v. *Heck's, Inc.*, 398 F. 2d 337 (1968).

General Steel Products, Inc. v. *NLRB*, 398 F. 2d 339 (1968), reversed.

NLRB v. *Gissel Packing Co., et al.*, 395 U.S. 575 (1959).

In all seven cases that went to the Supreme Court, Judge Haynsworth voted against the labor position.

In all seven cases Judge Haynsworth was reversed by the Supreme Court.

In six of the cases, the Haynsworth position was unanimously rejected by all participating Supreme Court Justices. Judge Haynsworth's position was supported by only one Supreme Court Justice—Justice Whittaker—in one case. Thus, Judge Haynsworth's views in labor cases were rejected not only by those Supreme Court Justices considered liberals, but by such conservative or moderate Justices as Frankfurter, Harlan, Clark, Stewart, and White.

There are three additional decisions which could be regarded as labor cases in a broad sense, though not involving labor-management relations. In each of these cases, too, Judge Haynsworth voted in favor of the employer, and in each of them the Supreme Court reversed:

Walker v. *Southern Railroad Co.*, 354 F. 2d 950 (1965), reversed per curiam 385 U.S. 196 (1966).

Mitchell v. *Lublin, McGaughy and Associates*, 250 F. 2d 253 (1957), reversed 358 U.S. 207 (1959).

United States v. *Seaboard Airline Railroad*, 258 F. 2d 262 (1958), reversed 361 U.S. 78 (1959).

Thus, Judge Haynsworth's overall record in the Supreme Court in the labor field is 0 out of 10—no affirmances and 10 reversals.

Every advocate believes that his case is a critical one. But there is only one objective measure of the importance of a Federal lawsuit; whether the Supreme Court has agreed to exercise its discretionary power of review. Certainly the foregoing record conclusively establishes the proposition that as to vital labor questions, Judge Haynsworth's decisions reflect an antilabor bias as measured against the decisions of the Supreme Court.

Second, Judge Haynsworth sat on 17 labor-management cases in which there was a division of opinion among his fellow judges on the Fourth Circuit. It may be assumed that these were close cases. In addition to the divided cases that went to the Supreme Court, O'Sullivan Rubber, Washington Aluminum and Darlington, they are:

Textile Workers v. *American Thread Co.*, 291 F. 2d 894 (1961), Boreman and Haynsworth, JJ, Sobeloff, J, dissenting.

Lewis v. *Lowry*, 295 F. 2d 197 (1961), Haynsworth and soper, JJ; Sobeloff, J, dissenting.

NLRB v. *Quaker City Life Insurance Co.*, 319 F. 2d 690 (1963), Bell and Haynsworth, JJ, Boreman, J, dissenting.

Wellington Mill Division, West Point Mfg. Co. v. *NLRB*, 330 F. 2d 579 (1964) Boreman and Haynsworth, JJ, Bell, J, dissenting.

Radiator Specialty Co. v. *NLRB*, 336 F. 2d 495 (1964), Bryan and Haynsworth, JJ; Sobeloff, J, concurring and dissenting.

NLRB v. *Wix Corp.*, 336 F. 2d 824 (1964), Bryan and Haynsworth, JJ, Bell, J, dissenting.

NLRB v. *M & B Headwear Co.*, 349 F. 2d 170 (1964), Sobeloff and Haynsworth, JJ; Bryan, J, dissenting.

Taylor v. *Local 7, Horseshoers*, 353 F. 2d 593 (1965), Boreman, Haynsworth and Bryan, JJ; Sobeloff and Bell, JJ, dissenting.

NLRB v. *Lyman Printing & Finishing Co.*, 356 F. 2d 884 (1966), Bryan and Haynsworth, JJ; Bell, J, dissenting.

Dubin-Haskell Lining Corp. v. *NLRB*, 386 F. 2d 306 (1967), Winter, Sobeloff, Craven, Butzner, and Haynsworth, JJ; Boreman and Bryan, JJ, dissenting reversing 375 F. 2d 568 (1962), Boreman, Bryan, and Janes, JJ; Sobeloff and Craven, JJ, dissenting.

Westinghouse Electric Corp. v. *NLRB*, 387 F. 2d 542 (1966), Boreman, Haynsworth, Bryan, and Winter, JJ; Sobeloff and Craven, JJ, dissenting.

Schneider Mills, Inc. v. *NLRB*, 390 F. 2d 375 (1968), Winter, Haynsworth, Borman, Bryan, and Butzner, JJ; Sobeloff and Craven, JJ, dissenting.

Darlington Mfg. Co. v. *NLRB*, 397 F. 2d 760 (1968), Butzner, Sobeloff, Winter, and Craven, JJ; Haynsworth, J, dissenting.

Arguelles v. *U.S. Bulk Carrier, Inc.*, 408 F. 2d 1065 (1969), Boreman and Bryan, JJ; Haynesworth, J, dissenting.

If Judge Haynsworth had an open mind on labor matters one would expect to find a certain balance between his pro- and anti-labor votes in such cases. However, an examination of these cases discloses that Judge Haynsworth voted completely or substantially in favor of the employer 13 times, in favor of labor only 3 times—Quaker City Life, Dubin-Haskell Lining Corp. and M & B Headwear Co.—and took a middle position once—*Darlington*, 397 F. 2d 760.

A qualitative analysis of Judge Haynsworth's major labor cases, those that went to the Supreme Court, is equally damning. For such an analysis demonstrates: First, that Judge Haynsworth has not grasped a central feature of the labor policy Congress has constructed; namely, that the courts are not to interfere with the right to engage in peaceful concerted activity unless there is a clear and express statutory basis for doing so; second, that Judge Haynsworth has exhibited a faculty for stretching employer-oriented arguments far beyond the breaking point in order to disadvantage employees who have opted for unionization; and third, that Judge Haynsworth has not shown the slightest concern over the harsh consequences to employees of the tenuous legal positions he has espoused.

The basic lesson learned from the judicial performance in labor law prior to 1937 is that the courts are unable, on their own, and without detailed congressional direction to regulate labor-management relations, in a fair, effective and rational fashion. During that period, most courts treated the concerted action of employees as a tortuous and enjoinable conspiracy whenever they regarded the means or objectives as unlawful; the only standard of lawfulness was the judicial view of the desirability or undesirability of the activities in question. One of the objectives of Congress in guaranteeing the right to engage in concerted activities in section 7 of the NLRA was to deprive employers of the weapon of this conspiracy doctrine—see, *International Union, UAW* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 257–258 (1949). Prior to the fourth circuit decision in Washington Aluminum, the NLRB and the reviewing courts had given effect to labor history by avoiding approaching the interpretation of concerted activities in a manner which would invite scrutiny of the fairness or unfairness, the wisdom or unwisdom, or the desirability or undesirability of peaceful activities which are concerted in fact and do not violate a clear legal mandate.

Washington Aluminum presented the question of whether peaceful conduct, otherwise clearly protected by section 7 of the NLRA—in that case a strike to protest bitterly cold working conditions—risks the loss of that protection if the employees do not allow the employer an opportunity, sufficient in the eyes of the court, to correct their grievance. The fourth circuit held that that protection of section 7 is available only where the employees can convince the courts that they did provide their employers with such an opportunity. In doing so, the court of appeals went counter to the basic policy Congress embedded in section 7, and against a line of authority upholding the protected nature of spontaneous strikes to protest intolerable conditions—see for example, *NLRB* v. *Southern Silk Mills*, 209 F. 2d 155 (C.A. 6th Cir., 1953)—and it was, therefore, reversed unanimously by the Supreme Court.

Judge Haynsworth's failure to grasp the circumscribed nature of the permissible regulation of peaceful concerted activity was also exhibited in the O'Sullivan Rubber case. In O'Sullivan Rubber, the issue was whether section 8(b)(1)(A) of the NLRA, which prohibits "restraint and coercion," could be employed by the NLRB to prohibit peaceful picketing by

a union that had lost its majority status during a strike in which the company replaced the union's members. Prior to 1957, the NLRB had recognized that section 8(b)(1)(A) did not prohibit such picketing. In 1957 the board reversed itself in *Drivers Local 639 (Curtis Bros.)* 119 NLRB 232. The District of Columbia second, ninth, and fourth circuits reviewed the Curtis doctrine. The District of Columbia and second and the ninth circuits rejected it. Only the fourth circuit accepted it. The matter then went to the Supreme Court which affirmed the District of Columbia Circuit, *NLRB v. Drivers Local 639*, 362 U.S. 274 (1960)—three justices favoring a remand to the board for consideration of the effect of section 8(b)(7) which had been passed in 1959 and which dealt in specific terms with organizational picketing—and which reversed the fourth circuit unanimously.

In Curtis Bros. the Court made it plain that the fourth circuit had fallen into error by ignoring section 13 of the National Labor Relations Act which "is a command of Congress to the courts to resolve doubts and ambiguities in favor of an interpretation of section 8(b)(1)(A) which safeguards the right to strike as understood prior to the passage of the Taft-Hartley Act"—362 U.S. at 282—and by refusing to heed decisions such as *IBEW v. NLRB*, 341 U.S. 694, 701–3 (1957), which had emphasized the restricted nature of section 8(b)(1)(A). Thus the error made by Judge Haynsworth, in O'Sullivan as in Washington Aluminum, was to substitute his restricted view of the importance of the right to engage in concerted activities for the broader view of Congress.

While not a section 7 case, the Enterprise Wheel decision is a further illustration of Judge Haynsworth's penchant for partisan judicial activism. In that case, the fourth circuit reversed an award reinstating certain employees on the ground that the award was unenforceable after the underlying collective agreement had expired. The Supreme Court, with only Mr. Justice Whittaker dissenting, reversed, stating—363 U.S. at 598–599:

> The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards * * * plenary review by a court would make meaningless the position that an arbitration decision is final * * *. It is the arbitrators' construction which was bargained for; and so far as the arbitrators' decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

Enterprise Wheel was one of three companies' cases in which the Supreme Court outlined the basic contours of the Federal labor policy on arbitration. Some of what the Supreme Court said in these cases was novel in terms of prior conventional learning. The interesting facet of Enterprise Wheel, however, is that the decision was in no way novel; it was merely the reaffirmation of a policy, sound in both the commercial and labor fields, announced in 1855 in a commercial arbitration case:

> Arbitrators are judges chosen by the parties to decide the matters submitted to them finally and without appeal. As a mode of settling disputes it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error either in law or in fact. A contrary course would be a substitution of the judgment of the Chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation. *Burchell v. Marsh*, 17 How. 344, 349 (1855).

Indeed, as the Supreme Court recognized, the applicability of the principle of Burchell against Marsh, in the labor area was plain in light of section 203(d) of the Taft-Hartley Act which states:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

Judge Haynsworth's faculty for stretching employer-oriented arguments far beyond the breaking point to disadvantage employees who choose unionization is most strikingly illustrated in the Darlington case and in the card check cases—Gissel Packing, Heck's, and General Steel.

In the Darlington case the majority of the fourth circuit, sitting en banc, accepted the proposition that Deering-Milliken, which operated and controlled numerous textile companies, including the Darlington Co., had the status of a single employer which was responsible for the closing of Darlington as the answer to a representation election victory by the Textile Workers Union; the majority then held that the closing was not an unfair labor practice on the ground that "a company has the absolute right to close out a part of or all its business regardless of antiunion motives."

The question of whether a single employer should be allowed to close down entirely is an extremely difficult one. However, as the Supreme Court recognized—380 U.S. at 274–275—there is no policy argument at all for allowing a partial closure based on antiunion animus:

> A discriminatory partial closing may have repercussions on what remains of the business, affording employer leverage for discouraging the free exercise of § 7 rights among remaining employees of much the same kind as that found to exist in the "runaway shop" and "temporary closing" cases . . . Moreover, a possible remedy open to the Board in such a case, like the remedies available in the "runaway shop" and "temporary closing" cases, is to order reinstatement of the discharged employees in the other parts of the business. No such remedy is available when an entire business has been terminated.

The question of the precise circumstances under which a bargaining order based on authorization cards should be issued is also complex. It has troubled the NLRB and the courts of appeals for a number of years. On the one hand, it is often stated that an election which is not marred by unfair labor practices is preferable to a card check. On the other hand, in 1947 Congress rejected a proposal to make elections mandatory, and both prior and subsequent to 1947 the Supreme Court has held that card checks are lawful, see, *Mine Workers v. Arkansas Oak Flooring*, 351 U.S. 62 (1956). Moreover, it is generally acknowledged that the Board's remedial sanctions are too weak; and depriving the Board of its power to issue bargaining orders when an employer commits substantial coercive unfair labor practices strips it of its most effective weapon.

Because of the balance of these considerations, the first, second, fifth, and sixth circuits, the appeals courts other than the fourth circuit which considered the matter, rejected the suggestion that it is beyond the board's power to issue bargaining orders, based on authorization cards, when an employer commits substantial unfair labor practices. Only the fourth circuit, speaking through Judge Haynsworth, accepted it. The extreme pro-employer bias of the fourth circuit's view was recognized by the Supreme Court when it stated (395 U.S. at 609):

> If the Board could enter only a cease-and-desist order and direct an election or a rerun, it would in effect be rewarding the employer and allowing him "to profit from [his] own wrongful refusal to bargain, . . . while at the same time severely curtailing the employees' right freely to determine whether they desire a representative. The employer could continue to delay or disrupt the election processes and put off indefinitely his obligation to bargain; and any election held under these circumstances would not be likely to demonstrate the employees' true, undistorted desires.

The foregoing demonstrates that in labor cases Judge Haynsworth's zeal to further employer interests has been such that he has been blind to the importance of judicial self-restraint, to the basic purposes of Congress in enacting the NLRA, and to the guidance furnished by the Supreme Court—blind, in other words, to all of the basic virtues supposedly associated with "strict constructionism." But these doctrinal points do not reflect the totality of Judge Haynsworth's failures in the field of labor-management relations. They do not capture the human portion of the legal equation, which demonstrates that the tenuous legal positions that Judge Haynsworth has espoused have had extraordinarily harsh consequences for the employees involved.

The formalistic rule of Washington Aluminum, of some relevance perhaps to common law code pleading, but not to modern labor relations, was devised to deprive employees of legal protection when they engage in peaceful self-help "for the purpose of trying to correct conditions which modern labor-management legislation treats as too bad to have to be tolerated in a humane and civilized society like ours," *Washington Aluminum*, 370 U.S. at 17.

In O'Sullivan Rubber, the legal rule approved by the fourth circuit deprived over 300 long-time employees of the company of the basic method of concerted action available to them in their fight to regain the jobs which they had lost to

strike replacements while trying to secure a decent first contact after the union had won an NLRB representation election 343 to 2.

In Darlington, Judge Haynsworth took the position that a partial shutdown in which over 500 employees lost their jobs for doing nothing more than expressing their desire for union representation in an NLRB election should not be considered an unfair labor practice. Apparently it was a matter of supreme indifference to him whether the remaining employees of the Deering-Milliken chain were allowed to make their decision on unionization free of the fear of the same type of retaliation.

In Gissel, the company engaged in coercive interrogation of its employees, threatened them with discharge and other economic harm, promised them economic benefits, and discharged two of the leading union supporters—all to destroy the majority position that the Meatcutter's Union had secured. Judge Haynsworth's response was to order the company to rehire the discriminatees and post notices saying that it would not violate the law again, but to excuse the company from immediate bargaining. Apparently the judge was unconcerned over the fact that the remedy he allowed was an invitation to violate the law, and that it did not afford any protection to employees who wanted immediate union representation, rather than respresentation many years hence.

The two main arguments put forward by Judge Haynsworth's supporters are that those opposed to the judge's nomination have not given adequate consideration to the unanimous decisions in which he participated, and that a number of the Supreme Court cases and split decisions analyzed above are mislabeled as antilabor. Neither of these arguments will bear inspection.

First, it is my view that where there is no division of opinion among Federal judges on a question of law or fact in a labor case, the presumption is that the decision is neither prolabor nor antilabor but rather is clearly dictated by law. Any other view is dangerously cynical as to the nature of the rule of law. It is only where the judiciary is split that it may fairly be said that there are decisional leeways which permit the exercise of a substantial measure of personal judgment.

Benjamin A. Cardozo stated as follows in his famous study of judicial decisionmaking, the nature of the judicial process. When I was a member of the Supreme Court of Montana, I read and reread this landmark document in order to continue to admonish myself to come to the rationale of judicial decisionmaking as referred to in Justice Cardozo's book. Justice Cardozo said:

> Of the cases that come before the court in which I sit, a majority, I think could not, with semblance of reason, be decided in any way but one. The law and its application alike are plain. Such cases are predestined, so to speak, to affirmance without opinion.

Parenthetically, that was probably the situation in the Brunswick case that has been discussed. In reading the Brunswick case, there was only one way the case could have been decided. Perhaps that is why Judge Haynsworth forgot the case was still pending before him.

I shall continue to read from Justice Cardozo's statement in the nature of the judicial process:

> In another and considerable percentage, the rule of law is certain, and the application alone doubtful. A complicated record must be dissected, the narratives of witnesses, more or less incoherent, and unintelligible, must be analyzed, to determine whether a given situation comes within one district or another upon the chart of rights and wrongs. . . . Finally there remains a percentage, not large indeed, and yet not so small as to be negligible, where a decision one way or the other, will count for the future, will advance or retard, sometimes much, sometimes little, the development of the law. These are the cases where the creative element in the judicial process finds its opportunity and power.

Moreover, the question before the Senate is not whether Judge Haynsworth should be impeached because he has shown an absolutely uncontrollable antiunion animus which has made it impossible for him to decide even the simplest case properly; it is whether the judge has shown the professional ability, the detachment, the insight, and the understanding necessary to decide the complex and important cases which continually come before the Supreme Court. The relatively simple cases that provoke no disagreement among courts of appeals judges do not provide guidance in answering the relevant question. They are not the cases that reach the Supreme Court.

Finally, it should be noted that the dynamics of labor litigation are such that it is only to be expected that the great majority of the cases in the fourth circuit quite literally compel a decision in favor of the union. It is for this reason that a mere tabulation of these decisions is of little or no significance. The two main sources of that court's labor work are section 301 arbitration matters, and NLRB matters. The former normally arise from an employer's refusal to arbitrate, a refusal that is rarely, if ever, justifiable under present law—see *United Steelworkers* v. *American Mfg. Co.*, 360 U.S. 564 (1960). The latter are typically factual cases involving discriminatory discharges or other coercive interference with concerted activity since unions in the fourth circuit area are not as strong or well organized as unions in other areas of the country, and employers in that area have shown a strong proclivity for engaging in such conduct. These cases are screened by the Board's general counsel, by a trial examiner, and by the Board itself, and under the law, the factual determinations that are reviewed must be accorded a large measure of respect by the courts. Indeed, the major reason these cases get to court at all is that Board orders are not self-enforcing. If a company refuses to comply, the Board must go to court to secure an enforceable order. Often the type of company that commits clear unfair labor practices is the type of company which recognizes that delay works in its favor, and that a judicial proceeding in a frivolous matter is preferable to voluntary compliance.

Under the circumstances it is clear that all but a small number of decisions should enforce the Board's order. To say that these factual cases cited in the Hruska-Cook letter are prolabor is ludicrous. Indeed, in another context, that letter itself appears to recognize the force of this point. Thus, while it labels unanimous opinion affirming the Board on substantial evidence grounds "prolabor" it dismisses split decisions decided on substantial evidence grounds as follows:

> Of the sixteen divided Fourth Circuit cases which the AFL–CIO lists, only one was written by Judge Haynsworth, *Lewis* v. *Lowry*, 295 F. 2d 197 (4th. Cir. 1961), and that was on *sufficiency of evidence* grounds. Three additional cases were on these grounds (rather than labor-management issues) and were thus not "anti-labor" decisions.

The Hruska-Cook letter's defense of Judge Haynsworth's performance in Supreme Court cases and in split decisions is equally unsound. It is not true that the reversals in O'Sullivan Rubber, Walker against Southern Rail Road and Enterprise Wheel were "based upon fundamental policy changes by the Congress and the Supreme Court subsequent to the fourth circuit's decision." In Curtis Bros., three members of the Court, Justices Stewart, Frankfurter and Whittaker, took the position that the 1959 amendments to the NLRB had such a pervasive impact on the problem that the case should be remanded to the NLRB. The rest of the Court disagreed and decided the case on the basis of the law as it had been prior to 1959, stating that the amendments do not "relegate this litigation to the status of an unimportant authority over the meaning of a statute which has been significantly changed"—362 U.S. at 291. The opinion in Walker against Southern Railroad also demonstrates that the intervening change in the law which occurred was not critical to the decision, and as already stated, Enterprise Wheel is notable for the fact that it does not break new ground and is, in fact, a reaffirmation of a rule of law announced in an 1855 precedent.

Indeed, Walker is especially interesting for the light it shea on the proposition that Judge Haynsworth's civil rights' record is merely a reflection of his preference for a literal approach to Supreme Court precedents. For, in Walker, he went counter to Supreme Court authority squarely in point, which as a practical matter favored labor, on the ground that the reasoning in a more recent case, *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965) indicated a change in the Court's views. It would thus appear that Judge Haynsworth follows a literal approach where it suits his convenience and not as a matter of principle.

The Hruska-Cook letter is equally unsound when it argues that *Deering-Milliken* v. *Johnston*, 295 F. 2d 856 (4th Cir., 1961) and *United States* v. *Seaboard Air Line R.R. Co.*, 258 F. 2d 262 (4th Cir., 1958), reversed 361 U.S. 78 (1959) are not "labor cases." It is, of course, true that Johnston raised a procedural point,

whether the Federal Courts could enjoin a Labor Board hearing, but it is plain that the labor context was not irrelevant. Here again a comparison with Judge Haynsworth's civil rights' decisions is in order. The opinion in Johnston is notable for Judge Haynsworth's criticism of NLRB delays. While there was much justification for this criticism of the Board, the judge failed to note that the companies who were complaining of Board delays, had contributed mightily to them, or that the discharged employees, not the companies, were the principal victims of Board delay. Judge Haynsworth's stringent criticism of NLRB delays contrasts with his indulgence toward the Prince Edward County School Board in the famous school closing case. There the court of appeals ruled, in a 2 to 1 opinion by Judge Haynsworth, that the district court should not, even after years of litigation, have ruled on the school board's latest evasive maneuvers without giving the Supreme Court of Appeals of Virginia an opportunity to rule first, *Griffin* v. *Board of Supervisors*, 322 F. 2d 332 (1963). The Supreme Court disagreed, declaring:

> There has been entirely too much deliberation and not enough speed—*Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 217, 229.

As to Seaboard Air Line, it is sufficient to say that there Judge Haynsworth was faced with a choice between reading the Safety Appliance Act broadly enough to serve its avowed purpose, the protection of the life and limb of railroad workers, even though that might cause some additional expense to the railroad, or very narrowly in order to save the railroad money. He chose the latter and was reversed by the Supreme Court.

Neither the majority report nor the letter attempt to justify Judge Haynsworth's opinions in Washington Aluminum or Darlington; and on the card check cases they merely relay the following passage from the Gissel opinion:

> Despite our reversal of the Fourth Circuit below . . . the actual area of disagreement between our position here and that of the Fourth Circuit is not large as a practical matter.

The difficulty with this position is that the deleted portion of that quotation states: "in Nos. 573 and 691 on all major issues." Normally, the Court goes out of its way to avoid the appearance of criticizing a lower court that it is reversing. The reversal, especially one that is unanimous, is normally sufficient to make the point. Thus, when the sentence from Gissel is read in its entirety, it is plain that the portion quoted by the majority was simply to soften the blow of a unanimous reversal "on all major points."

Finally, the Hruska-Cook letter takes the view that the decisions in the Wellington Mills case, the Radiator case, the Wix case and in Arguelles against U.S. Bulk Carriers are prolabor. This is incorrect.

Wellington Mills involved in a number of issues: the validity of certain notices posted by the company, of certain actions and statements of supervisory personnel, and certain discharges of union activists. Except for the validity of one statement, every one of these issues was decided in favor of the company by the fourth circuit, which in every instance reversed the NLRB. Thus, unless the rule is to be that any case that is decided in favor of employees, or of a union, in any respect is "prolabor" which is the rule apparently espoused by the majority, there can be no doubt that Wellington Mills is an antilabor decision. Indeed, despite the fact that the Supreme Court has repeatedly stated that it would review evidentary cases only in the most extreme situation, the NLRB considered the decision in Wellington Mills so destructive of employee rights that it secured the consent of the Solicitor General to the filing of a petition for certiorari. Wellington Mills was one of two petitions in an evidentiary case filed by the Board during the 1960's. The company, on the other hand, did not file a petition. Thus the parties had no doubt who had won the case and who had lost it.

In Radiator Specialties, the court upheld the Board's findings of restraint and coercion, a finding which led to a simple cease-and-desist order that cost the company nothing, but reversed the finding that there was an unfair labor practice strike, a finding which required reinstatement of 131 strikers and the payment of substantial back pay. In Wix, the court reversed six of seven Board findings of discriminatory discharges. Finally, in Arguelles, where the only parties were a seaman seeking back wages and his employer, there being no union involved in the suit, the fourth circuit held in favor of the seaman, and Judge Haynsworth, in dissent, voted against his securing a recovery on the ground that while neither party was seeking arbitration it was the preferable method to utilize in settling the dispute.

In supporting Judge Haynsworth at the hearings, Lawrence E. Walsh stated that the judge was "running with the stream of the law at a slower pace than perhaps some others." The record demonstrates that in labor law Judge Haynsworth is some 35 years behind the times. That is simply too slow a pace of advance for a prospective Justice of the Supreme Court.

A discussion of Judge Haynsworth's financial involvement is unnecessary at this time. It has been widely discussed in the press; it has been set forth in the hearings; it has been discussed on the floor. Suffice it to say I have read the evidence concerning the Carolina Vend-A-Matic case, the Brunswick case, and others.

The very able and dedicated Senator from South Carolina (Mr. HOLLINGS) has emphasized the testimony of John P. Frank, who has had several articles on legal ethics and judicial procedure published in the law reviews. Mr. Frank is a recognized authority. He states that in view of the facts confronting Judge Haynsworth, it was not a violation of judicial ethics for him to participate in the six or so cases where conflict of interest might have occurred. I have great respect for Mr. Frank and view his opinions and his articles as genuine contributions to the law and the ethics when a judge has a conflict of interest. It is well accepted that in an instance where there is universal interest such as in a taxation case, there are no grounds for disqualification. Everyone is a taxpayer. A special improvement tax or a corporation tax might be a different matter. I believe that the de minimis rule, that is, the law does not take notice of small or trifling matters, should apply to cases where a judge is a very minor shareholder in a large publicly held corporation. I am not personally concerned about the ethics involved in the Vend-A-Matic case or the Brunswick case insofar as they are applicable to Judge Haynsworth as a continuing member of the Circuit Court. I agree with Mr. Frank that here is no violation of statute and no grounds for impeachment.

But we are not here concerned with impeachment or criminal indictment. Certainly Judge Haynsworth on the evidence adduced has not violated any statute nor has his behavior been such that any valid attack can be made on his integrity as a citizen or a circuit judge.

However, in confirming Judge Haynsworth as an Associate Justice of the U.S. Supreme Court, the Senate is entitled to, and should utilize, higher standards than might be employed in an attack upon the integrity or the actions of a sitting judge.

We are entitled at this initial stage to inquire as to how the nominee has conformed to the standards of the Code of Judicial Ethics and how the citizens of America will accept his own ethical record as he hands down his decisions on the Nation's Highest Court.

The Canons of Ethics of the American Bar Association admonish a judge to not only be "free from impropriety" but to "avoid the appearance of impropriety."

Judge Haynsworth has not "avoided the appearance of impropriety." His Vend-A-Matic activities and his profit of $450,000 while a director and substantial stockholder in the firm constitutes an "appearance of impropriety." The purchase of the Brunswick stock while a case was still pending is another example of failure to avoid "an appearance of impropriety."

In voting on the advise-and-consent motion, I am going to observe the statutes, the Canons of Judicial Ethics of the American Bar Association, and the effect of the appointment on the American public in deciding on my vote for confirmation.

I have outlined the labor cases in which Judge Haynsworth has participated.

In the 10 cases in which Judge Haynsworth participated in labor problems that went to the Supreme Court, all of them were overturned.

Under the conditions I have previously outlined, how can we tell a laborer, a workingman, that Judge Haynsworth, who has decided wrong on labor cases 10 times and has been overruled by the Supreme Court 10 times, should be confirmed? As a lawyer and as a former appellate judge, perhaps I can rationalize his opinions. But looking into his record,

I can wonder if an American workingman can think that Judge Haynsworth would give him justice. At the circuit court level the cases were argued, decided, and appealed. But at least there was an appeal and the Supreme Court had the final decision. A Haynsworth opinion was subject to another judgment other than in the fourth circuit court. If Haynsworth is on the U.S. Supreme Court, his judgment is final and there is no further appeal.

One further comment—the question of the impeachment of Justice Douglas has been raised by the minority leader of the House. If any Member of the House of Representatives believes he has evidence justifying an impeachment resolution, he owes it to the Nation, to the Congress, and to his conscience to bring it now, this very day and not use it as trading stock to attempt to obtain votes on an irrelevant matter.

I am glad that the Senator from Kentucky (Mr. COOK) and other Senators who are vehement supporters of Judge Haynsworth's nomination were equally as vehement in protesting the equation of impeachment of Justice Douglas with a vote against Judge Haynsworth's nomination.

I assure the minority leader of the House if impeachment proceedings are brought, they will receive the same careful and reasoned response that I have given the case at hand.

In fact, there has been too much bartering for votes already in this case. The activities of employees on the President's staff are well known. Members of the Senate have been threatened, coerced, high pressured, and offered special project and appointments, all to secure votes for Judge Haynsworth's confirmation.

The vote for approval or disapproval of a contested nomination of a Supreme Court Justice may be the most important vote we cast in the Senate this session. The results of that vote have already been clouded by activity outside the Senate. I am convinced that every Senator is going to vote his own conscience in this very delicate but important issue.

For a strong Supreme Court, for a high regard of judicial ethics, for the protection of the modern concept of equal justice in civil rights and labor cases, I am going to vote against confirmation.

Mr. President, I yield the floor.

Mr. MANSFIELD. Mr. President, first, let me say I want to express agreement with my distinguished colleague in what he has said relative to impeachment proceedings against a sitting Justice and the coincidental statement or assumption that action on that matter would be tied to action in the Senate on the confirmation or lack of confirmation of the nomination of Judge Haynsworth. It appears to me, as my distinguished colleague has said, that if there is any evidence—and I understand there are those who have been searching for some time—they ought to produce it now, today——

Mr. METCALF. This very afternoon.

Mr. MANSFIELD. Yes, indeed; and it should have no connection—none whatsoever—with what the Senate will do insofar as the nomination of Judge Haynsworth is concerned.

Either they have enough for impeachment or they have not; and if they have, they ought to produce it and let the process for impeachment begin. It will have to be decided here, if they have sufficient evidence. If they have not, then they ought to observe the advice of their President and lower their voices.

ORDER FOR ADJOURNMENT—PROGRAM

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 tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. It is with regret that I cannot see my way clear to ask the Senate to come in earlier, but because of some important hearings, possibly decisions having to do with crime, pornography, and gun legislation in the Judiciary Committee tomorrow morning, I think it is advisable that the Senate meet at noon, to give that committee a chance to report some legislation, which it is very desirous of doing.

I would hope, also, that we would consider staying in session late this afternoon, and that it might be possible sometime to reach an agreement by which we could, at a time certain, vote on the pending nomination. As far as Senators who are opposed to the nomination of Judge Haynsworth are concerned, after inquiring around I find that they do not intend to make very many more speeches, and none, I am informed, of any length.

On last Friday we had three speeches, after coming in at 10 o'clock in the morning, and we were out of business, practically speaking, at 3 o'clock. We had to go into recess and wait around until a third speech was made available.

So I appeal both to Senators who are for and those who are against the nomination of Judge Haynsworth, as well as those who are undecided, to come to the floor, make their speeches, bring this matter to a head, and allow the Senate after a reasonable amount of time, to come to a decision one way or the other.

I make this plea because I would like to take up the amendment to the Draft Act, which is now on the calendar, and I would like to clear the path, as rapidly as possible, for bills which may be reported by the Judiciary Committee tomorrow, and also for consideration of the tax relief-tax reform bill, hopefully, next week.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. MANSFIELD. Yes indeed.

Mr. HRUSKA. It was with gratification that I heard the majority leader suggest a noon meeting hour tomorrow instead of earlier. What he has said about the matter of reporting several bills from the Judiciary Committee is true. A committee meeting had been scheduled for tomorrow, and those bills will be considered—the crime bill, the narcotics bill, if possible, the pornography bill, and also gun legislation, of which I think the majority leader is the author.

Mr. MANSFIELD. Yes.

Mr. HRUSKA. So I am happy to learn that the committee will have an opportunity to meet. We are hopeful of reporting those bills as a result of a session tomorrow.

Mr. MANSFIELD. The Senator has been most consistent, because he has been one of the strongest advocates in all these areas. I made the statement I did with the knowledge that he was on the floor and would corroborate the Senator from Montana.

I was serious, and I am serious, about staying in late tonight.

Before I suggest the absence of a quorum, I raise the possibility that it may be a live quorum, and that it may not be the only live quorum today.

I have just been handed a list of Senators who may be ready to speak on this side; and, to the best of my knowledge, we have two, at the very most.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAVEL in the chair). Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 12829) to provide an extension of the interest equalization tax, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MILLS, Mr. BOGGS, Mr. WATTS, Mr. BYRNES of Wisconsin, and Mr. UTT were appointed managers on the part of the House at the conference.

SUPREME COURT OF THE UNITED STATES

The Senate, as 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. BAKER. Mr. President, the question is whether the Senate should advise and consent to the nomination of Judge Clement Haynsworth to the Supreme Court. I speak today in support of confirmation.

This is not a minor issue. A Supreme Court Justice serves for life, casting one vote of nine on the most powerful court in the world. The Court is a tribunal of awesome responsibility which influences the whole course of American jurisprudence. Therefore, I believe it is right and proper that the U.S. Senate carefully deliberate the nomination.

Judge Haynsworth was born 57 years ago in Greensville, S.C. He attended Furman University and Harvard Law School, joined his father's law firm and served in the Navy during World War II. In 1957 he was named by President Eisen-

hower to the Fourth Circuit Court of Appeals and he has now become the chief judge of that circuit. His nomination to the High Court has the support of 16 former presidents of the American Bar Association. They include Harold J. Gallagher, Cody Fowler, Robert G. Storey, Loyd Wright, E. Smythe Gambrell, David F. Maxwell, Charles S. Rhyne, Ross L. Malone, John D. Randall, Whitney North Seymour, John C. Satterfield, Sylvester C. Smith, Jr., Lewis F. Powell, Jr., Edward W. Kuhn, Orison S. Marden, and Earl F. Morris.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a telegram from the persons whose names I have read, addressed to the Honorable JAMES O. EASTLAND, chairman of the Senate Committee on the Judiciary, dated October 23, 1969.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAKER. The American Bar Association's Federal Judiciary Committee has approved the nomination of Judge Haynsworth, as have a majority of the members of the Senate Committee on the Judiciary.

It is against that background, Mr. President, that the Senate now turns to its constitutional responsibility to advise and consent on the nomination by the President of the United States of Clement Haynsworth to serve as an Associate Justice of our highest tribunal.

The opponents of this nomination apparently have centered their objections on two basic points, some contending that Judge Haynsworth has by his participation in several cases created "the appearance of impropriety," and others asserting that his decisions indicate that he is anti-civil rights and antilabor. In my judgment, the record compiled by the Senate Judiciary Committee clearly demonstrates that these characterizations of Judge Haynsworth are wholly unfounded.

Mr. President, in this respect, I allude to remarks which I made on a previous occasion about the nomination of Judge Haynsworth, and point out that my first reaction to those who allege and aver that Judge Haynsworth is anti-civil rights, or antilabor, or anti-anything else, should be careful in their scrutiny of this nominee or any other, to make sure that nominations for the highest court in the land are not made on the basis of an antiposition or a pro-position for any group within society. Rather, for my part at least, I would hope that our position on nominees for the Supreme Court would not be anti or pro anything, but would approach that responsibility and that privilege for service as nearly objectively and as free from previous judicial bias as it is possible for the frail, subjective human machine to be.

I shall not dwell in detail on the allegations of impropriety that have been raised. I have examined the record made by the Senate Judiciary Committee, have read the bill of particulars set forth by our distinguished colleague from Indiana (Mr. BAYH), and have listened carefully to the rebuttal by the Senator from Kentucky (Mr. COOK) and others in this debate before the Senate. I share the judgment of the President as to the honesty and integrity of this distinguished nominee. I believe that if any Senator examines in detail and depth, the so-called appearances of impropriety that have been raised, rather than taking a rigid position based on superficial reasoning determined by philosophy or ideological persuasion, he will reach a similar judgment. If that approach is used, then I am convinced that this nominee will be confirmed by this body by an overwhelming vote.

Some are now saying the President should withdraw this nomination because these appearances of impropriety have been created; but I ask, in all due deference: "Who created those appearances?" Clearly, in my view, not the distinguished nominee, for, as I have said, any objective analysis of the record will clearly indicate to the contrary. The so-called appearances of impropriety so often alluded to in debate on this floor have been created, in my judgment, not by the nominee but by the debate, the newspaper accounts, the reports, the innuendo, the rumor, the incomplete analysis of the 700-page record compiled by the Senate Judiciary Committee.

Obviously the test of Caesar's wife, that a nominee for the highest court should be free of the appearance of impropriety is a valid test. But just as properly, an appearance of impropriety should represent the situation created by the nominee and not be contributed to by an examination of the nominee's conduct or the record of an incomplete file. Just as completely, in my view, the Senate in its deliberations on the nomination of Justice Abe Fortas to be Chief Justice of the United States created by implication, if not directly, a higher level of care and greater responsibility on the part of the Senate than had probably existed at any previous point in the history of the Republic.

In that proceeding, dealing with the confirmation or the withholding of advice and consent on the nomination of Justice Fortas to be Chief Justice of the United States, the Senate effectively broadened the scope and horizon of the inquiry and, in effect, created a reaction especially unfavorable to those who allege that it is an admonition of the administration or those of us who support Judge Haynsworth's nomination that the Senate should abdicate its constitutional responsibility to advise and consent on the desirability and the propriety of a presidential nomination to the judiciary and rather should serve merely as a rubber stamp, a suggestion recurring throughout the debate and obviously advanced by those who oppose the nomination.

I believe no such thing. I believe that the Senate has never been, nor is it ever likely to be, a rubber stamp of any administration or Chief Executive whose constitutional responsibility requires that he send to the Senate his nominations so that the Senate may make the searching analysis and critical examination that is necessary to determine whether the Senate should confirm or withhold its advice and consent.

There is no element of rubber stampism involved in these proceedings. Rather, I once again thoroughly agree with and roundly applaud the searching analysis of the examination made by the Judiciary Committee, culminating in approximately 700 pages of committee testimony and reports in the debate that has now permeated the functions of the Senate for so many weeks, notwithstanding the fact that formal debate commenced only last week.

I applaud those who have clearly and forthrightly expressed their views for and against the nomination of Judge Haynsworth.

I believe we are rendering higher service and coming closer to our constitutional mandate when we approach this problem in that manner. However, I do respectively caution against adopting the doctrine of Caesar's wife and the appearance of impropriety and then creating that appearance ourselves.

I believe, on the contrary, as I have previously said on the floor of the Senate, that our first responsibility under the heightened degree we have set for ourselves is to examine carefully all the testimony taken before the Senate Committee on the Judiciary, the committee report, and the separate and individual views, to take into account the debate on the issues as presented on both sides of the issue on the floor of the Senate, to carefully evaluate, for example, the so-called bill of particulars filed by the distinguished Senator from Indiana (Mr. BAYH) and, by the same token, to take into account the fully detailed rebuttal and reply made by the distinguished Senator from Kentucky (Mr. COOK).

In a way, in a calm and dispassionate manner, we analyze and examine the aspects of the case which are factual and which are not rumor, innuendo, or inference drawn from incomplete premises.

If the Senate does that, I affirm once again that I am convinced the nominee will be confirmed overwhelmingly.

But even if this be the fact, it is being contended that while the ethical questions that have been raised were not warranted, or were without foundation, since doubt has been raised, the President should withdraw the nomination. However, as the President has said, to pursue that course of action would mean that anyone who wants to make a charge can thereby create the appearance of impropriety, raise a doubt, invoke the doctrine of Caesar's wife, and then demand that the nomination be withdrawn. The President rejected that course of action, and I commend him for it. To allow a man to be victimized in this manner would be contrary to our system, and would obviously mean that a nomination could be defeated for a good reason, for a bad reason, or, as in this case, in my view for no reason at all.

Mr. President, the charges concerning the civil rights record of Judge Haynsworth raise a serious question requiring most careful consideration by the Senate. All agree that there is no place on the High Court for a person shown to favor the continuation of second-class citizenship, and I would vigorously oppose a nominee of that persuasion. My review of Judge Haynsworth's record convinces me

that he is not such a man. It is clear that on a few occasions Judge Haynsworth has voted against the party claiming deprivation of his constitutional rights. In addition, he has not always attributed to the Supreme Court's decisions the broadest possible scope of application. Nor has he correctly anticipated the Court's rulings in every case. On three occasions he has been reversed by the Supreme Court. The question for our resolution is whether these facts disqualify a nominee for the Supreme Court.

As final interpreter of the Constitution, the Supreme Court enunciates the "law of the land," which every Federal judge takes an oath to uphold. A nominee who disregards the Supreme Court's pronouncements violates his judicial oath and is obviously unfit for service on our highest court, Judge Haynsworth has scrupulously followed the Court's decisions. On numerous occasions he has joined in decisions against persons charged with discrimination and in so doing has adhered to principles announced earlier by the Supreme Court. No less than 19 cases are cited in the majority views in the report of the Committee on the Judiciary as instances in which Judge Haynsworth aided the vindication of rights which had been held by the Supreme Court to be secured to every citizen.

The fact that Judge Haynsworth has adhered to the Court's pronouncements should end the inquiry. I ask another question: Whether his views in each decided case are reasonable. In determining the reasonableness of Judge Haynsworth's views, I suggest to Senators the consideration of the comments made to the Judiciary Committee by Prof. G. W. Foster, Jr., of the University of Wisconsin. This esteemed gentleman calls himself a liberal Democrat and is probably more responsible than anyone else for the formulation of the HEW school desegregation guidelines. He had this to say with regard to Judge Haynsworth's civil rights record:

> In the area of racially sensitive cases I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I probably would have decided another way. I am not aware, however, of a single opinion associated with Judge Haynsworth that could not be sustained by a reasonable man.

It has come to my attention, too, that in addition to the 19 cases cited by the Committee on the Judiciary in its report summarizing the hearings on the nomination of Judge Haynsworth, there are a number of other cases, which I feel are significant in trying to gain some insight into the basic pholosophy and ideology, if that in fact be valid, for judging the qualifications of the nominee to sit on the Supreme Court of the United States, and which may give us an inkling of what his real, fundamental concern and sensitivity may be in this area. I shall impose on the Senate to deal briefly with a number of these cases.

I refer, first, to the case styled *McCoy* v. *Greensboro City Board of Education*, 283 F. 2d 677, from the Fourth Circuit Court of Appeals, in 1960.

In that case, Judge Haynsworth joined Judges Sobeloff and Soper in holding that Negro students need not exhaust their State administrative remedies where a local board had acted in obvious violation of their constitutional duty to end school desegregation.

This, too, is one of the civil rights decisions of Judge Haynsworth, and I venture the estimate that it is not the sort of case that one would use to try to establish the basis for charging that the nominee is anti-civil rights or a segregationist.

Cummings v. *City of Charleston*, 288 F. 2d 817, in the fourth circuit, in 1961. In that case there was a per curiam opinion in which Judges Haynsworth, Sobeloff, and Boreman found no reason for postponing the integration of a public golf course beyond the 6-month period agreed to by the plaintiffs. Once again, an example of a Federal appellate judge upholding the mandate and requirements of the highest reviewing tribunal in this country, the Supreme Court of the United States, and applying the law relating to desegregation evenhandedly and firmly to accomplish the announced purpose of this Republic, and that is to abolish the real, the legal, and the equivalent status of second-class citizenship in this country. That is not a case, not a decision, to lend credence to the characterization of a fine member of the judiciary as anti-civil-rights or a segregationist.

Wheeler v. *Durham City Board of Education*, 309 F. 2d 630, from the sixth circuit in 1961. This was a unanimous en banc decision enjoining the Durham School Board from continuing to administer the North Carolina Pupil Enrollment Act in a discriminatory manner.

Once again, Mr. President, the action of an even-handed judge adhering to the announced principle and objective of this Nation to create nothing but first-class citizenship and to abolish segregation, and joining with the rest of his colleagues on that court to grant the relief sought. It is not a decision, surely, upon which one could judge a nominee to be anti-civil-rights.

Brooks v. *County School Board of Arlington*, 324 F. 2d 303, fourth circuit, 1963. Judge Haynsworth joined Judges Sobeloff and Boreman in holding that the district judge had prematurely and erroneously dissolved an injunction against the board's discriminatory practices.

The relief sought was in keeping with the decisions of our highest court, and obviously was calculated to advance the cause of desegregation in those States embraced within the Fourth Judicial Circuit of the United States. Surely, that is not the basis on which one would judge a nominee for the Supreme Court of the United States to be anti-civil rights.

Wheeler v. *Durham City Board of Education*, 346 F. 2d 768, Fourth Circuit, 1965. A unanimous court ordered that the district court reexamine the actions taken by the board to eliminate the dual system which had existed in the city of Durham. The board's suggestion that its plan should be approved by the court of appeals was rejected. The relief sought was the desegregation of schools in that area. It was a unanimous judgment by the Fourth Circuit Court of Appeals, and certainly is not a decision and a judgment on which any fair-minded person could base an inference that the participants in that opinion were anti-civil rights.

Felder v. *Harnett County Board of Education*, 349 F. 2d 366, Fourth Circuit, 1965. This was another en banc decision, a per curiam decision, upholding the district court's order that the school board cease its discriminatory application of North Carolina's assignment and enrollment of pupils act. Once again, the relief sought was to enhance and further the objectives of desegregation. It certainly was not a decision on which we could fairly base an assumption that this man, participating in that per curiam decision, was anti-civil rights.

Wanner v. *County School Board of Arlington County*, 357 F. 2d 452, from Judge Haynsworth's circuit, the Fourth Circuit, in 1966. Judge Haynsworth joined Judge Sobeloff, Judge Boreman, and Judge Bell in reversing the district court, which has enjoined the board, at the insistence of white parents, from putting certain desegregation plans into effect. The court of appeals found that the board was proceeding in an appropriate manner in its attempt to comply with earlier desegregation decrees and therefore should not have been enjoined.

Franklin v. *County School Board of Giles County*, 360 F. 2d 325, from Judge Haynsworth's circuit, the Fourth Circuit, in 1966. In this unanimous en banc decision, the court held that teachers who have been discriminatorily discharged are entitled to "reemployment in any vacancy which occurs for which they are qualified by certificate or experience." In my view, this is not a decision to form the basis for an inference that this nominee is anti-civil rights.

Smith v. *Hampton Training Schools for Nurses*, 360 F. 2d 577, from the Fourth Circuit, in 1966. Several Negro nurses at a hospital receiving Hill-Burton funds were discharged for entering an all-white cafeteria after being ordered not to do so. They brought an action under the Civil Rights Act. While the litigation was pending, the Fourth Circuit held that hospitals receiving Hill-Burton assistance are engaged in "State action" and therefore may not discriminate. A question in this case was whether the plaintiffs here could rely on that precedent. The court unanimously held that they could and that it followed that they had been unconstitutionally discharged. The nurses were ordered to be reinstated. Once again, Mr. President, the relief sought by those attempting to advance the cause of total equality of every citizen of this country, was granted, and surely this is not a decision on which one could judge this

nominee, a participant in the decision, to be anti-civil rights.

In *Wheeler* v. *Durham City Board of Education*, 363 F. 2d 738, Fourth Circuit 1966, the court unanimously reversed the district court's holding that racial considerations had not been a factor in the board's employment and placement of teachers. An order requiring the board to desegregate facilities was entered.

Once again relief was sought properly and in an admirable way by those trying to advance the cause of equality and citizenship for all people of this Nation; a decision once again that simply does not form the basis for an inference that the nominee is anti-civil rights. On the contrary, this case and the cases I have cited previously form a substantial and most impressive body of judicial work which creates the image of a fair, calm, even-handed jurist, dedicated to the furtherance of equality of individuals, of the preservation of their liberty, and the implementation of the law as determined and interpreted by the highest court of our land in a highly sensitive field, in a part of this Nation uniquely affected.

In *Chambers* v. *Hendersonville City Board of Education*, 364 F. 2d 189, fourth circuit, 1966, Judge Haynsworth was the "swing" vote. He joined Judges Sobeloff and Bell in applying the principle that where there is a long history of discrimination, the local board is under a duty to show by clear and convincing evidence that its acts were not discriminatory. Concluding that the board had not made such a showing, the three judges held that the plaintiffs were entitled to relief. Judges Bryan and Boreman in dissent were satisfied that the board's actions had not been racially motivated. This was not the view of Judge Haynsworth. In the view of this humble lawyer, Judge Haynsworth participated in the principle of law and its implementation that is truly unique to the judicial system; and that is to say the degree of concern and care to a public agency on the basis of past historical performance rather than on the facts of the instant case, notwithstanding the consequences of the law. Judge Haynsworth was once again the swing vote in establishing that principle which would bring about the relief sought by those seeking to advance the cause of equality.

Surely in this decision we do not have the example of an anti-civil-rights jurist. On the contrary, we have a brave, even-handed judge, dedicated to even-handed actions.

In Cypress v. *Newport New General & Nonsectarian Hospital Association*, 375 F. 2d 648, fourth circuit, 1967, the court sitting en banc, held that the defendant hospital had discriminatorily denied the plaintiff Negro physician's request for admission to the staff and also that it had engaged in the practice of taking race into consideration in making room assignments to patients.

Once again the nominee, Judge Haynsworth, participated in an en banc decision of his court, the court on which he sat with distinction for so many years, to advance the cause of equality and to strike down the real, imaginary, legal, and quasi-legal barriers to give full participation in this society to men and women of all races in every walk of life.

In *Wall* v. *Stanly County Board of Education*, 378 F. 2d 275, Fourth Circuit, 1967, once again a unanimous en banc court reversed the district court's denial of relief to a Negro teacher who had been discharged by the defendant board. The appellate court ordered an award of money damages as well as a cessation of the Board's discriminatory practices.

The relief was sought by those trying to advance the cause of equality. The nominee, sitting en banc with his colleagues on the Fourth Circuit Court of Appeals upheld the law of the land and advanced the dignity and opportunity of every citizen, regardless of race, color, and creed. Surely, this is not a decision on which one could base a judgment of anti-civil rights.

In *Wooten* v. *Moore*, 400 F. 2d 239, Fourth Circuit, 1968, Judges Haynsworth, Butzner, and Merhige held a restaurant subject to the 1964 Civil Rights Act. The court rejected claims that the restaurant did not offer to serve interstate travelers and did not have a substantial effect on commerce.

This is not a case on which one could judge those participating as being anti-civil-rights.

In *Felder* v. *Harnett County Board of Education*, 409 F. 2d 1070, Fourth Circuit, 1969, Judge Haynsworth joined a majority of the court in holding a school desegregation plan constitutionally deficient because its effects on segregation had not been determined. The district court's order that the board furnish a plan that would promise realistically to end the dual school system was affirmed.

These are not decisions, in my view, of a man who was anti-civil-rights or a segregationist, but rather it is the record of a dedicated judge trying to uphold the law of the land as enunciated and prescribed by our highest tribunal in the field of civil rights and human dignity, at a time in our history and place in our country where that must not have been an easy task. But he did it in this case and in other cases.

It seems to me that in the business of examining all the facts and circumstances surrounding the service of this nominee, all the facts and circumstances upon which a judgment can be made, the innuendo or even the inference, most certainly the allegation, that Clement Haynsworth is anti-civil rights does not stand against the weight of the decisions I have just alluded to.

Once again, for my part, I do not want a nominee on the Supreme Court who is anti or pro anything; but I want an even-handed, objective jurist, as far as humanly possible and, as Dr. Foster said: "an intelligent, open-minded man, with a practical knack for seeking workable answers to hard questions."

I believe we have such a man in Judge Clement Haynsworth. I believe these decisions are significant and important in making the assessment that this body must ultimately make of the qualifications and competence of Clement Haynsworth as Associate Justice.

Mr. President, the allegation has been made with respect to certain other aspects of Judge Haynsworth's judicial career. If they show a state of mind or an anti-civil-rights bias, that should be taken into account. I urge colleagues to take into account any such allegations, but I believe they should be dismissed having once been considered. If there is an anti-civil-rights attitude or anti-anything on the part of this or any nominee who is faced with the prospect of a lifetime of service on the independent judiciary, it should be known now, not later, but we must take into account all of the record compiled by the Committee on the Judiciary and compiled from the debate on this floor, and from the colloquy between Senators, and whatever other solid, sound, and reliable information we can find and manage.

Criticism has been voiced from time to time that Judge Haynsworth has shown an anti-civil-rights bias because he has failed in one case to concur in an opinion that awarded attorneys' fees.

While agreeing with the thrust of the judgment, apparently Judge Haynsworth felt that the awarding of attorneys' fees in that particular case was made and left unanimously to the discretion of the trial judge, with statements upset and overturned in the appellate court.

Those of my colleagues who are lawyers, I am sure, can understand that logic. There certainly is broad discretion on the part of a trial judge. This is so deeply imbedded in the fabric of Anglo Saxon jurisprudence that it is no longer often challenged and never successfully challenged.

The reasons for the existence of that rule are real and meaningful. A trial judge is the one who sits and hears the witnesses and sees their demeanor or conduct on the stand, who can best appreciate or evaluate their sincerity or lack of sincerity of the cause being espoused or resisted. The trial judge, therefore, has tremendous latitude and discretion in many matters, including that of awarding attorneys fees. But to say that Judge Haynsworth felt that the trial court should not be reversed in such a case, because he relied on the discretion of the trial judge, sheds no light at all on his view of the civil rights situation outlined in the pleadings and the proof of the instant case.

It occurs to me that a careful examination of all of the written opinions of the Fourth Circuit Court of Appeals is essential to a careful examination of the qualifications of and confidence in the nominee. He has been part of that court since his appointment by President Eisenhower in 1957. He has participated in virtually every decision on that court since his appointment in 1957.

Some of the opinions he wrote. Some of the opinions he concurred in. Some of the opinions he dissented from. But it is important to examine them carefully and consider the totality of the conduct of this fine jurist over the 12 years which have intervened since 1957.

Mr. President, I believe that any thorough, objective analysis of the record

before this body would result in overwhelming support for the nominee. I believe we should stop hiding behind the anti-civil-rights, and antilabor, and consider the facts as they have been presented to us.

As I have said before, Justice Holmes once remarked that lawyers and legislators of the world have the unhappy faculty of devoting much of their daily lives to the art of shoveling smoke. I hope we do not devolve into a smoke-shoveling contest, but, rather, come to terms with the facts of this situation as we see them.

EXHIBIT 1

RICHMOND, VA.
October 23, 1969.

HON. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate, Washington, D.C.

The Federal Judiciary Committee of the American Bar Association after careful investigation has found that Judge Clement Haynsworth is highly acceptable from the viewpoint of professional qualification to serve on the United States Supreme Court. We the undersigned past presidents of the American Bar Association, all deeply concerned with the quality of the Federal judiciary, have full confidence in the processes and judgment of the ABA Committee. Accordingly, we hereby affirm our support of Judge Haynsworth and urge his confirmation as a justice of the Supreme Court.

Harold J. Callagher; Cody Fowler; Robert G. Storey; Loyd Wright; E. Smythe Gambrell, David F. Maxwell; Charles S. Rhyne; Ross L. Malone; John D. Randall; Whitney North Seymour; John C. Satterfield; Sylvester C. Smith, Jr.; Lewis F. Powell, Jr.; Edward W. Kuhn; Orison S. Marden; Earl F. Morris.

(The following colloquy, which occurred during the delivery of Mr. BAKER'S address, is printed at this point in the RECORD by unanimous consent.)

Mr. BAYH. Mr. President, I listened with a great deal of interest to the Senator from Tennessee, just as I listened with interest to the Senator from New York (Mr. JAVITS). Each looked at the same issues, and each came to an opposite conclusion.

Mr. President, it is because of the great respect I have for my friend from Tennessee that I should like to make the observation that it is possible for men of good faith to look at the facts of a case and come to different conclusions.

I have come to a different conclusion than my friend from Tennessee, but I certainly believe that he is doing what he thinks is right. I appreciate the opportunity to have been able to listen to his remarks.

Mr. BAKER. I thank my colleague from Indiana.

I am now happy to yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I wish to commend the Senator from Tennessee for his precise and to the point remarks.

We have had the opinions of many experts. Those of us who have read the hearings recognize that they were protracted. We had the testimony of experts in the field of legal ethics. I have read the record and concluded more than a week ago, there is no real basis for the charges made against Judge Haynsworth unless they are made on a philosophical level.

The Senator from Tennessee has laid to rest the feeling that Judge Haynsworth might be anti-civil rights. Others have laid to rest, or will lay to rest, the charges by labor leaders that he is antilabor.

I was very much impressed, a couple of weeks ago, when I visited with former Associate Justice Charles Whittaker, who served on the Supreme Court with great distinction, from 1957 to 1962. He was appointed by President Eisenhower and was confirmed by the Senate. He now resides in the State of Missouri where he is engaged in the private practice of law.

On November 10, he released a statement which I should like to read at this point because it sets forth the views of a man who served on the Supreme Court and who served in the same position now being sought—hopefully sought—by Judge Haynsworth. He therefore knows a little about judges, their ethics and qualifications.

I shall read this brief statement which was released to the public on November 10.

I have several times been asked to publicly state my views as to whether the hearings conducted by the Judiciary Committee of the Senate on the President's nomination of Judge Haynsworth as an Associate Justice of the Supreme Court of the United States disclosed any evidence of improper or unethical judicial conduct by Judge Haynsworth.

Although I have, rather naturally, been interested in those proceedings and have kept abreast of them by carefully reading and considering the testimony before the Judiciary Committee, I have refrained, because of my rather unique position as a former Associate Justice of that Court, from any public expressions upon the matter, but now that numerous statements are being publicly made by Judge Haynsworth's opponents saying, I think quite falsely, that the hearings before the Judiciary Committee of the Senate disclosed improper and even "unethical" judicial conduct by Judge Haynsworth, my conscience compels me to speak out.

In those very lengthy and protracted hearings before the Committee, Judge Haynsworth was impugned on two cases: The first, that he sat in a case when he owned some shares of stock in one of the litigants. In truth, the record shows that he did not own any stock in either litigant in the case, but only held some shares in a vending company which, on a lease basis, maintained some of its vending machines in a plant of one of the litigants. The second, that Judge Haynsworth sat in a case, referred to as the "Brunswick" case, when he held shares of stock in the Brunswick company. In truth, the record shows that, quite aside from this being a piddling suit on a promissory note to foreclose a chattel mortgage that resulted in a judgment for $1,425.00. Judge Haynsworth owned no stock in the Brunswick company at the time the case was heard and decided. The record shows that after the case was heard and decided, and another judge had been assigned to write the opinion, Judge Haynsworth, on the recommendation of his broker, purchased some shares in the publicly-held Brunswick company.

These are the bases upon which it is being publicly claimed by Judge Haynsworth's opponents that he has been guilty of improper and even "unethical" conduct as a judge. My sensitivities do not permit me to sit silently by, and thus condone such wholly unfounded character assaults.

Inasmuch as there is no support in the record for the charges of unethical conduct that are being widely hurled and publicized against Judge Haynsworth by his opponents, it simply has to be that they are doing these for other reasons—perhaps because they do not like his nonlegislative and conservative judicial philosophies, yet, do not want frankly to oppose him on their real grounds for fear that to do so would not be publicly well received, and hence would not be politically expedient to them.

It seems evident to me that any proper sense of moral decency requires those who oppose Judge Haynsworth's confirmation to state their real reason for opposing him rather than to resort to false charges of unethical conduct.

I am not well acquainted with Judge Haynsworth, and certainly have no political or other alliances with him, but I do know him to be a fine and highly respected judge and man, and that he has gone through very protracted hearings before the Judiciary Committee of the Senate without a showing of even any appearance of impropriety, and I simply say that it seems to me to be a shame that his opponents are willing to falsely assault his character in order to obtain his defeat because they want a more "liberal" justice appointed to the Supreme Court.

CHARLES E. WHITTAKER.
NOVEMBER 10, 1969.

Again, I state that Justice Whittaker served with great distinction on the Court, and his opinion is worth having for the RECORD.

I thank the Senator from Tennessee.

Mr. BAKER. I thank the Senator from Kansas.

Mr. BAYH. Mr. President, perhaps I should ask the Senator from Kansas to permit me to comment on what I think is a unique intervention of a former member of the Court, rather than impose on the time of the Senator from Tennessee. I will submit to whatever the Senator from Tennessee thinks is in his best interest.

Mr. BAKER. I am happy to yield to the Senator from Indiana briefly, for the purpose of establishing a colloquy.

Mr. BAYH. Let me, as a member of the legislative branch, state that I take a dim view of a former member of the judicial branch impugning the motives of some Members of this body. Justice Whittaker's statement alleges that we were concerned only that Judge Haynsworth held some stock in a vending machine company. I can speak as one member of the committee who listened to every word of testimony at the hearings. It was not a matter of merely holding some stock. It was a matter of a one-seventh interest, worth a half a million dollars, a matter of serving on the board of directors, a matter of serving as vice president, and a matter of having his wife serve as secretary of the corporation for 2 years. This was the sort of involvement that concerned me, not just the holding of some stock in a vending machine company.

I noted with great interest that Justice Whittaker talked only about the Brunswick Co. Judge Haynsworth also had interests in Grace Lines, Inc., and Maryland Casualty Co. when cases in-

volving those corporation appeared before his court.

I ask the Senator to look at page 305 of the record of the hearings, in which Senator MATHIAS asked Judge Haynsworth whether the Judge had a substantial interest in Brunswick. Senator MATHIAS asked Judge Haynsworth:

Do you consider that your interest was substantial, then?

Judge Haynsworth said that it was.

I think it is fair to assume that some of us in the Senate would conclude that the interest was substantial, if Judge Haynsworth himself said it was substantial. And if the holdings in Brunswick were substantial, so were those in Grace Lines as well as Maryland Casualty. There were many facts that led us to the conclusion that we ought to have someone with a greater sense of sensitivity. Justice Whittaker seems to ignore those facts.

I thank the Senator for letting me use his time. I thought that I ought to put the record of the Senator from Indiana straight. I am getting tired of people impugning my motives. I do not impugn the motives of the Senator from Kansas. I thought the statement of the Senator from Tennessee was very interesting to follow. I know it comes from his heart. I hope the rest of the debate will continue in this tenor.

(This marks the end of the colloquy occurring during the delivery of Mr. BAKER'S address.)

Mr. DOLE. Mr. President, I would hope the Senator from Indiana would give former Justice Whittaker the same right to express opinions as other people have. I happen to know that Justice Whittaker has carefully read the record. He has read the testimony. I am a lawyer, as is the Senator from Indiana. I feel that Justice Whittaker was objective when he read the record. Since he served on the Supreme Court for 5 years, he knows better than I, and perhaps as well as the Senator from Indiana, what is required of a Justice of that Court.

I trust the day never comes when a former Justice of the Supreme Court cannot express himself, as suggested by the Senator from Indiana. The former Justice said what was in his heart and he honestly believes, rightfully or wrongfully, that this is the conclusion he reaches after reading the record. He has a right to reach that conclusion.

The former Justice may have had in mind canon I, which, as the Senator from Indiana knows states that we have the responsibility sometimes to defend the Court, because the Court is in a peculiar position. Members of the Court cannot always defend themselves. Members of the bar, when they feel charges are baseless, should defend the Court. It may be that that is the canon former Justice Whittaker had in mind when writing his statement.

Let me also add that former Justice Whittaker did not volunteer anything. I know many people called on him. And in fact, when I visited him I had not made up my mind. He said, "Senator, I am glad you called, because I have been asked to contact you, but did not think it was proper to do so."

I wanted to make it clear to the Senator from Indiana that former Justice Whittaker was not trying to trespass upon the rights of this body. He replied only when he was asked to do so. He had read the record. He was not making an off-the-cuff statement or rendering an off-the-cuff opinion. I feel he has a perfect right to express himself and am happy he has expressed himself. I only wish more members of the Court would do so much.

Polls have been taken, and some of those polled had not read the record. I was informed that 80 percent of the ATLAS lawyers felt Judge Haynsworth's nomination should not be confirmed. Certainly former Justice Whittaker has as much right to express his views as anyone. He was a member of the Court. He understands the high degree of ethics required. He is not trying to compromise the canons of ethics. He has no personal interest in Judge Haynsworth and has no alliance with him politically or in any other way. He feels some of the charges against him are false and he has a right to reach that conclusion.

Mr. BAYH. Mr. President, will the Senator permit me to elaborate or repeat what I said? I am not sure who has the floor.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. BAKER. I am happy to yield to the Senator from Indiana.

Mr. BAYH. The Senator has been very tolerant.

I believe any citizen of this country, certainly any former member of the Court, has a right to give his opinions. I get a little sensitive, however, when I read a statement which says that those who have read the record and arrived at a different conclusion from those who favor Judge Haynsworth's nomination are really not sincere.

I salute my friend from Kansas for referring to the first canon of ethics. I think that is an important canon, and I hope that before this debate is over, the Senator from Kansas will also become interested in a half dozen other canons that deal with this matter of impropriety. I think they are equally important.

I rose to interrupt my distinguished friend from Tennessee only because, in pointing to the facts that he alleges were the basis for the determination of some of us who are concerned about ethics, he omitted some of the most significant facts. For example, it is not the mere owning of vending machine corporation stock that we question; as I have pointed out, it is also the involvement in the affairs of the corporation which disturbs us. Furthermore, in the Brunswick, Grace, and Maryland Casualty cases, the judge unfortunately did not meet the standard of conduct which he set for himself.

I would hope that Judge Whittaker would examine these facts and give us, the Members of this body, credit for making the determination which we think is right.

Mr. BAKER. Mr. President, I thank my colleagues for the interesting colloquy involving Justice Whittaker's letter. That was not one of the main thrusts of the remarks I have just made. However, I accept the colloquy as a happy addition; and, having seen the matter thus expanded, I intend to expand on my own views.

I have never seen Justice Whittaker's letter heretofore; I am glad that my colleague from Kansas requested and obtained such a letter.

Mr. DOLE. Mr. President, I did not request the statement. He had been asked by several newspapers to submit his views, and he did so only after reading the entire record. I am satisfied that he took into account the W. R. Grace case and other cases alluded to.

Mr. BAKER. I understood the Senator had requested the Justice's views.

Mr. DOLE. I did not request any written response. He did tell me in a phone conversation that if we could not confirm the nomination of Judge Haynsworth, we would have to find a trapeze artist. I contacted him seeking advice, as I did the senior Federal judge of Kansas, officers of the bar association, and leading lawyers in Kansas, who make their living practicing law. Frankly I was surprised at their overwhelming support for Judge Haynsworth because of the flurry of charges made against him.

Mr. BAKER. I commend the Senator from Kansas for bringing this matter to our attention, and for talking with former Justice Whittaker in this respect. I am pleased that he has produced the Justice's letter at this point, making it a part of the RECORD. I respectfully disagree with the Senator from Kansas when he credits it with impugning any Member or former Member of this body. I also reject the idea that any former member of the highest court cannot express his viewpoints and ideas publicly. Were he at this time a sitting member of the Court, it might be a different situation, though I am not sure it would be. But I do feel that the expression of the viewpoints and ideas by former Justice Whittaker given us today by the distinguished junior Senator from Kansas is a significant contribution to that branch of this inquiry, and I commend him for adding substance to it.

Mr. BAYH. As I said, I appreciate the indulgence of my friend from Tennessee. I must say that this is the first time I have heard of the letter. Was I correct in understanding that Justice Whittaker said that because there is no ethical question, the opponents who stress this point must really be concerned about civil rights, labor, and philosophical matters? If not, I apologize to my friends, the Senator from Tennessee and the Senator from Kansas. It was a statement to that effect I thought I heard, and I am a bit sensitive to such remarks. I think in this Body, we should give everyone full faith and credit for doing what he thinks is right, for reasons which he thinks are important. That is the reason I rose, not to take issue with my friend from Tennessee and my friend from Kansas. Although I disagree with the Senator from Tennessee, I do not think he is making his presentation on any grounds other than those he considers right.

Mr. BAKER. Mr. President, on the question of sensitivity, as I understood the statement of former Justice Whittaker, in effect, he is saying that under the circumstances there must be philosophical and ideological overtones in this struggle. I very much doubt that my friend from Indiana would deny that there has been such a thread woven through the fabric of this entire debate. I think it is a proper undertaking for those for and against Judge Haynsworth to examine his philosophy; otherwise I would not have taken 45 minutes of the Senate's time going over 19 cases, in a detailed analysis, to decide whether or not there was an anti-civil rights bias in those decisions. I concluded that there is not; but in that case, I am examining a philosophical and ideological bias or bent on the part of a member of the judiciary.

I see no reason for anyone to be offended by the considered moderation of former Justice Whittaker's letter.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. BAKER. I am happy to yield to the Senator from Kansas.

Mr. DOLE. I do not believe he includes every opponent; but some opponents of Judge Haynsworth are opposing his confirmation on philosophical grounds. Some appeared before the committee, for example, George Meany; certainly he is opposed on philosophical grounds. He says in effect "He is antilabor; we are going to block him, just as we did Judge Parker in the Hoover administration."

Certainly, if he has that right, Justice Whittaker should be accorded the same right, to make a public statement about Judge Haynsworth, because public statements have been made that he is antilabor, anti-civil rights, and unethical.

The Senator from Indiana has said that, "he is honest and a man of integrity, but he is insensitive." That generally is what the Senator from Indiana said, as well as others; that he is honest and a man of integrity, but he is insensitive, and that, therefore, he is unfit to sit on the Supreme Court.

Justice Whittaker, having sat on the Court for a period of 5 years, had something to say which should be helpful to all Senators.

Mr. BAYH. Mr. President, I am glad the Senator read the letter into the RECORD, because I have not had a chance to see it, and I want to examine it with some degree of particularity.

As I said a moment ago, any Member of this body, any former justice of the Supreme Court, or any citizen of this country has a right to express himself. Of course he does. But I do not think we should impugn the motives of those who draw conclusions different from the conclusions reached by the proponents of Judge Haynsworth.

I concur that the matter of philosophy has been interwoven into this debate, but I think it is entirely possible for people to look at this record and say, "all right, on the matter of philosophy we are going to give the President the benefit of the doubt, but on the matter of ethical conduct, at this particular time, with these facts, we feel that the conduct falls below the required standards." Disapproval of Judge Haynsworth's ethical conduct can be a valid reason for opposing him, and not some subterfuge for some other reason which George Meany or someone else might offer.

I think each of us could look at this matter entirely differently. I trust my colleagues from Kansas and Tennessee, and the other participants in this discussion who are going to face this particular issue, will look at the facts and make their own determination. I am giving them credit for doing what they think is right.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, on October 31, 1969, the Hollywood Bar Association wrote the President urging him to withdraw the nomination of Judge Clement F. Haynsworth as an Associate Justice of the Supreme Court. In their letter, the bar also requested the Senate to reject his confirmation, in event his nomination is not withdrawn. Since the recommendations of the Hollywood Bar Association have a direct bearing on the current debate on Judge Haynsworth's fitness to sit on the Court, I ask unanimous consent that the letter of the Hollywood Bar Association be printed in the RECORD at this point.

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

OCTOBER 31, 1969.

The PRESIDENT,
The White House,
Washington, D.C.

MR. PRESIDENT: The Hollywood Bar Association by vote of its Board of Governors and officers recommends the withdrawal of the nomination of Judge Clement F. Haynsworth to the Supreme Court and further recommends if such nomination is not withdrawn, that confirmation by the Senate be denied.

We have not considered nor do we feel it the province of the Bar Association to comment on Judge Haynsworth's political or social attitudes as reflected in his decisions. These attitudes and decisions are not the question before us.

Judge Haynsworth purchased stock in a company which was a party to a lawsuit before him after the court had completed its deliberation but before the decision was publicly announced. If a judge is aware that a decision is pending on a case and enters into a relationship with a party to the action, we deem such an act an impropriety. If a judge enters into a relationship with a party and is not aware of a pending decision before him, this action raises material question as to his lack of awareness and judgment. Let all Americans know that this Bar Association feels such action by a judge cannot be condoned, for a judge's first interest and obligation is to the people he serves.

The American people demand in a judge a man who is fair and impartial, a man who will analyze the questions before him with an open mind and unobstructed view. One cannot properly judge the wine from inside the barrel. Most important, the American people want to have confidence in their courts, in their judges, and in their government. If this confidence is shaken by some act of a justice of the highest court, however innocent the intention of the act, the morale of the country suffers.

This then is the focal point of Judge Haynsworth's nomination. His acts, however intended, have shaken the trust and confidence in our judicial system.

Very truly yours,

HOLLYWOOD BAR ASSOCIATION,
By PHILIP H. GILLIN.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

HAYNSWORTH AND LABOR

Mr. HANSEN. Mr. President, opponents of Judge Haynsworth claim that he is antilabor. In no meaningful sense is this true.

Judge Haynsworth has undoubtedly either written, or joined in, opinions which were objectionable to the national leadership of the AFL–CIO. And, it is true, that if this is enough to make a judge antilabor, then Judge Haynsworth, along with countless other Federal appellate judges in our country, are antilabor. This sort of judgment is found in the statement of Mr. George Meany, president of the AFL–CIO, before the Committee on the Judiciary that "he would not approve of a decision against labor." And, predictably, therefore, Mr. Meany does not approve of Judge Haynsworth.

But if one takes the broader view, recognizing that organized labor is not entitled to receive everything it demands from the courts, any more than is management, then the criticism of the leadership of organized labor becomes much less impressive. Like most other judges of Federal courts of appeals, Judge Haynsworth has joined in many opinions that have rejected the position of the unions, and many opinions that have favored the positions of the unions. Perhaps a highly specialized labor lawyer could develop a sort of a legal Geiger counter that would tell us, at least to his satisfaction, whether the judge is a couple of degrees off center one way or the other. I do not claim to be such an expert, and I am satisfied that Judge Haynsworth is well within the mainstream on labor law.

Forty years ago, organized labor successfully opposed the confirmation of the nomination of John J. Parker as an Associate Justice of the Supreme Court of the United States. Ironically enough, Judge Parker was at that time a judge of the U.S. Court of Appeals for the Fourth Circuit, just as Judge Haynsworth is at present. Opposition to Parker was placed on the grounds that he had been antilabor, and particular emphasis was given to his opinion in the so-called Red Jacket case.

Organized labor now concedes that it misjudged its man in 1930, and that its

opposition was a mistake. Mr. Thomas Harris, general counsel of the AFL–CIO, stated at the Judiciary Committee hearings on the Haynsworth nomination:

I agree with you that the attack on Judge Parker on that ground was unjustified. But the Federation succeeded in blocking his confirmation to the Supreme Court and, as you say, he served for many years thereafter as a pro-labor judge and if we can get both of the same two results here, we will be happy.

More objective observers, feeling that the Supreme Court in the ensuing 39 years could have used the legal talents of John J. Parker, may not feel that the result was quite as funny as Mr. Harris apparently thinks it was. But these observers would doubtless agree with Mr. Harris that the Senate did make a mistake when it refused to confirm the nomination of Judge Parker, of whom Chief Justice Earl Warren said in 1958:

No judge in the land was more truly distinguished or more sincerely loved. His contemporaries appreciated and honored this man's qualities, and in the judicial history of the nation his great reputation will endure.

I, for one, do not relish the prospect of some future general counsel of the AFL–CIO, or of any other organization, telling us 40 years from now that the organization made a mistake in opposing Judge Haynsworth in 1969, but it was all a pretty good joke anyway. The decision that the Senate makes with respect to this nomination is obviously a serious one, entitled to the most careful consideration on the part of each of its Members. Fair consideration must be given to the claims of any group who feel that a candidate for the High Court would administer the law unfairly as to that group. But, by the same token, no group can be accorded a veto power, exercised in terms of its own necessarily narrow interests, over the right of the President to nominate, and the Senate to confirm, Justices who must represent every element in our Nation.

I do not find that Judge Haynsworth is antilabor. I find that he is a careful, scholarly, middle-of-the-road judge, and I strongly favor the confirmation of his nomination as an Associate Justice of the Supreme Court of the United States.

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

The PRESIDING OFFICER (Mr. DOLE in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR PROUTY OF VERMONT WILL VOTE TO CONFIRM JUDGE HAYNSWORTH

Mr. HRUSKA. Mr. President, a few moments ago, my attention was called to a news release that the junior Senator from Vermont (Mr. PROUTY) has announced his position in support of Judge Haynsworth.

I read from a part of the news release, in which Senator Prouty stated:

The most important consideration to me is whether the nominee possesses the qualifications required to serve on the nation's highest court. I am convinced Judge Haynsworth is qualified to serve.

The news release continued:

Prouty said in his ten years in the U.S. Senate he had on every occasion voted to confirm the President's nominee to the Supreme Court. "I would vote against confirmation only if I had serious doubts as to the nominee's morality, integrity or honesty." Prouty said, adding, "In this instance I have no such doubts."

The Vermonter said he had studied the record carefully and found that "the blizzard of accusations against Judge Haynsworth melts quickly under close scrutiny."

Likewise Prouty said that a thorough examination of Haynsworth's decisions refutes charges of bias and reveals "a record of objectivity and impartiality."

Prouty found the opposition to Haynsworth to be "more on political grounds than ethical grounds and more emotional than reasoned."

He concluded by saying: "It might be easier to vote against confirmation and thus bow to the volume of the accusations. Instead, I chose to weigh the merits of the charges and found them lacking in substance."

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GURNEY. Mr. President, as I mentioned in my remarks on Thursday, November 6, I have carefully examined the record developed by the Judiciary Committee concerning Judge Clement Haynsworth's appointment to the Supreme Court; and, I have studied the views of the distinguished Senators who object to Judge Haynsworth. I have also considered the objections which have been raised in the press and the media.

I must say, as was indicated in the announcement just read to the Senate by the Senator from Nebraska (Mr. HRUSKA), on the decision of the Senator from Vermont (Mr. PROUTY) to vote for confirmation of Judge Haynsworth that he feels much of the opposition to Judge Haynsworth has been politically motivated, that I cannot help agreeing with that feeling, that much of the discussion thus far concerning Judge Haynsworth's ethics, his stock market transactions, and his involvement in various business enterprises, is a smokescreen and a subterfuge which has had the effect of obscuring the real, underlying objections to his nomination. As other Senators have also stated, it seems to me that at the root of these objections is the judge's philosophical posture. The real question, to my mind, is then not one of ethics or Judge Haynsworth's off-the-bench conduct. The sooner we come to grips with the real objections to Judge Haynsworth's nomination, his judicial record and his performance as a judge, the more realistic and meaningful our discussion will be.

Certainly, Judge Haynsworth's critics have a right to their point of view as a class—and I mean most, not all, because there are exceptions—but as a class, it seems to me that they wish to see the perpetuation and continuation of the Warren court, a court which saw its role as an activist court which sought and seeks—that is, those who are still there—to impose upon this country its own notions of virtue, its own socioeconomic viewpoint, and its own view of the Nation and of the world.

In this sense I think we can applaud the candor of those critics of Judge Haynsworth, such as the AFL–CIO, and the National Education Association—NEA—who have admitted that their objections frankly go to Judge Haynsworth's judicial record, and not to his stock market dealings.

In fact, I commend the senior Senator from New York (Mr. JAVITS), who said that he would not talk about the ethics matter, because he opposed the judge on his attitude toward civil rights matters—other words, on philosophical grounds.

I think he was being very honest and candid in stating that that was what his objection was.

I think that, as President Nixon pointed out recently, much of the criticism of this decent man in the final analysis comes down to nitpicking of the worst sort. His critics in the press have gone to the well and they have come up dry. Having failed to produce any real evidence of wrong doing, his critics now fall back on canon 4 of the Canons of Judicial Ethics. That canon reads:

A judge's official conduct should be free of impropriety and the *appearance of impropriety* . . .

They now say that the Haynsworth nomination should be withdrawn or defeated because in their view there is an "appearance" of impropriety.

The appearance of impropriety of course has been contrived by the critics and exists only in their mind's eye. This is sophistry of the worst sort: The appearance of wrongdoing as an objection to this nomination has no independent existence.

I think that what the people want is a new direction to the Supreme Court. What we need most I think is a restoration of judicial restraint, which in years gone by characterized the deliberations of our highest court.

We have a good illustration of the kind of judicial restraint I am thinking about in the recent case involving Representative ADAM CLAYTON POWELL and his suit against the House of Representatives.

Judge Warren Burger, prior to his elevation to the Supreme Court, as a member of the court of appeals wrote the opinion concerning that case which was later made the basis of the appeal to the Supreme Court of the United States. There, former Chief Justice Warren, in one of his last official acts, wrote the majority opinion. Judge Warren Burger refused to pass judgment on the House of Representatives in the Powell case because of the inappropriateness of the subject matter for judicial consideration.

His opinion stated that he deplored the "blow to representative government where judges either so rash or so sure of their infallibility as to think they should command an elected coequal branch in these circumstances."

Chief Justice Earl Warren, on the other hand, Mr. President, was not so restrained. Pursuing his activist posture to the very end of his tenure, Mr. Chief Justice Warren—with the lack of judicial restraint which in my view has characterized a great deal of his performance on the Court—wrote the majority opinion holding that the House of Representatives had acted wrongfully and unconstitutionally when it had refused to seat ADAM CLAYTON POWELL.

Our system of government—

Said Earl Warren—

requires that Federal Courts on occasion interpret the Constitution in a manner in variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the Court's avoiding . . . constitutional responsibility.

The decision, which exemplifies the judicial overreaching which I deplore, has precipitated a constitutional debate which, as we all know, is not yet settled.

Judge Burger's treatment of the Powell case sought to avoid a decision which would bring about a serious constitutional confrontation between the courts and the legislative branch. Judge Warren's approach was just the opposite, because apparently he believed, for reasons which do not appear on the record that POWELL had been punished unconstitutionally, and his decision was tailored to reflect this belief.

The notion of judicial restraint which I am alluding to today was described in detail and with much eloquence by Justice Felix Frankfurter in many decisions in his long service on the Court. Examples I am speaking of are found in the 1940 case, *Osbourne* v. *Ozlen*, 310 U.S. 53; in *Board of Education* v. *Barnette*, 319 U.S. 624, 1943; and in *AF of L* v. *American Sash Co.*, 35 U.S. 538, 1949. Let me quote to you from that last case:

Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. It may not prove good, but it may prove innocuous. But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests—the people. If the proponents of union-security agreements have confidence in the arguments addressed to the court in their "economic brief," they should address those arguments to the electorate. Its endorsement would be a vindication that the mandate of this court could never give.

But there is reason for judicial restraint in matters of policy deeper than the value of experiment: It is founded on a recognition of the gulf of difference between sustaining the nullifying legislation. This difference is theoretical in that *the function of legislating is for legislatures who have also taken oaths to support the constitution, while the function of courts, when legislation is challenged, is merely to make sure that the legislature has exercised an allowable judgment, and not to exercise their own judgment*, whether a policy is within or without 'the vague contours' of due process. Theory is reinforced by the notorious fact that lawyers predominate in American Legislatures. In practice also the difference is wide. In the day-to-day working of our democracy it is vital that the power of the non-democratic organ of our government be exercised with rigorous self-restraint. Because the powers exercised by this court are inherently oligarchic, Jefferson all of his life thought of the court as "an irresponsible body" and "independent of the Nation itself."

As an attorney, I have followed the Court through its judicial excursions with much misgiving over the years. Curiously, I found that much of the harshest criticism of the Court comes from the Court itself in the form of opinions by dissenting justices. Let me offer, Mr. President, a few examples.

In the case of Mapp against Ohio decided by the Supreme Court in June 1961, the Supreme Court majority, willy-nilly, upset 50 years of American jurisprudence by holding in effect that illegally obtained evidence may not be used against defendants in State prosecutions. As Justice Harlan eloquently pointed out in his dissent in that case—a dissent in which Justices Frankfurter and Whittaker joined—the central question on which the case turned had not even been briefed before it reached the court. Certiorari had originally been granted in Mapp against Ohio to test the constitutionality of an Ohio obscenity statute. The privilege against unlawful seizure and search and questions concerning introduction of unlawfully obtained evidence in State court prosecutions were raised only casually, and in passing, by the defendants and in an amicus curiae brief filed by the American Civil Liberties Union. Nevertheless, in spite of the fact this matter was not even briefed or argued, in spite of the fact that this question was not therefore formally before the court, the majority of the Warren court in Mapp against Ohio held that illegally obtained evidence could not thereafter be used as a basis of a State prosecution, thus upsetting the doctrine of Wolf against Colorado and numerous other cases dealing with this important question. Here is what Mr. Justice Harlan said:

The Court in my opinion has forgotten the sense of judicial restraint which, with due regard for stare decisis, *is one element that should enter into deciding whether a past decision of this court should be overruled . . .*

The action of the Court finds no support in the rule that decision of constitutional issues should be avoided wherever possible. . . . the unwisdom of overruling Wolf without full-dress argument is aggravated by the circumstance that that decision is a comparatively recent one (1949) to which three members of the present majority have at one time or another expressly subscribed, one to be sure with explicit misgivings. I would think that our obligation to the States on whom we impose this new rule as well as the obligation of orderly adherence to our own processes would demand that we seek that aid which adequate briefing and argument lends to the determination of an important issue. It certainly has never been a postulate of judicial power that mere altered disposition, or subsequent membership on the Court, is sufficient warrant for overturning a deliberately decided rule of constitutional law.

President Nixon has thus far sent forward two nominations for the Supreme Court, and both men are experienced and senior appellate court judges both of whom have also had district court trial experience. This is a most refreshing development and one which I certainly applaud. I cannot help feeling that if some of our other recent Justices—I think immediately of Mr. Chief Justice Warren, Mr. Justice Douglas, Mr. Justice Fortas—had had prior judicial training before coming to the High Court, they would have been conditioned in the exercise of judicial restraint and American jurisprudence would have been the better for it.

I have spent some time talking about this matter of judicial restraint, and reading from some of the Supreme Court decisions dealing with it, because I believe that the appointment of Judge Haynsworth would be a step in that direction. This certainly is one of the elements that President Nixon had in mind in his nominations of both Chief Justice Burger and Judge Haynsworth. I think it is also something that the people of the United States have in mind.

When I was campaigning in Florida last year the immediate issues bothering most Floridians were of course the war in Vietnam, the question of inflation, and the question of crime. I think that was probably true of all the political races last year. But another matter which disturbed many people in Florida, and which I found very much in their minds was the behavior of the Supreme Court on a number of fronts. The people expressed to me dissatisfaction with the course of the Supreme Court's decision on school prayer, and outlawing Bible reading in schools. They were upset with the apportionment decisions which heretofore had been political matters within the exclusive jurisdiction of the States. They were irritated with the Supreme Court's tinkering with and even upsetting some State constitutions. They resented the way in which the court had effectively curbed efforts of law enforcement, and postal authorities to stop the flood of pornography. They resented the recent striking down of residency requirements for welfare recipients. They resented the striking down of the marihuana tax control laws.

They were upset, and rightfully so with the seemingly ludicrous criminal decisions such as Miranda, Escobedo, and a whole string of successive cases. Very often they did not know the names of the decisions. They could not give a citation, or anything of that sort. But they had the feeling, and I think the feeling was correct, that the thrust of many of these opinions was to free criminals, in some cases self-confessed criminals, on the flimsiest sort of technicalities.

They expressed to me the view, and it is a view that I subscribe to, that in the midst of the greatest crime wave in our Nation's history, the decisions of the

court which resulted in the freeing of criminals were absurd, almost, as one constituent told me, "like throwing gasoline on the fire." Even Justice Hugo Black, whose liberal credentials I think it is fair to say are beyond question, has said on several occasions that the majority of the Court's actions have "hobbled" legitimate law enforcement efforts and that prosecutors have been denied the right to proceed effectively against criminals, and set up procedures which unduly favored accused criminals. Let me quote some remarks by Mr. Justice Black in this connection.

In a 1968 case he said:

> The importance of bringing criminals to book is a far more crucial consideration than the desirability of giving defendants every possible assistance in their efforts to challenge the admissibility of evidence.

In a 1969 case he complained:

> The constitution does not give this court any general authority to require exclusion of all evidence that this court considers improperly obtained or that this court considers insufficiently reliable.

At the moment we need stronger law enforcement, Mr. President. The Court, by fiat, has set about to create a host of new rights and privileges in criminal law which have no judicial history, which no one had ever heard of a generation ago. The net effect of these decisions was to free criminals and to make a mockery out of the efforts of our law enforcement people.

Florida, as the ninth ranking State in population, has, Mr. President, a varied population and I know that many of these same views apply across the country. In a July 1968 Gallup poll, two out of three persons interviewed viewed the Court with disfavor.

I think it would be most unfair to characterize all of the opposition to Judge Haynsworth's nomination as political. I know that many of the distinguished Senators whom I respect feel that there are serious ethical question. I respect their viewpoints, but I think that in all candor a fair appraisal of this matter would substantiate the point of view that very much of what we hear in opposition to this nomination is philosophically and politically motivated.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. GURNEY. I yield to the Senator from Oregon.

Mr. HATFIELD. I thank the Senator from Florida for his erudite, scholarly presentation on this very important issue.

I should like to ask the Senator a question. I believe he has just stated that he feels the philosophy of the Court, or the trend in its philosophy, is one of the basic reasons why the President made his selection, or at least this was one of his measurements. Further the Senator observes there are those in this body who are also using philosophy, perhaps, as a criterion in determining their vote on the confirmation question.

Do I understand that the Senator believes it to be within the prerogative and responsibility of Senators to use or judge the philosophy of the candidate, Clement Haynsworth, in casting their votes for confirmation or against confirmation?

Mr. GURNEY. I would answer the Senator by saying I think that is the prerogative of any Senator, if he wants to use that criterion.

The point I was making is that I do think many Senators have used it in their reasoning as to whether they are going to vote for or against the confirmation of Judge Haynsworth. As I pointed out earlier, I think before the Senator from Oregon arrived, at least one Senator last week, I believe on Friday, had the candor to say exactly that. That was the senior Senator from New York (Mr. JAVITS), who said that he opposed the confirmation of Judge Haynsworth on the ground of his civil rights decisions—or at least he was basing his argument on that—rather than on the ethics of the matter.

Of course, as far as the civil rights decisions are concerned, I think one can make a case either way. The Senator from New York felt keenly about that issue; and in his argument here today, the Senator from Tennessee arrived at the opposite conclusion. I am simply making the point that I think that philosophical assessment of Judge Haynsworth will have a great deal to do with the "yes" or "no" votes of many Senators. I do not think they are really saying that that is their reason; they are putting it on ethical grounds.

Mr. HATFIELD. Will the Senator yield further?

Mr. GURNEY. I yield.

Mr. HATFIELD. Again, as I emphasized on a previous occasion, not as an attorney but rather as a layman attempting to make a judgment as to how to vote on confirmation, I am aware of the various arguments that are being used for and against a confirmation vote. One of the arguments that has been used most frequently with me, by those who have been in the position of favoring Judge Haynsworth's confirmation, has been that I am not to include in my judgment, or I should not include in my judgment, the question of philosophy; that if that were proper, men like Justice Brandeis and Justice Charles Evans Hughes would never have been confirmed. The Senator knows the argument—he has heard the discussions, as I have heard them—and that philosophy, therefore, should be ruled out as a base for my judgment on my vote. So, I found the statements of the Senator today to be very helpful and very enlightening.

I just wanted to make sure I understood correctly that they indicate that, whether it is a right or wrong thing, philosopy is a consideration of the President in his selection of Judge Haynsworth for this position and of those of us in the Senate who have, either directly or indirectly, indicated that philosophy is part of our consideration. Is that a correct observation of the Senator's statement?

Mr. GURNEY. It is correct to the extent that I think is motivating many Senators in whether they will vote yea or nay.

I would go on from there and point out that I do not think the U.S. Senate would be well advised to turn down a nomination on purely philosophical reasons. I think that the President of the United States, be he a liberal, middle of the road, or conservative man in his philosophical persuasion, should have the prerogative of nominating the person he wants for philosophical reasons to the Supreme Court of the United States.

So, in answer to the question of the Senator, no, I do not think that Judge Haynsworth's nomination should be turned down on philosophical reasons.

The point I was making was that I think Senators are turning him down on philosophical reasons, but using as a real reason the smokescreen of an ethical matter.

I do not think that is fair. If we look back at a lot of other nominations made in previous administrations by President Johnson, President Kennedy, and President Franklin Roosevelt, I do not think the Senator ever turned down, as I recall, a Supreme Court Justice on philosophical reasons.

I do not doubt that perhaps some nay votes were cast over the years that were motivated by philosophical reasons. However, I do not think a judge has ever been turned down on those grounds in recent years, unless it was in the case of Judge Parker.

Mr. HATFIELD. Mr. President, as an attorney and as one trained in the law, does the Senator think it would be fair to make a judgment on Judge Haynsworth on the basis of philosophy since, as the Senator says, the President of the United States takes cognizance of the attitude of the general public toward the Court today, and, therefore, did make his selection taking into consideration the philosophy of the man? Would it not be just as fair to cast a vote on philosophical reasons, as the President of the United States used philosophical reasons as part of his appointment criteria?

Mr. GURNEY. I do not think so, because my feeling of the advice and consent of the Senate in these matters is that it should go to the man's ability as a judge and not to the philosophical disposition expressed in his decisions.

It certainly should go to his ethics, indeed, and it should go to his honesty, integrity, and ability. However, I do not think we should make a judgment in the Senate and say, "no, the President should not appoint this man because we disagree with his political philosophy."

One reason that I do not think we should take that view in a broad sense is that the whole process of democratic government in this country is certainly involved in last year's elections. Along with the issues of Vietnam and crime and inflation, there was also a decision on philosophy. I do not think there is much question of that. I think that most people voted for President Nixon because they thought he was middle of the road to conservative. I believe that many people voted for Vice President Humphrey because they thought he was liberal.

If the outcome of the election means anything, it means that the people voted middle of the road to conservative in the

election. And since that was the voice of the people, I think that the President has every right to follow those general guidelines in his appointment to the Supreme Court of a new Justice.

And I say also that, in my opinion, the President is not trying to make a conservative court out of the Supreme Court.

As I see the Burger and the Haynsworth appointments, they were made in an effort to get the Court more near the middle of the road and more nearly akin to the feelings expressed across the country as to how the Court should be divided philosophically. I think that is what he is trying to do.

I do not think he is trying to revise the Court. And if he succeeds in his intention, he will be doing the country a great service.

As I mentioned earlier in my 2-year campaign for U.S. Senator from Florida—and I campaigned last year and the year before—I can say in all honesty that whenever the issue of the Supreme Court of the United States was made in any of my speeches, there was a roar such as I cannot describe on the Senate floor. It was a roar of unanimous disapproval by the people. They expressed how they felt about the Supreme Court of the United States.

I think this is a dangerous thing. I think it is very dangerous. The highest Court of the land is a Court that I as a lawyer, and I am sure every other lawyer who sits in the Senate or in law school—certainly in our earlier days of legal experience—viewed as something up high.

We viewed the men of the Supreme Court, the Brandeises and the Cardozas—and Judge Cardoza taught me at Harvard Law School—as great legal giants. We had enormous respect for them. However, during the Warren court a lot of that respect disappeared. We noticed that the people then viewed the Supreme Court as something they did not want, disrespected, and did not like. This was because the Court was tearing down many of the fundamental things people believed in.

This is very important in the appointment of Judge Haynsworth, because I firmly believe that one of the things the President is trying to do is to change the direction of the Court and, indeed, reestablish it as a bastion of strength and respect in the eyes of the people. And for the Senate of the United States to turn down the President of the United States on a matter of philosophical judgment, I think, is entirely wrong.

Mr. HATFIELD. Then, as I understand the Senator from Florida, if the President takes cognizance of this conservative trend, as the Senator would interpret the last election, in the feeling that the Court is now too liberal in its general character and that therefore he has purposely selected a conservative to balance the Court, not to make it all conservative, but to bring it into greater balance, that it is appropriate that this sentiment should stop at the Senate door as far as our judgment of the floor actions is concerned, and that we should ignore philosophical reasons, that even though the people of the United States have taken cognizance of the Supreme Court and Judge Haynsworth, we should not.

Mr. GURNEY. The Senator is correct. And I think that in the former action of the Senate in confirming other Supreme Court Justices, such as Justice Fortas, when his name was presented, and Justice Goldberg and Justice Thurgood Marshall—I am not familiar with the record at that time, although I am sure that many conservative Senators would have preferred another name to come here from President Johnson, President Kennedy, or President Roosevelt—nevertheless, the Senators voted "aye" and did not take into consideration the other arguments.

Mr. HATFIELD. The Senator stated his belief that the people had lost faith in the Supreme Court and that great resentment was reflected toward the Court in the Senator's campaign in Florida. I think that much of my mail from Oregon would indicate that situation is also true in Oregon. They feel that the breakdown in law and order should be laid at the doorstep of the present Court and, that the greater permissiveness in our society should be blamed on the present Court. They blame many things on the Court that I take issue with.

Does the Senator think that the faith we should have in our Supreme Court could be reestablished by a close vote on Judge Haynsworth of, say, 52 to 48?

Mr. GURNEY. No. I do not think that would enhance the cause of the Supreme Court or reestablish faith in it. I must admit that the Senator raises a good question.

On the other hand, I must also hasten to point out—and this is the whole meat of the argument I am presenting—that it is not the fault of the President of the United States, it is not the fault of Judge Haynsworth, it is not the fault of the people of the United States that we are going to have in this Chamber next Wednesday, Thursday, or Friday a close vote on Judge Haynsworth. But, as I see it, it is Senators sitting in this body who are erroneously and wrongfully injecting their own philosophical ideas of who ought to sit on the Supreme Court. I do not think that is right. I think it is wrong.

Mr. HATFIELD. In other words, by the action of the Senate, then—the individuals the Senator refers to—we have already undermined the potential of Judge Haynsworth becoming an instrument of reestablishing the faith and confidence in the Court that we might otherwise have been able to accomplish?

Mr. GURNEY. Perhaps, to a certain extent. But if we have done that, I do not think that should inure to the detriment of Judge Haynsworth, because it is not his fault that philosophical viewpoints were erroneously injected into this matter.

The argument has been made by a number of people, as the Senator from Oregon knows, and as I know, that the President should withdraw Judge Haynsworth's name, because then we will avoid a close vote and we will not get into the business of perhaps further discrediting the Court and further bringing it into disfavor. But I would say that I am sure that what is going on in the mind of the President of the United States is that if he caves in on this one, if he gives way to the philosophical, individual idiosyncracies of each Senator, then the same thing will happen when he sends up another name. So I think he is right in standing firm.

Mr. HATFIELD. Why does the Senator feel that this opposition to a so-called conservative appointee was not raised with the appointment of Chief Justice Burger? Chief Justice Burger fit generally into the same philosophical mold. Why was the opposition within the Senate that has accrued to Judge Haynsworth not raised against Chief Justice Burger?

Mr. GURNEY. Well, I do not know that I can answer the question of the Senator from Oregon. I would make a guess, but I cannot prove that it is so. I would say that perhaps the forces that are opposing Judge Haynsworth did not gear themselves up to oppose Judge Burger in the same fashion.

We might just as well face it: The two forces that are opposed to Judge Haynsworth are the civil rights groups of the country and the organized labor groups, the AFL–CIO. This is the steam behind keeping Judge Haynsworth off the Court, and I would say that probably they did not generate this concerted action against Judge Burger.

Then, too, I think that, in some of the ethical matters they have raised, they have found little things on which they can hang their hats. I do not think they are valid reasons, but I do think they are the kinds of things one can make a lot of noise about and spread a lot of smoke about.

Mr. HATFIELD. So there is something beyond the philosophical question, then, that the Senator feels might exist in the Haynsworth case that did not exist in the Burger case?

Mr. GURNEY. There is something to hang their hats on in the Haynsworth case that did not exist in the Burger case.

Mr. HATFIELD. I thank the Senator.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. BAKER. On the point made by the distinguished senior Senator from Oregon, I should like to respond with my own views in one respect.

The question was put, in substance—at least, as I understood it—"would a close vote for confirmation, by 50, 51, or 52 votes, do anything to further the public confidence and trust in one of our equal departments of Government?"

I must say that I entirely agree with the implication that the Court is in need of greater public support and greater public trust. It should have it; it is going to have it; and I am going to do what I can to get it. But my answer is that it does not make any difference, for a very great reason, one I am proud to have had some part in, and that was the recent extended debate and conflict over the confirmation, or failure of confirmation, of Justice Fortas.

As I said in my remarks this morning,

I think that, as a result of the Fortas fight, the Senate, in effect, created a higher duty of care than it had ever exercised before in reviewing judicial appointments. I think that as a result of the Fortas case we created and implemented the "Caesar's wife" concept. We expanded the doctrine of advice and consent far beyond that which had existed probably at any other stage in the history of the Senate. As a result, we can probably foresee that every nomination to the Supreme Court of the United States, by Presidents of whichever party, will be scrutinized more carefully by this and succeeding sessions of the Senate than has been the case in the past.

I think we can expect to have closer votes than in the past. We are moving away from the position, as some have charged, of a rubberstamp Senate. I think we have broadened the scope of advice and consent.

I have frankly admitted that this nomination must be judged according to those new and improved rules. But I think that the support given and the celebration I make of the heightened degree of care that the Senate is now exercising will produce closer votes in the future, and I do not think it is going to militate against public confidence in the Court. On the contrary, I think the Court will be a better, stronger, and more accepted part of the tripartite system of government because of the searching scrutiny we give this appointment and other appointments in the future.

Mr. HRUSKA. Mr. President (Mr. SAXBE in the chair), will the Senator yield?

Mr. GURNEY. I yield.

Mr. HRUSKA. Mr. President, if we are going to think in terms of a close vote for Judge Haynsworth, if it is something undesirable and should be withdrawn, why not extend that principle to the Supreme Court. Those nine men gather and often have a difference and the vote comes out 5 to 4? If it is something we do not like and the other side has five votes, then we can say: "It is too close to really have any value. It should be a more resounding vote than that, and really does not count. So we will disregard the 5-to-3 vote."

After all, if there is anything to this one-man, one-vote rule and to the democratic processes, there is always that possibility of determining the outcome by a very narrow margin. Are we to say, if it is narrow and it is against us, "Let's call the whole thing off and go at it again"?

I do not see anything wrong with the record that Justice Brandeis made and that Chief Justice Hughes made. They had a very substantial number of votes against them. They went on to become two of the most brilliant, best, and most constructive jurists this country has ever seen.

I see nothing sinful, or improper about a close vote. I would be happy with a 50-50 vote if the man in the Presiding Officer's chair would say that he would use his best judgment as to which of the candidates would be his favorite and would cast his vote accordingly. I think that still would be a victory.

Mr. GURNEY. The Senator from Nebraska has made a good point, in his usual, well reasoned argument.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. HATFIELD. I should like to clarify one of the questions I put to the Senator from Florida, because I think the comments of the Senator from Nebraska may indicate that it was not clearly understood.

I think that what the Senator from Florida said is very true—that there is a great need today to build stronger confidence and faith in the Supreme Court as an institution in this Nation's political system. With a close vote, we are talking here not of a rule of law or an interpretation of law which has very specific wording and very specific criteria, but we are talking about very intangible things, of faith and confidence of the mass of our people. This has emotion in it. It has many other elements that are not put through the same process of rendering an opinion or a decision on a law that is being challenged before the Supreme Court in which there may be a 5-to-4 decision.

I think the Senator from Florida was quite correct when he responded that it would tend to demean the role Judge Haynsworth might play in becoming an instrumentality of reestablishing this faith if it were a close vote, because it would show that in the Senate there were a number of people who did not have faith in him to sit as a qualified member of the Supreme Court. I am not saying this is what is going to happen. I do not know what the vote is going to be in the Senate; I do not even know what my vote will be at this point.

I am deeply troubled by these discussions and arguments because as a layman I have to ferret through all the arguments in order to make a decision.

I am grateful to the Senator for discussing the matter of philosophy. I appreciate the forthrightness of his argument in saying that Senators should not use philosophy as an answer, even though the President has done so in his nominating power.

That gives me a clear-cut answer to what the Senator is talking about on the floor of the Senate. There are other Senators who have stated otherwise and who have admitted the criteria should include philosophy. I think there is a difference in rendering an opinion by a vote of 5 to 4 and confirming a nominee by a vote of 52 to 48.

Mr. GURNEY. I thank the Senator. Our colloquy on this matter of philosophy was meaningful. I shall go further and say I hope I have convinced him that philosophy should not play a part in his decision when he casts his vote a few days hence.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. DOLE. Mr. President, I have listened with great interest. Some in this body came to the Senate on rather close votes. I remember President Johnson, when he came to the Senate, had a majority of 87 votes. He went on to become a great political figure. When President Nixon was Vice President and first sought the Presidency he lost, but there was still confidence in him. He was elected President in 1968.

In the past many Senators have had close elections and have gone on to become great Senators. The Senator from Florida properly pointed out that some judges who have gone on the bench after close votes have become great Justices.

I share the concern of the Senator from Oregon but do not believe we can shape the image of the Court in the Senate. The President has the right to nominate and if qualified so far as integrity, honesty, and ability are concerned, the nominee should be confirmed. I think Judge Haynsworth fits these qualifications and am not concerned that a close vote, will shake confidence in the Court. It is my guess that this nominee has been scrutinized more closely than anyone in history. If he is confirmed by a one-vote margin most Americans will accept the decision of the Senate and he can become one of our great jurists.

Mr. GURNEY. I thank the Senator. I agree that if there is a close vote, it is better that he be confirmed by a close vote than for the Senate to reject the confirmation. That would not be building confidence in the Supreme Court.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. BAYH. Mr. President, I appreciate the remarks of the distinguished Senator from Florida. I certainly know he has given this matter a great deal of thought.

On the point raised earlier by the Senator from Tennessee, I think we have set a higher standard. I concur with him. I think this new standard is good.

I do not believe, however, that because we have set a higher standard, we will always have a close vote. That was not the case in the Burger nomination. I do not know how many people opposed that nomination, but it was relatively few.

I am deeply concerned about the impact of a close vote on this nomination. Everybody looks at this matter differently. I appreciate the Senator yielding to me on his time although I have a different opinion. However, here we are for the first time in history being asked to fill a vacancy on the Court, which came about due to a question of ethics. Many people are looking to us to lead the way. I hope we will consider the loss of public confidence which will result from a narrow margin of votes for confirmation. I think it would be unfortunate to lose such confidence. I respectfully differ with my friend from Florida and I think it is in the finest democratic traditions.

Mr. GURNEY. I thank the Senator for his contribution. It is certain that Senators are going to differ on this matter. That is a certainty.

I might say, since this matter has been brought up as to what the country may feel about Judge Haynsworth one way or another, I have noticed in one or two polls taken recently that there is a fair amount of opposition to Judge Haynsworth. However, the interesting thing is that no one seems to know why. The pollsters, when questioning people dur-

ing a poll as to why they are opposed to Judge Haynsworth cannot get any response as to why he would not make a good Judge. I think that may have something to do with some remarks made the other night by the Vice President, and that is, what people hear from the news media.

I can give a very good example of what I am talking about. On November 6 I made a speech in the Senate in which I publicly came out for the first time for Judge Haynsworth. I happened to be in Florida the next day. On that same day one other Senator made a speech opposing Judge Haynsworth, and that was the Senator from Iowa (Mr. MILLER). I saw three leading Florida papers the next day that dealt with this matter. Every one of them headlined Senator MILLER'S opposition to Judge Haynsworth. In not one of the three newspapers was there one shred of print, not even a line, not even a word about the fact that their own Senator from Florida had come out in favor of Judge Haynsworth.

So it is not surprising that the people of the country may have an idea about Judge Haynsworth and they may not know exactly what the facts are. There is further evidence of what the Vice President was talking about the other night, and that is the power of molding opinion by some of the news media.

I would urge my colleagues to view this matter as dispassionately as possible. Stripping away the subterfuge and the exaggerations, I think no true bill can be delivered against Judge Haynsworth. The opposition has had more than 2 months now to pore over Judge Haynsworth's records and his business dealings and his stock market transactions—in a manner it might say which is unusual in public life—and the result of this search has disclosed little solid material, and in my view, no substantial or valid objections. I think the Senate could better discharge its obligations to advise and consent on this nomination by examining Judge Haynsworth's judicial record.

I realize that Judge Haynsworth's views on social issues may not please all my colleagues but I think that those who have these problems should state them in those terms. In that way we can come to the real problems which are bothering some of my colleagues, and the real basis for much of the opposition to Judge Haynsworth, philosophical attitudes on civil rights matters and attitudes on matters close to the hearts of organized labor.

For me, I believe that Judge Haynsworth is eminently qualified to serve on the Supreme Court, and I will vote for his confirmation.

Mr. SPONG. Mr. President, I concur with those of my colleagues who, in announcing their positions on the nomination of Clement F. Haynsworth, Jr., have spoken of the rather awesome responsibility imposed when exercising the constitutional prerogative to advise and consent to a President's nomination to the Supreme Court.

My first exposure to this responsibility was the nomination in 1967 of Justice Thurgood Marshall. At that time I determined that a Senator should review the hearings on a Presidential nominee for the Supreme Court with a presumption in favor of approval. The nominating power lies with the President of the United States and it is his prerogative to select the man he wishes to become a part of the Nation's highest tribunal. Of course, this is not to suggest that a Senator should blindly acquiesce to an appointment, for consent should be governed by evidence concerning qualification, background, experience, integrity, and temperament. The Senate should not endeavor to shape the Court in its own image. For that matter, in determining judicial philosophy, many fail to appreciate how meaningless classifications are except in relationship to a particular case. How many justices have been seated on the Court, neatly labeled as to their philosophical, social, and political views, only to disprove all predictions of how they would perform?

My preference for a narrow view of advice and consent results in part from a survey of the rather shoddy history of the Senate's role in Supreme Court appointments during the 19th century, particularly during the administrations of Tyler, Fillmore, and Grant. Rejections by the Senate—and they were numerous—were, for the most part, based upon purely partisan, political considerations.

Also, I recall the humiliation of Judge John J. Parker, of North Carolina, who, in 1930, was designated a Supreme Court Justice by President Herbert Hoover. That nomination was rejected by a vote of 41 to 39 and Judge Parker remained on the fourth circuit, serving with distinction for many years as its chief judge. As a law student, I came to regard Judge Parker as perhaps the most able jurist in the United States. Such of the argument against Judge Parker during the debate on his confirmation resulted from an opinion he had written in one case. Many who voted against his confirmation later acknowledged that they had been mistaken in judging his alleged bias in the midst of heated, political debate.

Opposition to Judge Parker was similar in many respects to that expressed to the nomination of Clement Haynsworth, although there were no ethical charges in the Parker debates. When charges questioning judical conduct are made, there is an obligation to weigh them cautiously. In the case of this particular nomination, one to fill a vacancy created by a resignation following charges of judicial impropriety, it is necessary to examine carefully the charges, the testimony taken by the committee, and the committee's report thereon.

Moreover, one has a particular obligation to a sitting judge. For if it be determined that Judge Haynsworth has behaved with impropriety, then, in concluding that he does not meet the standards of fitness for service on the Supreme Court, are we not also suggesting that the judge is not suitable for service as chief judge of the fourth circuit?

Realization of this seemed to dictate that independent investigation be made beyond the testimony contained in the record of the hearings. It has not been difficult for me to make inquiries concerning Judge Haynsworth. The State of Virginia is in the fourth circuit. Members of the Virginia bar have been readily available to give their independent opinions concerning Judge Haynsworth's fitness for higher judicial appointment. It has been helpful to consult with them after the hearings on the nomination were completed and the ethical charges made public, as well as having the benefit of their views of Judge Haynsworth's attitude toward ethical problems. Also, there are within my State excellent law schools whose professors have been available for evaluation of ethical questions raised during the Haynsworth hearings, as well as to comment upon the testimony before the committee concerning certain of the judge's decisions.

The Virginia lawyers with whom I consulted, who practice extensively in the fourth circuit, almost without exception are of the opinion that Judge Haynsworth is a man who is professionally qualified for service on the Supreme Court of the United States. They view him as a man with both personal and intellectual integrity. These views have been buttressed by Judges Albert V. Bryan and John D. Butzner, the Virginia members of the Fourth Circuit Court of Appeals, who have expressed their complete confidence in Judge Haynsworth's integrity and ability. Despite the many expressions of high regard for Judge Haynsworth's qualifications, the objections against the nominee which raise ethical questions have been so numerous and have been given such wide publicity, that I resolved to examine and evaluate them carefully before making a determination as to whether I should consent to this nomination. Accompanying allegations of judicial misconduct have been statements that his record of decisions indicate prejudice against the interests of many of our citizens. This is an extremely sensitive time for the Supreme Court and a time during which it is essential to restore public confidence in the Court. Regardless of whether a fair analysis of Judge Haynsworth's decisions shows him to be free of prejudice, if there were a real question about his honesty, his effectiveness as a judge would be forever impaired and public confidence in the Court further damaged.

Accordingly, I have consulted with law professors as well as corresponded with authorities on judicial ethics, particularly concerning disqualification.

The various objections to confirmation of this nomination are outlined in both the majority and minority views of the committee report. Many of the charges are, in my judgment, groundless and have served only to cloud the basic issue of determining Judge Haynsworth's fitness for this appointment. Most of these charges have been answered, but there are questions relating to disqualification because of stock ownership that require detailed examination and comment. We must realize that there is no present prohibition against the ownership of stock by a judge. Specifically, five cases have been cited in which opponents of the nomination have stated that Judge Haynsworth sat when the cases involved corporations in which he had financial in-

terests by reason of stock ownership, and in so doing, violated both the disqualification law and the canons of judicial ethics. Ownership of stock as it relates to judicial disqualification is governed by 28 U.S.C. 455 which provides as follows:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

Canon 29 provides as follows:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved.

THE DARLINGTON CASE

Of the five cases cited, the one with the longest history is *Darlington Manufacturing Co.* v. *NLRB*, 325 F. 2d 682, decided before the fourth circuit in November 1963. Judge Haynsworth's participation in this decision was questioned as far back as December 1963 and was investigated by Judge Simon Sobeloff, then chief judge for the fourth circuit, who in February of 1964 advised the then Attorney General, Robert F. Kennedy, that he had conducted an independent investigation of certain allegations with regard to Judge Haynsworth and concluded they were without foundation. Judge Sobeloff's conclusions were shared by Attorney General Kennedy, who expressed complete confidence in Judge Haynsworth.

The various corporate parties to the case are outlined in detail in the hearings and committee report. Nevertheless, we might recite briefly the following facts: At the time of the hearing Deering-Milliken operated textile plants in several southern States and was a party to the suit. Deering-Milliken granted space in its plants to vending machine companies on a competitive bidding basis, and one of these companies was Carolina Vend-A-Matic, which had machines in five of Deering-Milliken's 27 textile plants. Judge Haynsworth served as vice president and director of Carolina Vend-A-Matic until October 1963, resigning in compliance with a resolution passed by the United States Judicial Conference and adopted shortly before that date. When Judge Haynsworth resigned either as an officer or director of Vend-A-Matic is, in my judgment, not relevant to a determination of whether or not he should have disqualified himself in the Darlington case. He was a substantial stockholder in Carolina Vend-a-Matic from its inception in 1950 until 1964, when he sold his interest, and a stockholder at the time the Darlington case was heard. The legal and ethical questions concern whether a judge who owns stock in one corporation which in turn does business with a second corporation should disqualify himself when the second corporation is a party litigant in his court.

Cases seeking disqualification where a judge holds stock, not in a party before the court, but in a corporation which does business with a party litigant have rejected the argument for disqualification. After reviewing the record and the case law, I concur with the statement by Judge Lawrence E. Walsh, chairman of the American Bar Association Committee on Judicial Selection, who stated:

We believe that there was no conflict of interest in the *Darlington* case which would have barred Judge Haynsworth from sitting and we also concluded that it was his duty to sit.

PARENT-SUBSIDIARY CASES

In three cases: *Farrow* v. *Grace Lines*, 381 F. 2d 380 (1967); *Donahue* v. *Maryland Casualty Co.*, 363 F. 2d 442 (1966); *Maryland Casualty Co.* v. *Baldwin*, 357 F. 2d (1966), it is charged that Judge Haynsworth violated the law and the canons of judicial ethics because he sat while he owned shares in the parent subsidiaries which were before the court.

There is no clear authority in Federal cases dealing specifically with disqualification in parent-subsidiary cases, but there is some State court authority which holds that ownership in the parent of a subsidiary does not require disqualification.

It is clear from my examination, however, that Judge Haynsworth's interest in these three cases was very limited and that by the standard of "substantial interest" laid down in the disqualification statute or by the standard of "personal interest" set forth by the canons of judicial ethics he was not required to disqualify himself. In fact, faced with the strong rule that requires federal judges to sit where not disqualified, it would seem that Judge Haynsworth was under a duty to accept the responsibility of ruling in these cases, as he was in the Darlington case.

THE BRUNSWICK CASE

The matter that has given me grave concern was the purchase by Judge Haynsworth of 1,000 shares of stock in the Brunswick Corp. while a case involving that corporation was still pending before the fourth circuit. A chronological recitation of facts is outlined in the report on the nomination. The situation is unique insofar as the application of the recognized standards of ethics is concerned because the purchase was made after the case has been decided, but before a written opinion had been signed.

The Brunswick case and the Judge's stock ownership first came under discussion during the hearings. Judge Haynsworth had previously testified and been excused, and the subcommittee was examining John P. Frank, a recognized expert on disqualification of judges who is quoted in the committee report by both proponents and opponents of the nomination.[1]

Mr. Frank did not comment specifically on the Brunswick case in this testimony because he was not familiar with the facts. The following week Judge Haynsworth reappeared before the committee concerning this stock ownership. Also, the committee heard from Judge Harrison L. Winter of Baltimore, the judge to whom the Brunswick opinion was assigned for preparation, and Arthur C. McCall, a stockbroker of Greenville, S.C., who handled Judge Haynsworth's account.

From their testimony, one can make the following conclusions:

First. There was nothing in the evidence of the case, or from the precedent it established, that would encourage investment in the stock of Brunswick Corp.—hearings, pages 251, 256, 257.

Second. The panel of judges designated by the fourth circuit to hear the Brunswick case unanimously decided to affirm the district judge's opinion on November 10, 1967—hearings, page 238.

Third. The broker, Mr. McCall, suggested around December 15, 1967, to Judge Haynsworth that he purchase the Brunswick stock. The stock was ordered on December 26, 1967—hearings, page 264.

Fourth. On December 27, 1967, Judge Winter mailed the Brunswick opinion to Judge Haynsworth and upon receipt of same he realized that the case had not ended—hearings, pages 238, 272.

Fifth. The Brunswick decision was announced on February 2, 1968, after which the rules provided for 30 days in which to petition for a rehearing. No petition was filed within the 30-day period, but on March 12 and April 4, 1968, petitions to extend the time for a rehearing were filed and subsequently denied—hearings, page 245, 262.

Judge Winter, in addition to providing the committee with the factual situation in the Brunswick case, expressed the opinion that Judge Haynsworth was not in violation of either Canon 26 or Canon 29 of the American Bar Association's Code of Judicial Ethics—Hearings, Page 251, 252—and further, that he did not have a "substantial interest" within the meaning of 28 U.S.C. 455, the Federal statute in this matter.

Nevertheless, there is disagreement on this between proponents and opponents of the nomination. Since Professor Frank did not testify in any detail on

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[1] Mr. Frank is the author of *Disqualification of Judges* 56 Yale L.J. 605 (1947). The following note was appended to his letter of September 3 to the Chairman of the Judicial Committee:

"This is my thirtieth year as a law teacher, lawyer, and author. Politically, I was a strong supporter of President Kennedy, President Johnson, and Vice President Humphrey. In the constitutional field, I believe I filed, with others including the present Solicitor General of the United States, the first brief calling for a total end to school segregation (*Sweatt* v. *Painter*, 339 U.S. 629 (1950); was one of the first to advocate the rule which has become one man, one vote (*Political Questions*) in *Supreme Court* and *Supreme Law* 36, 41 (E. Cahn ed. 1954); consistently advocated the right to counsel rule which culminated in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); and was co-counsel on the prevailing side of the confession case of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Numerous books and articles reflect an abiding admiration for the work of Justice Hugo L. Black, and my immediately forthcoming work on law reform is dedicated to Chief Justice Earl Warren. I know Judge Haynsworth by virtue of twice having been a guest speaker on current developments in the law of civil procedure at the Fourth Circuit Judicial Conference, over which he presides, and as a fellow member of the American Law Institute." (Hearings, Page 117)

the Brunswick case and filed no subsequent statement for the record, I undertook to solicit additional comment from him. His conclusion was that while reasonable people might conclude differently regarding what Judge Haynsworth should have done when he discovered the inadvertent acquisition of the Brunswick stock, the Judge's actions reflected a practical judgment on the alternatives available and did not rise to the level of ethics.

At this point I ask unanimous consent that my letter, dated October 30, 1969, addressed to John P. Frank, Esq., Phoenix, Ariz., be made a part of the RECORD at this point in my remarks and, also, that his letter to me, dated November 3, 1969, be admitted subsequent thereto.

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

OCTOBER 30, 1969.

JOHN P. FRANK, Esq.,
Lewis, Roca, Beauchamp & Linton,
Phoenix, Ariz.

DEAR MR. FRANK: I have been reading your testimony of September 17th before the Senate Judiciary Committee in the hearings on the nomination of Judge Clement F. Haynsworth, Jr. On Page 128 of the printed transcript, Senator Bayh questions you about *Brunswick Corp.* v. *Long*, 392 Fed. 2d 348, but the matter was not pursued.

Judge Haynsworth testified again on Tuesday, September 23rd, and as near as I can conclude from his testimony the facts concerning his purchase of the Brunswick stock are as follows: beginning December 15th, 1967, through his broker, Arthur C. McCall, Judge Haynsworth sought to purchase a thousand shares of Brunswick stock. After some hesitation over price on the part of the broker, an order was entered on December 26th, purchasing a thousand shares of stock at $16 a share. Judge Haynsworth paid for the stock by check on December 27th and received his stock certificates on the 20th of January 1968.

At some time subsequent to that Judge Haynsworth received the proposed opinion in the case from Judge Winter. At that stage he realized the case had not been completely disposed of and that he had become a stockholder. On Page 272 of the printed transcript Judge Haynsworth is quoted as follows:

"My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any doubt about it, and nothing else occurred to return the case to the discussion stage. Now, it does occur sometimes, as was brought out from Judge Winter, that when an opinion is assigned to a judge for a number of reasons he may change his view.

"This may be the result of something he found in the record of which we were not aware. It may be the result of some research he did in his library to bring out some point that we were not aware of, were not fully appreciative of, and the case then reverts to the conference stage. It goes back for a brand new, fresh viewpoint. That happens now and then, not with great frequency but it does occur.

"Nothing of the sort occurred in this instance. If it had occurred, I would have gotten myself out. Indeed, I would not only have gotten myself out, I would have gotten Judge Winter out and Judge Jones, because if I was not qualified to sit in this case, I had conferred with them and if it was wrong for me to be in, it was wrong for them to be in it, so I would have gotten all three out and the case would have been set to be reheard before three new judges.

"As against that, I thought that really the decision had been made in November, long before I knew anything about Brunswick stock or became a stockholder, and in the interest of judicial efficiency, I should go on and endorse my name on the opinion as approving what we had agreed upon, as approving it as an expression of what we had agreed upon back in November.

"That, of course, I did. I do not think that was acting in a strictly judicial capacity at the time because it was merely an affirmation of what we had agreed upon some, well, 8 weeks earlier.

"As I say, Judge Winter said that he would not have bought this stock and I agree with him completely. I would not have bought it either if I had been aware of the fact that this case that we had heard in November had not been disposed of. Afterward I saw no reason why I should not proceed as I did in light of the circumstances and the fact that there was no reversion of this case ever to the conference stage. So I signed it and that was that.

"I do not think under the circumstances that under the statute, I did not think then, I do not think now, that what I did in the decisional process in that case was done while I had any interest whatever in the case or in its outcome."

Subsequent to this, after a 30-day period under the rules had expired, there was a petition to extend the time for filing a motion for a new trial. Later there was a petition to reconsider denial of the petition to extend the time within which to file the motion. I do not believe you had all these facts before you at the time you testified and I am writing to ask if you would care to make any additional comment with regard to the question of whether Judge Haynsworth should have disqualified himself. I shall be calling you concerning this inquiry the early part of next week.

Sincerely,

WILLIAM B. SPONG, Jr.

LEWIS, ROCA, BEAUCHAMP & LINTON,
Phoenix, Ariz., November 3, 1969.

Hon. WILLIAM B. SPONG, JR.,
U.S. Senate, Washington, D.C.

DEAR SENATOR SPONG: This will acknowledge your letter of October 30 asking for further comment on the matter of the *Brunswick* case as it relates to Judge Haynsworth in terms of the law of disqualification, and the relevant ethical standards.

I. GENERAL PRINCIPLES

The heavy majority point of view is that a judge should not hear a case of a corporation in which he holds stock. As I said in my earlier statement, "the heavy majority rule" is that "if a judge holds shares in a corporation which is in fact a party before him, he should disqualify as much as if he himself were a party." Senator Bayh asked me directly about this at P. 127 of the Hearings as printed and I expressly replied in agreement with his statement that if one holds "stock of any appreciable value in any corporation that is before you, you should automatically disqualify yourself." The cases to this effect are collected in the comprehensive annotation cited by me earlier, 25 A.L.R. 3d 1331 and were discussed to the same effect in my 1947 article.

While this is the majority view and I think clearly the better view, there are limitations where either the interest is small in relation to the whole or where there has been a waiver. This takes two forms: illustratively, the 5th Circuit takes the view that if the interest is small in relation to the total interest involved and there is no real effect of the decision on that interest, it is proper for the judge to sit. See *Kinnear-Weed Corp.* v. *Humble Oil & Refining*, 5th Cir. 1968, 403 F. 2d 437. This was brought into sharper focus very recently in connection with a utility matter where two of the judges had stock. The 5th Circuit Court of Appeals expressly found that the judges were nonetheless not disqualified by interest."

The second limitation of this sort is the closely related view that if there is any objection because of small stockholding, it may be dissipated by a waiver after notice.

II. PERSONAL VIEW

For myself, as I said earlier, I subscribe to the majority view. In that view, the judge should not sit if he has any stock at all in the corporation. This is the ABA position. The matter is not cured by disclosure and waiver. This practice is eminently suitable in arbitrations, where counsel need never practice before the particular arbitrator. See *Commonwealth Coatings Corp.* v. *Cont. Gas Co.*, 393 U.S. 145 (1968). But it puts an unreasonable pressure on counsel to waive if they appear regularly.

III. APPLICATION OF THE FOREGOING TO THE BRUNSWICK CASE

A. General principles

I read the testimony of Judge Haynsworth as agreeing with me that a judge should not sit if he has stock although he did follow the practice of waiver and disclosure in very small instances. He expressly testified that had he been aware that *Brunswick* was still in his court he would not have bought the stock. He does differ from me in approving the disclosure and waiver practice, but this is abstract in the circumstances of this case since it was not involved.

B. Controlling law

1. If one takes the 5th Circuit view, then there would have been no violation of the statute even if Judge Haynsworth had held the stock from the beginning since the interest is wholly unaffected by the case.

2. But this, too, is an abstraction, since he did not so hold it. There simply is no law on the subject of inadvertent after-acquisition. The whole problem of inadvertency is a perfectly real one. I recollect that when I was a law clerk at the Supreme Court 27 years ago, one of the Justices had his law clerks regularly inspect all records to be sure that no corporation was tucked away in the case in which he might hold some stock. This is clearly the better practice. Judge Haynsworth testified that in the light of the incident he would "check the cases that had been heard in his Court and were not disposed of" if he were doing it again.

IV. CONCLUSION

Given the facts as stated, the Brunswick stock acquisition of Judge Haynsworth seems to me, as he says, to have been a plain mistake. Once it occurred, the problem was how to dispose of the matter with fair concern for the interests of all. I suppose that reasonable people could conclude differently as to what might have been done—it was necessary to balance the cost of reargument of a perfunctory case against the other factors involved. While I think that this is a matter of practical judgment, I don't believe that it rises to the level of ethics.

Yours very truly,

JOHN P. FRANK.

Mr. SPONG. Mr. President, I agree that this matter does not rise to the level of ethics, but I wish that Judge Haynsworth had consulted with either the other members of the panel or with counsel after he became aware of the inadvertent purchasing of the stock. In my initial reading of the transcript, I was disappointed to realize he had not done this. Nevertheless he discussed this matter frankly with the committee, stating that acquisition of Brunswick stock was a plain mistake. Considering the perfunctory nature of the remaining matters

before the Court after the acquisition, the rather narrow legal question involved, and the fact that every judge who has reviewed the case from the district level through denial of certiorari is in complete agreement on the Brunswick decision, one must recognize that the judge made a practical judgment, one on which reasonable men might disagree, but nevertheless one that does not involve a violation of ethics.

There have been repeated suggestions that Judge Haynsworth was performing an act of judicial discretion with regard to the two petitions filed in March and April of 1968. These petitions were not timely in that they were filed after the allowed 30-day period had expired*—hearings, page 262, 278–280. In my view, the judges had no choice but to deny the petitions.

CONCLUSION

I believe Judge Haynsworth is an honest man. In my view, the questions concerning his ethics have not been substantiated. While some of his actions might be classified as mistakes or unintentional indiscretions, I do not believe they rise to a level which should cause one to doubt his basic integrity. My inquiries concerning his fitness for service on the Supreme Court have confirmed the high opinions held of him by members of the bench and bar of the fourth circuit.

I believe Judge Haynsworth possesses the qualifications to serve with distinctinction as an Associate Justice of the Supreme Court of the United States. Accordingly, I shall vote for confirmation.

Mr. BROOKE. Mr. President, the time is drawing near when the discussion and debate on the nomination of Judge Clement F. Haynsworth, Jr., will conclude and each of us will have to make a judgment of this man's qualifications for service on the highest Court in the land. Our respective decisions, while certainly not infallible, will have benefited greatly from the interrogation of witnesses by the Senate Judiciary Committee and from the exhaustive public review that has accompanied this nomination.

Service on the U.S. Supreme Court represents the high point of any lawyer's professional career. This personal consideration, along with an awareness of the impact that such an appointment will have on the development of our national history, places on each of us the grave and solemn responsibility for making a full and careful evaluation of Judge Haynsworth's credentials. The distressing conclusion that I could not support this nomination came only after I had devoted much time and thought to a reading of the hearing transcripts and a review of the opinions that the judge has authored. I also had the benefit of thoughtful comments from my constituents and some independent investigation of my own.

The question of confirmation quite properly deals with the nominee's intellectual capabilities, his judicial temperament, and his personal integrity.

The judge's opinions often reflect a capability for understanding the intricacies of the law. In certain areas his opinions reflect a thoughtful and independent approach.

It has been argued that Judge Haynsworth is the epitome of a strict constructionist. Yet a reading of the judge's opinions makes it clear that he is not always bound by a narrow construction of the law. In *Bruton* v. *United States* (391 U.S. 123, 1968), the Supreme Court ruled that two defendants cannot be tried together if one has made a confession implicating the other unless precautions have been taken to protect the right of confrontation of the defendant who has not confessed. It is significant to me that 8 years before this decision, Judge Haynsworth had written of the need for precautions of this kind in *Ward* v. *United States* (288 F. 2d 820), and said there that "in the normal case, such a precaution should be taken routinely."

His position was more clearly stated in *Rowe* v. *Peyton* (383 F. 2d 709), 1967, when he said:

> This Court, of course, must follow the Supreme Court, but there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case (p. 714).

In this case, the judge anticipated that the Supreme Court would no longer follow its earlier decision in which it held that a prisoner in custody under one sentence could not challenge another sentence he was to serve in the future.

It is equally clear that Judge Haynsworth has been willing on occasion to overlook technical deficiencies in cases before him. In *Coleman* v. *Peyton* (340 F. 2d 603), 1965, he stated:

> Claims of legal substance should not be forfeited because of a failure to state them with technical precision (p. 604).

Later he said:

> Theoretical abstactions are of no help. Our conclusion must be founded upon practical consideration. (*United States* v. *Southern Ry. Co.* [341 F. 2d 669, 671], 1965.)

Judge Haynsworth's broad construction of legal issues involving criminal justice contrasts markedly with his approach to issues presented in other cases. On other issues, for reasons best known to him, Judge Haynsworth has chosen to ignore "practical considerations," and to rely strictly on legal technicalities.

Let me illustrate my point. In the now famous Prince Edward County case, Judge Haynsworth reached the conclusion that the county has "abandoned discriminatory admission practices when they closed all schools as fully as if they had continued to operate schools, but without discrimination," page 336 of the opinion. He went on to quote Anatole France by saying:

> The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread. That the poor are more likely to steal bread than the rich or the banker more likely to embezzle than the poor man, who is not entrusted with the safekeeping of the monies of others, does not mean that the laws proscribing thefts and embezzlements are in conflict with the equal protection provision of the Fourteenth Amendment. Similarly, when there is a total cessation of operation of an independent school system, there is no denial of equal protection of the laws, though the resort of the poor man to an adequate substitute may be more difficult and though the result may be the absence of integrated classrooms in the locality (pp. 336–337).

It did not seem to matter to the Judge that the suit was brought by poor parents whose children had been denied access to any public education for the preceding 4 years and who, in fact, had had no schooling during that period. The practical effect of his opinion was, in the words of Judge Bell's dissent, a "humble acquiescence in outrageously dilatory tactics." Mr. Justice Black, speaking for a unanimous Supreme Court in reversing Judge Haynsworth, wrote:

> Prince Edward's public schools were closed and private schools operated in their place with State and county assistance, for one reason only: to insure, through measures taken by the county and the State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school.

The issue was at least clear to all of the Supreme Court.

The judge has been reversed for favoring procedural delays to desegregation in other cases. *Bowman* v. *County School Board of Charles City County, Va.* (382 F. 2d 326) 1967; and *Green* v. *County School Board of New Kent County, Va.* (382 F. 2d 338) 1967, are just two examples. In the Bowman case, Judge Sobeloff and Judge Winter felt compelled to write:

> The situation presented in the records before us is so patently wrong that it cries out for immediate remedial action, not an inquest to discover what is obvious and undisputed.

It would be both inaccurate and unfair to argue that Judge Haynsworth has been uniformly insensitive to the practical implications of these educational cases for Negro children. Other opinions in which he has participated, mostly unsigned, have upheld settled desegregation law or granted partial relief to the litigants. Of significance, however, is the fact that in his few signed opinions and dissents, technical issues have been permitted to control his decisions in favor of those who seek local evasion of a clear Supreme Court mandate.

Do such inconsistencies reflect the "cold neutrality of an impartial judge"? Where is the even hand of justice? Should a jurist be more sensitive to the protection of individual rights in criminal cases than he is to the protection of individual and group rights in other cases, especially when the power of the State is engaged? I think not.

I make these observations not as conclusive evidence of any professional shortcomings on Judge Haynsworth's part. Rather, the point I wish to make is that his vaunted precision and strict constructionism are not uniformly evident in all areas of the law.

Nor, I regret to say, is this claimed

* Rule 34, section 2.

thoroughness and meticulous care always present in the judge's nonjudicial activities and in some of his testimony concerning them. I have looked at the evidence as it was elicited from the various witnesses and I have examined the Canons of Judicial Ethics and the appropriate conflict-of-interest provisions in the United States Code. The distinct impression that emerged from my review was that Judge Haynsworth, on numerous occasions, had demonstrated an insensitivity to the spirit if not the letter of the law and canons.

Equally disturbing to me was the judge's apparent lack of candor in his testimony before the Senate Judiciary Committee. On more than one occasion, his testimony created discrepancies with what were later determined to be the facts.

I will not here review the details of the judge's business and stock involvements, since they have been the subject of intense debate already. I will only note what I believe parties to either side of the dispute can acknowledge; Judge Haynsworth does not always strictly construe the standards governing such activities.

Let me make clear that I believe the Court needs men who are dedicated to strict construction of the law. Jurists of this type, including the late Justice Frankfurter, are essential to the interplay within the Court as it strives for the most reasonable and most equitable interpretation of the law. When the Court has leaned to broader constructions in the interest of social justice and the larger purpose of the Constitution, as in the Brown case and Baker against Carr, it has done so most deliberately because its members had the benefit of powerful arguments for strict interpretation of the Constitution. The question before the Senate is not whether strict constructionists should sit on the Court; they should. The question is whether Judge Haynsworth should sit on the Court.

Mr. President, this is a difficult and painful situation. No one relishes depriving another man of the immense honor and opportunity for service which appointment to the Supreme Court offers. At the personal level, it would be easier and far more comfortable for most Senators to go along with the nomination, to skip over the record lightly, to ignore the blemishes which appear there.

But men are sent to the Senate to make hard judgments in the public interest, not to find comfort in their personal relations.

Some would assert that a President's nomination deserves the greatest deference and that any doubts should be resolved in favor of confirmation. That is true in some cases and in some degree.

When a President nominates an officer of the executive branch, he deserves and usually gets, the greatest latitude. The reason is simple and sound. An executive official is responsible to the President and can be held accountable. He carries out the President's policies. He holds office only at the pleasure of the White House. He is, in short, a political appointee. His tenure, like that of Members of Congress and the President himself, is limited.

These considerations have built a strong tradition that the President is entitled to pick his own men and to have them confirmed, barring clear evidence of incompetence or flagrant ethical shortcomings. That tradition largely explains the outcome of the long controversy over Secretary Hickel's nomination to the Interior Department. Many of us had qualms about his qualifications for that particular post, but there were no sufficient grounds for rejecting the President's judgment. And no one could be happier than I that the Secretary's performance has proven the great capacity which the President discerned in him. Not only is Walter Hickel vindicating his confirmation by doing a far better job than the critics including myself, had expected; he is well on the way to being one of the finest Interior Secretaries in memory. He has shown a rare ability for taking on the tough issues and for promoting the national interest by enlightened personal leadership. His achievements as a member of the Cabinet should bolster our confidence in the practice of respecting Presidential wishes in appointments to the executive branch.

But there is another, wholly different class of nominations. Judicial appointments have little in common with those to the executive branch. The factors in the confirmation of a judge must never be confused with those governing Cabinet nominees.

Any judge, and especially a Justice of the Supreme Court, is decidedly not the "President's man." Once appointed, he may sit for life. His decisions should be totally free from executive or legislative supervision. Although the laws he interprets may well be changed, his interpretations are exclusively his own.

The Court's unique position as the third, coequal branch in our political system imposes unique requirements on candidates for the bench. It also creates quite different obligations on the part of the President and the Senate. In confirming a nominee to the Supreme Court, the Senate bears no less responsibility than the President to insure that the most impeccable standards are met. It is the mutual obligation of the Senate and the President to safeguard the third branch of our Government.

The Court's stature is too precious to jeopardize, and that stature depends largely on the confidence our people have in the wisdom and integrity of its members. Nowhere in American government is it so essential for the superior competence and fairness of a public official to be demonstrated and recognized.

It does not take a professional student of the Court to understand this. It is the common insight of most Americans. The recent tumoil surrounding the Court has only underscored the need to apply this stringent test rigorously.

This, then, is the context in which Judge Haynsworth's nomination must be viewed. The question of confirmation transcends the specific concerns which many have voiced about his record on labor cases, or civil rights cases, or even his questionable financial activities while sitting on the bench. The judgment must be made in the whole, and I think it must be based on answers to the questions I posed some weeks ago:

Is Judge Haynsworth the man to restore the nation's confidence in the utter integrity of the Supreme Court? And is Judge Haynsworth the man to maintain the faith of that vast majority of fairminded Americans, not to mention the disillusioned minority, who look to the Court as the indispensable instrument of equal justice under law? I have concluded, reluctantly and sadly, that he is not.

The rejection of this nomination would be a personal tragedy for Judge Haynsworth. I regret that deeply. But his confirmation could be a collective tragedy for the Nation, and that risk is simply too real and too grave to accept.

We cannot afford to fill the ninth seat on the Court with a man who enjoys anything less than the full faith and respect of those whom he serves. We cannot afford to weaken the reverence on which the Court's power is ultimately founded.

The events of recent months have given us a new appreciation of our duties in the vital process of confirmation. As the Senate looks forward to future nominations, I believe the present proceedings will play a singular role in establishing the scope of this body's prerogative and the seriousness with which it views its duties in these matters. The result, I trust, will be a Supreme Court of even greater influence in American life, an influence founded on the merited confidence of our citizens.

That is the paramount consideration which ought to govern our action. Weighing it, I am sure the Senate will act wisely.

Mr. DOLE. Mr. President, from time to time one of our newspapers strikes the nail squarely on the head when it comes to analyzing the issues.

The Chicago Tribune did this recently in the case of Judge Clement Haynsworth.

I ask unanimous consent to include this editorial in the RECORD.

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

THE DEFAMATION OF JUDGE HAYNSWORTH

Professional "civil rights" agitators, labor leaders, and "liberal" columnists have launched a massive propaganda campaign against confirmation by the Senate of President Nixon's nomination of Judge Clement F. Haynsworth Jr., of South Carolina, to be a justice of the United States Supreme court.

Judge Haynsworth is opposed mainly by the same forces that defeated Senate confirmation of President Hoover's nomination of Judge John J. Parker, of North Carolina, for the Supreme court in 1930. Judge Parker was chief judge of the United States Court of Appeals for the 4th circuit, of which Judge Haynsworth has been chief judge since 1964. The National Association for the Advancement of Colored People, the labor unions, and other "liberal" elements attacked Judge Parker as a "reactionary," but some liberal senators who voted against him, notably Borah of Idaho, Wheeler of Montana, and La Follette of Wisconsin, praised him in later years.

Judge Haynsworth has been called a 'hard core segregationist" by Joseph L. Rauh Jr., vice chairman of Americans for Democratic

Action and prime mover of the Leadership Conference on Civil Rights. Roy Wilkins, executive director of the N. A. A. C. P., has issued a manifesto charging that the judge "has been reversed four times by the United States Supreme court in civil rights cases" and is a "partisan of racially segregated public education."

These pillars of the liberal establishment looked pretty silly when John P. Roche of Brandeis university, former White House intellectual in residence and former national chairman of the A. D. A., came to Judge Haynsworth's defense. Roche remarked that Haynsworth "hardly looks like a red-neck segregationist from the piney wood" and added: "Haynsworth's record . . . was examined with a microscope and, as far as any critic could discover, he has never called for the restoration of slavery, for legalization of torture, or for the abolition of the federal government."

George Meany, president of the AFL–CIO, and some of the liberal columnists are attacking Judge Haynsworth solely on the basis of the alleged "conflict of interest" in a case decided by his court. The judge owned 15 per cent of the stock of the Carolina Vend-A-Matic company, of which he also was an officer and a director. While grossing about $3,000,000 a year, this company received $50,000 a year for the use of its vending machines in the plants of the Deering-Milliken company, a large textile manufacturer.

In August, 1963, on the basis of competitive bidding, Deering-Milliken awarded Vend-A-Matic bids. In February, Judge Haynsworth's Court began considering an unfair labor practice charge against the Darlington Manufacturing company, a Deering-Milliken subsidiary, and in November, 1963, Judge Haynsworth wrote the court's opinion in a 2 to 1 decision in favor of Darlington.

Thus the only question is whether 15 per cent ownership of a company that received less than 2 per cent of its gross income from a company which had a subsidiary involved in the litigation amounted to a conflict of interest.

In 1964, when Carolina Vend-A-Matic was purchased by ARA Services, Inc., Judge Haynsworth promptly sold the ARA stock he received for his interest in Vend-A-Matic. He said it might be all right for a judge to hold an interest in a small, local company but not in a national company doing business all over the country. Altho he received $450,000 for his ARA stock in 1964, it is worth more than $1,400,000 today.

The truth, it appears, is that the liberals are against Judge Haynsworth because he is a "strict constructionist" who applies the Constitution as it is written. The liberals believe the Constitution is made of rubber and can be stretched to accommodate their vision of a socialist welfare state.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had passed the bill (S. 2000) to establish the Lyndon B. Johnson National Historic Site, with an amendment, in which it requested the concurrence of the Senate.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

(By order of the Senate, the following proceedings occurred as in legislative session.)

VIOLENCE AND THE MOBILIZATION

Mr. THURMOND. Mr. President, the mobilization has come and gone. It is time now for an assessment of the impact of this demonstration upon our political life.

We are already being told that this demonstration is an example of so-called plebiscitary democracy and that we had better get used to it. We are being told that this was a peaceful demonstration, or, as one newspaper put it, "remarkably peaceful." We are being told that this demonstration, by virtue of its size, should be taken seriously as a movement for peace.

Mr. President, I say that this was a violent demonstration. It was violent in terms of property damage, as the riots in DuPont Circle, near the South Vietnamese Embassy, and around the Justice Department attest.

Fortunately, responsible agencies of our Government were well informed and took timely and massive preventive measures. Instead of an orgy of planned destruction of which we were on the brink, the demonstration was, as a whole, kept under control. For the first time, so far as I know, we saw the use of barricades in Washington formed by buses end to end in the control of the mob and for the protection of the White House. Had massive preparations not been made, there is no telling what excesses of crime might have been perpetrated.

In the relatively few nonpeaceful situations that did erupt, and as evidenced by the riots in the DuPont Circle area on the evening of November 14 and at the Department of Justice on the 15th, both requiring the use of tear gas to disperse the mobs, our peacekeeping forces handled them effectively, winning the approval of experienced observers who were on the scene.

It was only the coordinated action by the police and the Justice Department that kept a contagion of violence from breaking out. The Attorney General, who has access to the best intelligence data in this situation, is quoted as saying:

> Unfortunately, the planned demonstrations were marred by such extensive physical injury, property damage, and street demonstrations that I do not believe that—overall—the gathering here can be characterized as peaceful . . . The blame for the violence must lie primarily with the New Mobilization Committee—specifically those influential members of the Steering Committee who knew the gathering in Washington would be a vehicle for violence.

In commenting on the violence, it is appropriate to stress the vision and wisdom of the founders of our Government who created the District of Columbia with exclusive legislative power vested in Congress. If the District had remained a part of Maryland, I doubt that a State could have met the November 14 and 15 crisis without calling for assistance. If the District had had self-government, the problems of coordination would have been enormous.

Mr. President, damage to property cannot be condoned. However, there was a violence of a more insidious sort which can do lasting damage to the body politic. There is sufficient evidence that this demonstration was manipulated as a united front movement by the enemies of this country. On this point, the Washington Post reported:

> Vietcong flags were far more prominent in the crowd than American flags and at the Justice Department confrontation the U.S. flag was ripped down and burned.

Mr. President, let us consider this situation. In the time of war, we have a mob gathering of thousands of people in which the flag of the enemy is the most prominent symbol. By contrast, the flag of our country is torn down and burned. This is symbolic action. It demonstrates what was the real mood and intent of this mobilization. Even those participants who would not condone such actions lent strength and support to a treasonous and despicable act by their mere presence. Symbolically, the demonstration itself was a movement designed to cast contempt upon this Nation, whether the majority of the participants intended to do so or not.

The desecration of the American flag is a violation of 18 U.S.C. 700, which provides a fine of $1,000 or 1 year in jail, or both, for publicly mutilating, defacing, defiling, burning or trampling upon the flag. This action, as reported in the newspaper, occurred in front of the Justice Department. I call upon the U.S. Attorney General to investigate and determine if a violation occurred, and if so, to see that such violation of the law is prosecuted to the fullest extent.

Mr. President, this kind of demonstration does violence to our political system. Our freedom is built upon respect for the organized mechanisms of our State and Federal Governments. The Constitution guarantees to the States a republican form of government. Peaceful avenues are available for the redress of grievances. Anyone who dissents from the policies of our Government can work in many ways to change them.

However, the assembly of thousands of people in one gathering brings our system into danger. The backers of this mobilization claim that it was the largest demonstration in Washington in history. Yet even a quarter of a million people are not representative of the Nation. These people were self-appointed. They were not chosen by democratic means. There is no possible way that such a gathering could be called a "plebiscite."

On the contrary, such a gathering has no structure, no system of self-discipline. In other words, it is a mob, subject to mob psychology. It is antipolitical. It is rejecting the organized mechanisms of government. In other words, it is the very kind of situation which the enemies of our country, and the enemies of our form of government would like to de-

velop. Inevitably, such conditions, if prolonged, degenerate into violence. It is not surprising that the flag of the enemy was the most prominent feature of this mobilization.

Nicholas von Hoffman, the New Left columnist for the Washington Post, wrote as follows on Sunday:

If after today the war doesn't end immediately, these same thousands and their even more numerous supporters will commence the campaign to end it. We will see a tapering off of demonstrations designed to convince public officials to change their minds. Instead the movement will shift its vectors toward direct action.

What is this if it is not a call to violence? Von Hoffman is saying that the alternatives are immediate surrender or violent confrontation. This Nation will not submit to the Von Hoffman type of blackmail, yet it requires very little insight to see that the kind of mob politics we are witnessing must quickly degenerate into violence.

Such movements weaken our country, and they weaken the efforts of the President to get an honorable peace.

The publicized aim was to bring peace in Vietnam to be accomplished by the unilateral and precipitate withdrawal of U.S. forces. Such withdrawal would inevitably mean U.S. surrender and a massive Communist bloodbath and genocide in that unfortunate country. In effect, the hard-core demonstrators and those innocently aiding and abetting them were serving as a Communist fifth column marching in time of war in the Capital of the United States.

What did the massive demonstration accomplish? Did it possess any specific plan for ending the war, except by what would be a disastrously costly surrender? Did it offer any intelligent method for abandoning our treaty obligation as regards Southeast Asia, or show any concern for the fact that such demonstrations give North Vietnam a tremendous boost in their aggressive attempts to destroy the South Vietnam Government and its people?

Did any speaker addressing the throng submit a reasonable plan to terminate the war? Did not all its leaders and orators fail to suggest any means for solving the tremendous difficulties involved which would offer any imaginable advantage over the administration's present program? Did they not recognize the fact that Communist power is at its peak and is endeavoring to make further encroachments with huge successes through the weakening of governmental structures of free nations that have been coasting along toward a condition of submission? Did not this aggregation make our Government's task vastly more difficult in ending the war, and did they not know that North Vietnam has been hailing their demonstrators as "comrades"?

In closing, I would like to make one comment about the mass of the antiwar Washington demonstrators. Most of them, both men and women, were of the so-called hippie type, who probably imagined themselves as being original—but they were not. They are merely 20th-century nihilists repeating the pattern of Russian revolutionary socialism a century ago.

As the following excerpt from a scholarly article on "nihilism," by Sir Donald MacKenzie Wallace, K.C.I.E., K.C.V.O., and an authority on Russia, in the 11th edition of the "Encyclopaedia Britannica" should be of great interest to thoughtful editors and publicists as well as to the responsible agencies of our Government, I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

[From Encyclopaedia Britannica (11th edition) 1911, vol. XIX, pp. 686–7]

NIHILISM

(By Sir Donald MacKenzie Wallace, K.C.I.E., K.C.V.O.)

Nihilism, the name commonly given to the Russian form of revolutionary Socialism, which had at first an academical character, and rapidly developed into an anarchist revolutionary movement. It originated in the early years of the reign of Alexander II and the term was first used by Turgueniev in his celebrated novel, *Fathers and Children*, published in 1862. Among the students of the universities and the higher technical schools Turgueniev had noticed a new and strikingly original type—young men and women in slovenly attire, who called in question and ridiculed the generally received convictions and respectable conventionalities of social life, and who talked of reorganizing society on strictly scientific principles. They reversed the traditional order of things even in trivial matters of external appearance, the males allowing the hair to grow long and the female adepts cutting it short, and adding sometimes the additional badge of blue spectacles. Their appearance, manners and conversation were apt to shock ordinary people, but to this they were profoundly indifferent, for they had raised themselves above the level of so-called public opinion, despised Philistine respectability, and rather liked to scandalize people still under the influence of what they considered antiquated prejudices.

For aesthetic culture, sentimentalism and refinement of every kind they had a profound and undisguised contempt. Professing extreme utilitarianism and delighting in paradox, they were ready to declare that a shoemaker who distinguished himself in his craft was a greater man than a Shakespeare or a Goethe, because humanity had more need of shoes than of poetry. Thanks to Turgueniev, these young persons came to be known in common parlance as "Nihilists", though they never ceased to protest against the term as a calumnious nickname. According to their own account, they were simply earnest students who desired reasonable reforms, and the peculiarities in their appearance and manner arose simply from an excusable neglect of trivialities in view of graver interests.

In reality, whatever name we may apply to them, they were the extreme representatives of a curious moral awakening and an important intellectual movement among the Russian educated classes (See Alexander II, of Russia).

In material and moral progress Russia has remained behind the other European nations, and the educated classes felt, after the humiliation of the Crimean War, that the reactionary regime of the Emperor Nicholas must be replaced by a series of drastic reforms. With the impulsiveness of youth and the recklessness of inexperience, the students went in this direction much farther than their elders, and their reforming zeal naturally took an academic, pseudo-scientific form. Having learned the rudiments of positivism, they conceived the idea that Russia had outlived the religious and metaphysical stages of human development, and was ready to enter on the positivist stage. She ought, therefore, to throw aside all religious and metaphysical conceptions, and to regulate her intellectual, social and political life by the pure light of natural science. Among the antiquated institutions which had to be abolished as obstructions to real progress were religion, family life, private property and centralized administration. Religion was to be replaced by the exact sciences, family life by free love, private property by collectivism, and centralized administration by a federation of independent communes. Such doctrines could not, of course, be preached openly under a paternal, despotic government, but the press censure had become so permeated with the prevailing spirit of enthusiastic liberalism, that they could be artfully disseminated under the disguise of literary criticism and fiction, and the public very soon learned the art of reading between the lines.

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. GRAVEL in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPREME COURT OF THE UNITED STATES

The Senate as 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. HRUSKA. Mr. President, one of the principal issues in the current debate on confirmation of Judge Haynsworth's nomination has centered around his decisions as a judge on the subject of civil rights legislation.

I am seriously concerned by the claim that the judge has indicated hostility to civil rights and to the aspirations of minorities. I would be most reluctant to vote favorably on the confirmation of any Supreme Court nominee against whom that charge could fairly be made. Thus, I have tried to pay close attention to the arguments as they have been made and to the record that has been compiled within the Committee on the Judiciary.

The case Judge Haynsworth's opponents make against him in the area of civil rights, as I see it, is basically that he is not as advanced on that subject as is the Supreme Court of the United States. There are those who conclude that the judge is, indeed, out of the mainstream in the area of civil rights. Some have used the terms "persistent in error" and "a judge 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 two decades now."

Some have used the phrase—

Here is an irreconcilable judicial voice consistently reiterating a doctrine of the past.

I should like first to point out that such conclusions with respect to Judge Haynsworth are sharply at odds with several respected voices of liberalism, who might be expected to embrace them if they were, indeed, factually supportable. Professor Bickel, professor of law at the Yale Law School, though critical of Judge Haynsworth on the conflicts question, made the following statement with respect to the judge's civil rights views:

Judge Haynsworth is no reactionary. His civil rights record is centrist, although more cautious than some senators might like. If the Senate demands precisely the ideological profile it would prefer, the appointment process will be a deadlock, Judge Haynsworth should be seen ideologically as falling within that area of tolerance in which the Senate defers to the President's initiative.

The St. Louis Post-Dispatch, not known as a spokesman for hidebound reaction, described Judge Haynsworth's judicial record in these words:

Judge Clement Furman Haynsworth, Jr., President Richard M. Nixon's new nominee for the Supreme Court, is an experienced jurist with a razor-sharp mind and a solid, middle-of-the-road record.

Even more important, though, in my mind, is the statement of Professor Foster of the University of Wisconsin Law School, filed with the Judiciary Committee.

I ask unanimous consent to have this statement printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HRUSKA. Mr. President, the statement contains a careful analysis of almost all of the cases upon which the senior Senator from New York (Mr. JAVITS) relied upon in his analysis of last Friday. I shall try to merely highlight a few points that Professor Foster made.

First, a few excerpts from the beginning of the statement:

I am G. W. Foster, Jr. Since 1952 I have taught at the Law School of the University of Wisconsin, have been a full professor there since 1959 and an Associate Dean of the Law School for a period of approximately a month. Still earlier I served as an administrative aide to the then Secretary of State, Dean Acheson. Before that I was the Legislative Assistant to the late United States Senator Francis J. Myers (D-Pa.), at that time the Whip of the Senate.

By faith I am a liberal Democrat and while Judge Haynsworth would not have been my first preference in filling the existing vacancy on the Supreme Court, I am convinced that it is both wrong and unfair to charge that he is a racial segregationist or that his judicial record shows him to be out of step with the Warren Court on racial questions. I now support his nomination unreservedly.

Judge Haynsworth is not a segregationist nor is he out of step with judges whose fidelity to the directions of the Warren Court is unquestioned, and on this point I believe I have some special competence to speak. For more than a decade much of my time has been taken by problems of school segregation. Particularly between the years 1958 and 1966 I came to know a number of federal judges across the South as I studied the impact of school cases on the courts in that region. From early 1961 until I went to Europe for the year in 1963–1964 I served as a consultant on problems of school segregation to the United States Commission on Civil Rights. On my return in 1964 I became a consultant, again on problems of school segregation, to the United States Office of Education and retained that role until returning to Europe in 1967. For better or worse I am probably as much or more responsible than anyone else for the original HEW School Desegregation Guidelines that first appeared in April 1965.

In the area of racially sensitive cases I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I probably would have decided another way. I am not aware, however, of a single opinion associated with Judge Haynsworth that could not be sustained by a reasonable man.

Any description of judicial implementation of *Brown* v. *Board of Education* involves a moving picture. Every judge worth his salt who has devoted any substantial time to wrestling with problems of school desegregation has changed views he earlier held. The reasons are straight-forward: Remedies thought workable when ordered by the court turned out in practice to be partially, sometimes entirely, unworkable either because they were circumvented by school authorities or had encountered obstacles not foreseen. Again, there remain to this day questions not resolved as to the final scope of the Brown mandate: even now I know no one bold enough to attempt a final definition of what constitutes a "racially nondiscriminatory" public school system.

Professor Foster then goes into a detailed analysis, not merely of the cases in which Judge Haynsworth has written, but of the background of the entire school desegregation problem as it evolves the decision of the Brown case in 1954.

Notwithstanding declarations to the contrary, a reference to Professor Foster's statement, or to the cases discussed by both him and the senior Senator from New York, make crystal clear the fact that the Supreme Court decision in Brown against Board of Education in 1954 was by no means the end of the legal development in this area. Indeed, it was in many respects only a beginning. Though it is something of an oversimplification, it is nonetheless accurate in the sense we are speaking of it to say that Brown against Board of Education outlawed "de jure" segregation of schools—that is, school systems in which by law blacks were required to attend schools separate from those attended by whites. I know of no opinion or decision authored or participated in by Judge Haynsworth in which he has expressed doubt or reservation about this doctrine. But, as Professor Foster points out, there were numerous issues that developed during the late 1950s and early 1960s which were not in any way foreclosed by the Supreme Court's decision in the Brown case. One of these was faculty and staff integration; another was what is called by some the "minority transfer" rule, and by others the "freedom of choice" doctrine. In these areas, decisions written by Judge Haynsworth were reversed by the Supreme Court of the United States, but in these respects the Court of Appeals for the Fourth Circuit, for which he wrote, suffered a fate at the hands of the Supreme Court no different than that of other Federal appellate courts.

Let us take, for example, similar cases decided by the Courts of Appeals for the Sixth Circuit and for the Eighth Circuit, both of which have jurisdiction over some areas in which there was once segregation of schools by law, but both of which also covered several states which have never had any legal requirement of segregated schools. In short, these circuits represent combinations of Southern and Northern States, and draw their judges, as well as their lawsuits, from both Southern and Northern States.

It may be true that certain cases indicate that Judge Haynsworth has not been as advanced on the subject of civil rights as the U.S. Supreme Court, but I think it unfair to criticize Judge Haynsworth or the Court of Appeals for the Fourth Circuit on which he sits without considering the entire development of the law in this area in the last 20 years.

The most casual reference to the landmark civil rights cases shows that the Supreme Court of the United States has been ahead of virtually all of the lower courts in this area, and not just of the Court of Appeals for the Fourth Circuit or of Judge Haynsworth. *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637, decided in 1950, requiring state supported graduate schools to treat Negroes and whites alike, was a decision which reversed a three-judge Federal court sitting in the Western District of Oklahoma.

The great landmark case of *Brown* v. *Board of Education of Topeka*, 347 U.S. 483, in which the Supreme Court finally held that segregated public schools were unconstitutional, was a reversal of a judgment entered by a three-judge Federal district court in the District of Kansas.

Burton v. *Wilmington Parking Authority*, 365 U.S. 715, decided in 1961, in which the Supreme Court of the United States greatly expanded the concept of "state action" under the 14th amendment, reversed a contrary opinion of the Supreme Court of Delaware.

Indeed, *Goss* v. *Board of Education*, 373 U.S. 683, which is referred to in the helpful carefully prepared statement of the Leadership Conference on Civil Rights before this committee, was a reversal of a judgment of a Federal court of appeals—not the Court of Appeals for the Fourth Circuit, on which Judge Haynsworth sits, but of the Court of Appeals for the Sixth Circuit, whose headquarters is in Cincinnati.

Other Federal courts as well have not been as advanced in the civil rights area as the Supreme Court. *McNeese* v. *Board of Education*, 373 U.S. 668, decided in 1963, for example, was a reversal of a decision of the Seventh Circuit Court of Appeals. The Eighth Circuit was reversed twice last year and once this last term by the Court in civil rights cases. *Raney* v. *Board of Education of Gould School District*, 391 U.S. 443 (1968); *Jones* v. *Mayer*, 392 U.S. 409 (1968); *Daniel* v. *Paul*, 395 U.S. 298 (1969).

The decisions of a number of special

three judge courts have similarly been overturned. *Anderson* v. *Martin*, 375 U.S. 399, decided in 1964, reversed the lower court's decision upholding a Louisiana law requiring racial designations of candidates to be shown on the ballot. And *Katzenbach* v. *McClung*, 379 U.S. 294, decided in 1964, upheld the constitutionality of the Civil Rights Act of 1964, as applied to a restaurant, after the lower court had enjoined the act's enforcement on the ground that it exceeded the powers of Congress.

Those of us who support civil rights have on more than one occasion commended the Supreme Court of the United States for its pioneering efforts in this area of the law. But I cannot help feeling that it is a little bit inconsistent to praise the Supreme Court for breaking new ground in the field of civil rights, on the one hand, and to criticize the judge of a lower Federal court for not having been as advanced as the Supreme Court, on the other hand. I am quite doubtful that we would want judges of the lower Federal courts constantly departing from existing law on their own—if new constitutional doctrine is to be made, it should very probably be made by the Supreme Court of the United States.

While I certainly do not agree with all of those of Judge Haynsworth's opinions in the field of civil rights which I have read, and doubtless would not agree with some of his decisions in other areas, I am quite certain that I would have the same reaction to just about any other nominee who would come before this committee. I do not think that the criticism of Judge Haynsworth for not being as advanced as the Supreme Court in the field of civil rights is a fair one. He seems to have faithfully followed the precedents as he understood them in those of his opinions which have come to our attention.

I must say, Mr. President, that during discourses on this floor, far too often cases are referred to, abstracted, and commented upon. They are not out of context exactly, but certainly are not considered within the continuity of the development of a brand new field of law. That, as I have already said, is not the proper way to consider the proposition of whether the nominee is pro-civil rights or anti-civil rights. Attention must be given to the development of civil rights law during the past 20 years.

An honest evaluation of the judge's views on school segregation can only be made by taking into consideration the time in which he spoke. His decisions must be assessed by comparing them with decisions of other judges who were faced with the same problems with respect to the particular school year. Virtually every judge who has devoted any substantial time to grappling with the school desegregation problem has changed the views he earlier held. This evolution of judicial opinion has been caused by the simple fact that remedies originally thought to be workable when ordered by a court turned out in practice to be unworkable either because unforeseen obstacles were encountered or because they were circumvented by school officials. It would be easy to take the views of the Supreme Court and some other front running Federal Judge today and compare those with earlier views held by the Supreme Court and proved that those earlier views were wrong. New law has been made by the Supreme Court when it reversed other courts of appeals and indeed would have modified its own views. For example, on October 29 of this year, the Supreme Court of the United States in the case of Alexander against Holmes County Board of Education, announced that the standard of allowing "all deliberate speed" for desegregation was no longer constitutionally permissible. Thus the Supreme Court modified the standard it itself had laid down in Brown against Board of Education in 1954. By using the type of reasoning that has been employed against Judge Haynsworth, one could argue that a Federal judge who was following the guidelines laid down by the Supreme Court in Brown against Board of Education was out of step with the Supreme Court. Such reasoning is obviously fallacious. The views of any Federal judge on school desegregation in any given year must be made by comparing those views with what other judges were doing in that same year.

There are numerous other cases in which the Supreme Court has modified its earlier views. For example, in 1959 only three Supreme Court Justices believed it was important to consider the question whether a school plan which explicitly recognized race as an absolute ground for the transfer of students between schools was constitutional. *Kelly* v. *Board of Education of the City of Nashville*, 361 U.S. 924 (1959). Just four years later, the Supreme Court was not only willing to consider the issue but a unanimous Supreme Court held that such a plan was unconstitutional. *Goss* v. *Board of Education of Knoxville*, 373 U.S. 683 (1963).

The Supreme Court has of course made new law in the area of civil rights by reversing at one time or another the several courts of appeals that consider such questions. It is quite simply wrong to say that the Fourth Circuit is the only circuit which has been reversed by the Supreme Court in this area. For example, in the Goss case, to which I just referred, the Supreme Court reversed the Court of Appeals for the Sixth Circuit. The Sixth Circuit panel was composed of Judges Cecil, Weick, and O'Sullivan. Similarly, in the Kelley case, the Sixth Circuit panel was composed of Judges Allen, McAlister and Choate. Another example is furnished by *Rogers* v. *Paul*, 382 U.S. 198 (1965) where the Supreme Court reversed a panel for the Eighth Circuit Court of Appeals composed of Judges Vogel, Matthes, and Mehaffy.

We have here some nine judges of two courts of appeals, all of whom were handing down the same sort of rulings as Judge Haynsworth was. Are they all faithless to the teachings of the Supreme Court? Are they all die-hard segregationists? To put them in proper perspective, Judge Allen was from Ohio, and Judge McAllister was from Michigan; both were appointed to the Court of Appeals for the Sixth Circuit by President Franklin Roosevelt. Judge Cecil and Judge Weick were both from Ohio, while Judge O'Sullivan was from Michigan; They were all appointed to the Sixth Circuit by President Eisenhower. Judge Mehaffy is from Arkansas, and was appointed to the Court of Appeals for the Eighth Circuit by President Kennedy; Judge Vogel was from North Dakota, and Judge Matthes was from Missouri, and they were both appointed to the Court of Appeals for the Eighth Circuit by President Eisenhower.

It is possible, of course, to say that if these judges voted the way they did in these cases, they too are to be condemned. But the plain fact of the matter is that what we are looking for is not 100-percent correspondence between the view of any particular Senator and the judicial philosophy of a Supreme Court nominee, but simply a range of reasonableness. And if the opinions handed down by Judge Haynsworth in areas of civil rights law which have arisen since the decision in the Brown case are no different from those of judges in Michigan, Ohio, North Dakota, and Missouri, can it fairly be said that they were unreasonable applications of the law as then understood? I think not.

No one would contend that Judge Haynsworth's record in civil rights cases is as liberal as say, for example, that of Justice Douglas. Nor would anyone contend that his record in finding new constitutional rights for criminal defendants, or new constitutional protections for pornography, is comparable to that of Justice Douglas or of the very liberal wing of the Supreme Court. Individual Senators must decide for themselves whether they choose to evaluate these philosophical aspects of the nominee, and if so on what basis. But if there is to be philosophical evaluation, and if the test is to be not identical correspondence with the Senator's view, but a range of reasonableness, then I think Judge Haynsworth plainly passes this test in the field of civil rights. I think his views in this area, and in other areas of constitutional law currently under study, are entirely consistent with the position of Associate Justice of the Supreme Court of the United States to which he has been nominated.

Mr. President, the issue of whether this nominee for the Supreme Court is in the mainstream of a particular legal concept or branch of the law or whether he is found to be in consonance with the Supreme Court has been considered by other authorities.

Judge Lawrence Walsh, who is the chairman of the committee of the American Bar Association Committee on the Federal Judiciary, testified that his committee considered this question. They have been doing this type of investigation now for 18 years. And it has been my good fortune for a period of more than a decade as a member of the Judiciary Committee, to have been one of the recipients of their reports in each one of these instances. I know the fashion in which they operate.

I quote from the testimony of Judge Walsh regarding this question:

> Now I do not mean in any way to suggest that I thought Judge Haynsworth was running against the stream of the law. I think he was punctilious in following that stream as the Supreme Court laid it up, and in some fields he has run ahead and broken

new ground. For example, in the expansion of the doctrine of the utility of habeas corpus, he broke away from an old restraint in earlier Supreme Court opinions and was complimented by the present Supreme Court for doing so. He has moved over into, as I recall it, more modern tests on insanity and things of that kind.

So he is in no sense running against the stream of the law. If I were going to characterize it, I would say where new ground is being broken by the Supreme Court, he believes in moving deliberately rather than rapidly and particularly where an interpretation of the Constitution which has stood for many years is reversed or turned around.

He would perhaps give more time than other judges to adjust to the new state of affairs.

Mr. President, in conclusion, I simply point out that in trying to make a judgment of the nominee on his civil rights decisions these factors must be considered: First of all, the time when that decision was rendered; second, how other judges and other circuits were deciding; what precedents existed within his own circuit; and finally, the nature of the problems presented in applying a fundamental principle of law such as that which was declared in Brown against Board of Education.

After all, that decision, while it was precedent-setting, was necessarily general in its impact. Outside of its immediate decision it simply raised the problem of asking and deciding innumerable other questions within that period.

The lower courts of course had to apply as best they could in each of those instances the rules of law they thought were extant, those that they thought were applicable, and those that in their best judgment they thought flowed from the Supreme Court's declaration of principles which had been made at that time.

If these principles are applied and observed, I am satisfied that most reasonable men will conclude that this man who has been adjudged to be an excellent jurist, a man of integrity will satisfy every test required of a member of the Supreme Court not only in the field of civil rights but in other fields as well.

Mr. President, I yield the floor.

EXHIBIT 1

STATEMENT BY G. W. FOSTER, JR., IN SUPPORT OF THE NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH, JR., TO THE SUPREME COURT OF THE UNITED STATES

I am G. W. Foster, Jr. Since 1952 I have taught at the Law School of the University of Wisconsin, have been a full professor there since 1959 and an Associate Dean of the Law School for a period of approximately a month. Still earlier I served as an administrative aide to the then Secretary of State, Dean Acheson. Before that I was the Legislative Assistant to the late United States Senator Francis J. Myers (D-Pa.), at that time the Whip of the Senate.

By faith I am a liberal Democrat and while Judge Haynsworth would not have been my first preference in filling the existing vacancy on the Supreme Court, I am convinced that it is both wrong and unfair to charge that he is a racial segregationist or that his judicial record shows him to be out of step with the Warren Court on racial questions. I now support his nomination unreservedly.

Judge Haynsworth is not a segregationist nor is he out of step with judges whose fidelity to the directions of the Warren Court is unquestioned, and on this point I believe I have some special competence to speak. For more than a decade much of my time has been taken by problems of school segregation. Partcularly between the years 1958 and 1966 I came to know a number of federal judges across the South as I studied the impact of school cases on the courts in that region. From early 1961 until I went to Europe for the year in 1963–1964 I served as a consultant on problems of school segregation to the United States Commisson on Civil Rights. On my return in 1964 I became a consultant, again on problems of school segregation, to the United States Office of Education and retained that role until returning to Europe in 1967. For better or worse I am probably as much or more responsible than anyone else for the original HEW School Desegregatin Guidelines that first appeared in April 1965.[1]

In the area of racially sensitive cases I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I probably would have decided another way. I am not aware, however, of a single opinion associated with Judge Haynsworth that could not be sustained by a reasonable man.

Any description of judicial implementation of *Brown* v. *Board of Education* involves a moving picture. Every judge worth his salt who has devoted any substantial time to wrestling with problems of school-desegregation has changed views he earlier held. The reasons are straightforward: Remedies thought workable when ordered by the court turned out in practice to be partially, sometimes entirely, unworkable either because they were circumvented by school authorities or had encountered obstacles not foreseen. Again, there remain to this day questions not resolved as to the final scope of the Brown mandate: even now I know no one bold enough to attempt a final definition of what constitutes a "racially nondiscriminatory" public school system.[2]

FACULTY AND STAFF INTEGRATION

Thus an assessment of a judge's views on school segregation must be made in the context of the time in which he spoke. Said another way, he must be judged by comparison with other judges facing the same problems with respect to the particular forthcoming school year to which the answers were to be applied. The reason is simply that from school year to school year the picture changed—and rules and priorities applied for one year were modified or abandoned for the next.

I can—albeit quite unfairly—take the views held earlier by any of the small number of federal Judges whose views on racial matters make them front runners among their fellows and compare earlier positions with ones held later by themselves or the Supreme Court and thereby "prove" them "wrong" and out of step with the Supreme Court. Judge Haynsworth is not among that very small front-runner group but he is no foot-dragging, entrenched segregationist, either. In my judgment he ranks along with the best of the open-minded, pragmatic judges in the federal system, neither dogmatic nor doctrinaire.

To buttress the conclusion just stated, I intend to review in a different light the cases that have been cited to the Committee on the Judiciary as evidence that Judge Haynsworth cannot be trusted to respond fairly to cases involving racial problems. These will be treated under three headings: (1) Faculty and Staff Integratio; (2) The "Minority Transfer" Rule; and (3) the "Racially Nondiscriminatory" School System.

Much has been made of the point that the Supreme Court's per curiam reversal of Judge Haynsworth's opinion in the *Bradley* case[3] proves how far he was out of line with the Supreme Court's thinking. I would like, if I may, to put the faculty integration question in a broader context.

The South's dual schools traditionally had distinctive sets of black and white teachers. The administrative staffs within each school followed a comparable pattern. Yet the school cases before the federal courts during the 1950's focused primarily upon pupil desegregation and apart from some scattered instances in the Border States the school plaintiffs did not assign any important priority to teacher and staff integration.

By the early 1960's, however, complaints filed on behalf of pupils and parents were including demands for faculty integration. Even in this period, plaintiffs generally assigned higher priorities to student integration and as a rule did not press hard either to build a record showing discriminatory faculty assignments nor ask for orders to break up discriminatory faculty patterns. What I intend to do here is summarize developments in the various circuits down through the standards they applied to faculty segregation for the 1965–1966 school year, the year the Fourth Circuit was considering when Judge Haynsworth wrote the *Bradley* decision.

What happened to the Fifth Circuit down to 1965 is typical. On July 24, 1962, a panel consisting of Judges Rives, Tuttle and Brown reversed a District Court order in the Escambia County, Florida, case which had struck from the complaint a claim that discriminatory assignment of faculty resulted in harm to pupils; this point should not have been resolved at the pleading stage, the panel held, but only after a hearing on the question.[4] A few weeks later then District Judge Bryan Simpson ordered school authorities in Duval County, Florida, to submit plans prior to the end of October 1962 for assigning teachers without regard to race.[5] From the context of Judge Simpson's order it was clear that no change earlier than the 1963–1964 school year was intended. Things were further delayed while Duval County took an appeal and not until January 10, 1964, did the Fifth Circuit rule on the case. Chief Judge Tuttle's opinion[6]—by this time looking forward to the 1964–1965 school year—held that pupil objections to racial assignment of teachers and staff was a proper concern for the court, adding that the question of teacher assignment could either be postponed[7] or at the discretion of the trial court brought on for hearing as Judge Simpson had done.

This brings us now to the Fifth Circuit's views respecting faculty segregation for the 1965–1966 school year, the year under consideration when the fourth Circuit decided the *Bradley* case. On February 24, 1965—approximately six weeks before the *Bradley* decision was announced—a panel which included Chief Judge Tuttle reaffirmed the view that the District Court had discretion to postpone consideration of faculty integration (but adding that the court was not precluded from taking up the question).[8] On July 2, 1965—roughly two months after the *Bradley* decision was announced—another panel of the Fifth, also considering plans for the 1965–1966 school year, reversed an order of the District Court which denied standing to pupils challenging faculty segregation but set no priorities for handling the question on remand. This opinion—in the *Price* case out of Texas—was written by now Chief Judge John Brown, who indicated the question of faculty segregation was best left to the Dis-

Footnotes at end of article.

trict Court "for consideration by and with the Board as the imported HEW standards are applied." [9]

The reference to the "imported HEW standards" calls for explanation. Near the end of April 1965 the U.S. Department of Health, Education, and Welfare issued the "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools," a document widely known thereafter as the HEW Guidelines.[10] Broadly, the Guidelines required all desegregation plans to contain provisions for ultimate faculty and staff desegregation [11] but for the 1965–1966 school year a district was "normally" expected to do no more in this direction than arrange for joint faculty meetings and joint inservice programs.[12] Some not-normal districts, as the Guidelines perceived 1965–1966, would be relieved of even this much joint faculty and staff activity. The position of the Guidelines restated what we understood the prevailing judicial doctrine of the day to be: faculty desegregation was ultimately to be in the picture but a good bit of discretion was to be retained for decision in individual cases when to bring it on.[13]

Summarizing the position of the Fifth Circuit with respect to the 1965–1966 school year—views expressed both before and after Judge Haynsworth's decision in *Bradley*—faculty and staff integration was part of the job to be done but its timing was to be left largely to the discretion of the District Court (which should also take account of the directives in the HEW Guidelines). And the Fifth Circuit views toward the 1965–1966 school year were either written or concurred in by such men as Judge John Brown and Chief Judge Elbert Tuttle.

Developments in the Sixth Circuit on the faculty desegregation front down to the 1965–1966 school year paralleled closely those in the Fifth, just described. In an early phase of the Chattanooga case, the District Court had struck from the complaint a demand by pupils for faculty desegregation and on July 8, 1963, the Sixth Circuit reversed, restoring the issue to the complaint and leaving it to the discretion of the trial court to determine when to bring the issue on for consideration.[14] A year later, looking into the forthcoming 1964–1965 school year while reviewing the Memphis case, the Sixth quoted with approval the view adopted a year earlier in the Chattanooga case that the question of faculty segregation was a proper one to be considered but was an issue left to the discretion of the District Court as to timing.[15] A year later, assessing the Sixth Circuit position on the faculty integration question, District Judge Bailey Brown concluded shortly before the 1965–1966 school year commenced that the timing of the question was still left to the discretion of the trial court.[16]

The faculty segregation question came before the Eighth Circuit only in connection with the 1965–1966 school year and in the context of a case out of Fort Smith, Arkansas. A unanimous panel of the Eighth affirmed the discretion of the District Court in postponing the question and went on to limit the standing to challenge faculty segregation to pupils attending grades already desegregated under the plan.[17] Shortly after reversing the Fourth Circuit on the faculty segregation question in the *Bradley* case, the Supreme Court reversed the Eighth for its holding on the same question.[18]

The views of the Fourth Circuit down through the 1965–1966 school year remain to be accounted for. Developments in the Fourth paralleled those in the Fifth and Sixth Circuits and its views for 1965–1966 were somewhat broader than those just described for the Eighth Circuit. On June 29, 1963, Judge Sobeloff announced for himself and Judge Haynsworth an opinion involving an appeal from Lynchburg, Virginia. (Judge Soper had heard argument in the case but died prior to participating in the Court's opinion.) In reversing and remanding the case to the District Court the Sobeloff-Haynsworth panel held that the complaint had raised the question of faculty and staff desegregation and that the issue was appropriate to the establishment of a racially nondiscriminatory school system.[19] (For those who suggest Judge Haynsworth has gone along on new developments only where no other recourse was available to him, it is worth noting that he joined Judge Sobeloff on a point apparently new for the Fourth Circuit and reached by the two of them without reference to other authority on the point.)

By now looking into the 1965–1966 school year, the Fourth sitting en banc announced unanimously, with Judge Haynsworth participating, that the complaints as amended raised the faculty segregation question and that the plaintiffs had standing press the issues against school authorities in Prince Edward and Surrey Counties in Virginia.[20] This decision came December 2, 1964, about four months prior to the en banc decision in *Bradley* [21] and the companion cases decided with it.[22]

The *Bradley* case was argued in the Fourth Circuit on October 5, 1964, and the companion cases involving Hopewell, Virginia, and Buncombe County, North Carolina, were argued November 5, 1964. All three were heard by the Fourth sitting en banc and the opinions on the three were announced together April 7, 1965. In each Judge Haynsworth wrote for the Court and as to each Judges Sobeloff and Bell joined in a partial dissent.

The point of difference between the majority and minority on the question of faculty integration was comparatively a narrow one. All the en banc Court agreed that pupils had standing to challenge faculty and staff segregation, a view which was shared by the Fifth, Sixth and Eighth Circuits at this point in time. Judge Haynsworth's opinion followed the view then current in the other Circuits that the timing for bringing on faculty integration was to be left to the discretion of the District Court and it was on the question of timing that the Sobeloff-Bell dissent parted company, not only with Judge Haynsworth but with the views of the other three Circuits as well.[23] Occupying new ground, the dissenters insisted that evidentiary hearings on faculty segregation should be brought on at once and, secondly, that following such a hearing the District Court should have only limited discretion thereafter to delay faculty integration.[24]

By the time the *Bradley* case came before the Supreme Court for review, yet another school year—1966–1967—was in the offing and in a terse per curiam announced November 15, 1965, *Bradley* was reversed on the question of timing the evidentiary hearing on faculty segregation; the Court saw no justification at this point in time for further postponement of evidentiary hearings.[25] The Court did not speak to the second point raised in the Sobeloff-Bell dissent—the priority of timing faculty integration once an evidentiary record showed segregated patterns to exist—and not until the *Montgomery* case in the Spring of 1969 did the Court speak to the substantive content of plans for faculty integration.[26]

The real significance of the Supreme Court's decision in *Bradley* is not that it establishes Judge Haynsworth as a foot-dragging segregationist unable to keep step with the currents of the Warren Court. This conclusion can be reached only by saying that the same decision also tars the image of other highly respected judges and ones clearly liberal on racial questions who were announcing positions similar to Judge Haynsworth's at the very time the Fourth Circuit opinion in Bradley was written. And that just simply will not do.

Moreover, the real significance of *Bradley* is that it represented the commitment of the Supreme Court to the proposition that faculty integration was part of the school desegregation picture. Despite the unanimity that the Circuit had reached in concluding that pupils could challenge faculty segregation, there was continued insistence from school authorities that this point did not have the support of the Supreme Court. The Supreme Court's decision in *Bradley*—and its per curiam decision shortly afterwards reversing the Eighth Circuit's ruling in the Fort Smith case [27] supplied the support for faculty integration. And in supplying that support the Court had speeded the process for the forthcoming 1966–1967 school year by ordering prompt evidentiary hearings on the question of faculty segregation. Moreover, the Court left for the future the question of timing steps toward faculty integration although the Sobeloff-Bell dissent had suggested an answer on that issue, too.

THE "MINORITY TRANSFER" RULE

On September 17, 1962, the Fourth Circuit sitting en banc announced through a per curiam decision that the "racial minority" transfer provision in the school plan for Charlottesville, Virginia, was unconstitutional because its purpose and effect were to retard desegregation.[28] There were two dissents, one of them from Judge Haynsworth. Almost nine months later, on June 3, 1963, a unanimous Supreme Court invalidated a like minority transfer provision in reviewing two cases out of Tennessee, [29] one of them the *Goss* case out of Knoxville.

For reasons that I will try to develop briefly here I believed at the time that *Goss* laid down too inflexible a doctrine and developments in the years that came after have not removed my doubts *Goss* torpedoed the then growing development of unitary geographic zoning that was being built on the foundation of the so-called "Nashville Plan" by striking down an obviously discriminatory but nevertheless useful transition device for bringing an end to the dual school systems. Moreover, by injecting inflexibility into geographic zoning at this instant in time, *Goss* gave a critically important shot in the arm to experiments just getting under way with giving pupils a "free choice" of schools. The point was that without some kind of safety valve available at least for the short run, a geographic zoning system that locked in unhappy minorities whether black or white was simply unworkable in the initial stages of desegregation in many communities. If insisted on, families either moved out of the attendance zone, further concentrating racial imbalances in housing or they withdrew their children and enrolled them in private schools. The alternative to this kind of locked-in geographic assignment was freedom of choice and it was toward this alternative that much of the school board response turned in the wake of the *Goss* decision.

A brief description of the Nashville plan is helpful in judging the minority transfer question. The plan was put in effect there in 1957 under the watchful eye of District Judge William E. Miller, whose sensitivity and judgment toward racial problems over the years have been matched by few indeed. For 1957 a unitary system of zones was established for the first-grade level in all of the City's public schools. Each child entering first grade was initially assigned to the elementary school in his zone of residence and was permitted to transfer to another school only if he were in a racial minority in his school or class.[30]

The overtly racial character was troublesome but as a transitional device it could be justified on several grounds. First, it was a safety valve through which both black and white minorities could escape to schools where their own races were predominant. At first all the whites and nearly all the blacks

Footnotes at end of article.

chose to escape but as the years passed the numbers of blacks who chose to remain in an integrated situation rose steadily and in time growing numbers of whites abandoned the inconvenience of going outside their attendance zone to school. A second and critically important feature of the minority transfer rule was to prevent white majorities from avoiding attendance at an integrated school. A white pupil was not permitted to transfer from a school merely because a Negro minority had elected to attend. Almost certainly this tended to stabilize the initial stages of the transition to a unitary system. This feature of holding down white minorities is of course lost if the minority transfer provision gives way to transfers based on unrestricted choice.

Judge Haynsworth in his dissent in the Charlottesville case did not develop his position in the detail stated here but it is perfectly evident that these were the kinds of problems about which he was concerned. His own Court, he thought, had considered the question largely in abstract terms and the parties had not asked for consideration of practical consequences of the alternatives they pressed the Court to rule on. His is one of the few opinions I know on the subject of the minority transfer question that did seek to open the practical inquiry into the operations of the rule as a transitional device and in retrospect I regret that he did not carry the day in order that the alternatives could have been thought out better than they were at the time.

The assumptions the Supreme Court makes in *Goss* are that the minority transfer device tends to perpetuate segregation—a point entirely true—and secondly, that transfer provisions not based on state imposed racial conditions can be appropriate means for desegregation—a point also true but whether transfers granted in wholly nonracial terms are the most reasonable means in every case for bringing about a system of "just schools" in place of a system of "black" schools and "white" schools can be questioned.

Indeed the rigidity of the *Goss* ruling seems quite out of character with the insistence by the Supreme Court last year in *New Kent* and its companion cases that the end product must be no more dual schools and that the test in each case requires selection of alternatives that are more, rather than less, likely to produce a unitary system.[31] Nor do the current cases impose objections to making use of racial criteria—the assignment of faculty in the *Montgomery* case [32] and the growing use of optional attendance zones and majority to minority transfers are examples.[33]

To summarize, Judge Haynsworth in his Charlottesville dissent rested on the point that the question was more complex than the majority was ready to concede and more attention to his concerns for developing effective transitional devices might well have done much to head off the explosive move toward freedom of choice that came after the Fourth Circuit, and then the Supreme Court, struck down a transitional device essential in many cases to the initial establishment of unitary zoning. And more careful attention to the working of various devices such as minority transfers, paired schools, optional zones might have come sooner than has been the case.

In any event, the Haynsworth dissent in Charlottesville cannot be explained by asserting it demonstrates him to be out of step with the directions of the Warren Court.

THE "BASICALLY NONDISCRIMINATORY" SCHOOL SYSTEM

Across the years that followed the *Brown* decisions in the Supreme Court a basic difference developed among the judges of the lower federal courts with respect to what, ultimately, was required to bring the dual systems of the South into line with the requirements of the Fourteenth Amendment.

The new view—which only began to emerge in the 1960's—saw the end product as a system of "just schools," rather than a system that could include "black" schools and "white" schools from which discriminatory obstacles to admission had been removed.

The other and older view saw the end product as the removal of racial obstacles and burdens—and if at the end some white and some black schools remained as the collective results of unfettered choices by school patrons, there was no violation of the Fourteenth Amendment involved.

It was common to both views that racially invidious practices, when shown to exist or to be intended, would not be tolerated in the name of the state. Most of the changes in the rules relating to school desegregation over the years came about in the context of demonstrated invidious discriminations and as a result it was simply not necessary to decide any more than that steps be taken to eliminate the results of invidious discrimination.

There gradually emerged however, a series of school situations in which the difference in view toward the end product called for by *Brown* resulted in a difference in the outcome of a particular case. The *New Kent* case and the cases from the Sixth and Eighth Circuit decided with it are classic examples. If one assumes that *Brown* commanded only an end to burdens and discriminations respecting choice of schools, the decisions reached by the Fourth, Sixth and Eighth Circuits appear clearly correct. In the *New Kent* case, for example, the plaintiffs conceded they had an unencumbered opportunity annually to choose the white rather than the black school in the County. A view on the other hand that *Brown* commanded an actual undoing of the dual school system to produce a system of "just schools" calls for a different result on the facts of the case: New Kent County operated two comprehensive schools, one traditionally for whites, the other for blacks. No attendance zones existed and each school served the entire county. Moreover, Negroes and whites were more or less generally distributed throughout the County. Thus by the comparatively straightforward move of zoning one school to serve one half of the County and the other school the other half, substantial integration would result. That kind of move would be a long step toward a system of "just schools," given the fact that the freedom of choice system had done little to alter the original character of the two schools as "black" and "white."

In the *New Kent* case, Judge Haynsworth had remanded the case for inclusion of a minimal objective timetable that took account of the comprehensive timetable adopted only a short time before by the Fifth Circuit in the *Jefferson County* case.[34] Judges Sobeloff and Winter specially concurred, expressing approval of Judge Haynsworth's assertion that the *Jefferson* standards were applicable on remand to the question of faculty integration and regret at the failure of the majority to require on remand the establishment of a periodic review by the District Court to determine the effectiveness of the freedom of choice system in operation, particularly to see that residual effects of the past dual system were removed.[35]

The Supreme Court in reversing *New Kent* and its companion cases from the Sixth and Eighth Circuits on May 7, 1968, moved on to new ground well beyond that occupied previously by any decisions of the Circuit Courts. The Fifth Circuit's en banc decision in the *Jefferson County* case at the end of March 1967 had gone farther than any other, though Judge Haynsworth's decision in *New Kent* two and a half month's later announced his accord with the Fifth Circuit standards of the *Jefferson* case (but see the Sobeloff-Winter concurrence for expression of the wish that the Fourth repeat specifically some of the things said in Jefferson). What the Fifth had done in *Jefferson County* was to come down hard on insisting that the test of a desegregation plan was whether it did away with the vestiges of the dual school system and to test that question specified a quite detailed decree that called for regular reporting of information concerning progress toward a unitary system.

What the Fifth had not done in Jefferson County, and what was new in the Supreme Court's decision in the *New Kent* line of cases, was to impose the duty on a board to select among feasible alternatives those which were more rather than less likely to result in putting an end to the vestiges of the dual system. While the Fifth had called for periodic review of developments, it had said nothing this clear about actual implementation.

Back then to Judge Haynsworth's opinion for the Court in New Kent. What he said there seems clearly in line with what the Fifth, Sixth and Eighth Circuits were saying at the time. By keying Fourth Circuit views to those of the Fifth Circuit in *Jefferson County*, he was giving a quiet burial to the *Briggs* dictum [36] which had so long cast a shadow across the writings of the Fourth Circuit. (Judge Sobeloff's concurrence in *New Kent* contains a sensitive summary of problems *Briggs* posed for the Fourth, coming as it had from Chief Judge John Parker who did not live long enough thereafter to qualify its thrust.) [37] But one could say that Judge Haynsworth's decision in *New Kent* was out of step with the direction of the Warren Court only by concluding that the same would have to be said of the Fifth, Sixth and Eighth Circuits which were saying the same things in that period. What the Fourth had done, along with the other Circuits, was to bring itself in line for the Supreme Court to resolve that the end product called for by *Brown* was a system of "just schools" and that school districts were under a duty to select reasonable means best calculated to produce that result.

IN CONCLUSION

It has troubled me greatly that so much of the criticism directed recently at Judge Haynsworth has rested either on gross overstatement or seriously incomplete descriptions of the context in which he has acted. This is not to say that I have agreed with every one of his decisions, for I have not. At the time I would probably have decided the *Moses H. Cone Memorial Hospital* case [38] the other way, although the case was clearly a lot more difficult than was the *Burton* case that was the principal Supreme Court precedent in that period. Judge Haynsworth's decision later on the question of admitting Dr. Hawkins to the North Carolina Dental Society was hardly the "easy" case that some of the Judge's critics said it to be, as even a casual reference to the quite distant precedents drawn on will attest—and the result is a victory over racial discrimination.[39] Both *Hawkins* and *Moses Cone* draw on state action concepts and a comparison of the two opinions reflect, I submit, the capacity of Judge Haynsworth to grow in breadth and sensitivity on the job.

I also think the decision to abstain in the *Prince Edwards County* case was wrong. Partly this is because I believe the Abstention Doctrine itself was a mistake, and a mistake of the Supreme Court's own making.[40] The abstention in *Prince Edward* came about the time that doctrine had reached high tide and just ahead of the time that the Court itself began cutting back on abstention with its decision in the *England* case.[41] Moreover, by the time the Supreme Court reached the *Prince Edward* case for review, it had access to the opinion of the Virginia Supreme Court of Appeals, to wait for which had been the basis for the abstention by the Haynsworth panel. Yet regardless where the Abstention Doctrine came from, abstention on the facts of *Prince Edward* was in my

Footnotes at end of article.

judgment wrong and Judge Haynsworth must accept his part of the responsibility for the decision.

Perhaps there are some other decisions, too, that I would have turned the other way. But I cannot read his record in general or in particular as that of a dogmatic or doctrinaire man nor as that of a man out of step with the need to afford proper protection against racial discrimination. The suggestion offered during the hearings before the Judiciary Committee that his dissent in the *Brewer* case [42] out of Norfolk was in some fashion improper and at odds with the just-announced *New Kent* decision of the Supreme Court simply will not survive a reading of the two cases. Again in the *Chambers* case involving what were claimed to be racially discriminatory dismissal of Negro teachers, Judge Haynsworth cast the deciding vote for a 3 to 2 Court of Appeals that shifted to school authorities the burden of showing that discrimination had not motivated the dismissal.

All things considered, I find Judge Haynsworth not easy to characterize. I can cite instances in which he has declined to give strict construction to procedural rules where, to have done so, would have denied a party his day in court.[43] He has declined, I believe quite correctly, to stretch a statute limiting the contempt powers of lower federal courts to cover conduct which he regarded both as a contempt of the court and quite unconscionable.[44] In a doctrinally important habeas corpus case Judge Haynsworth abandoned a Supreme Court precedent before the Supreme Court itself had done so (and the Court in a later unanimous opinion said both that Judge Haynsworth's result was correct and that it was correct for the very reasons he gave).[45] But where arguments have failed to persuade him an established precedent should not be applied to the case at hand, he has followed the precedent.

To sum up: Judge Haynsworth is an intelligent, sensitive, reasoning man. He does not fit among that small handful of front-running federal judges who have consistently made new law in the racial area. He has earned a place, however, among those who serve in the best tradition of the system as pragmatic, open-minded men, neither dogmatic nor doctrinaire. His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. And it simply cannot be said that his record in the racial field marks him as out of step with the directions of the Warren Court.

Thus the question for me is not whether I would have made another nomination for the Supreme Court. It is rather the question whether Judge Haynsworth possesses the qualities required to become a fine Justice of the Supreme Court. My view is that he will make a first-rate Associate Justice.

I hope this Committee—and later, the Senate itself—will support the nomination of Judge Clement Haynsworth to the Supreme Court of the United States.

FOOTNOTES

[1] A detailed account of the evolution of the HEW Desegregation Guidelines appears in Orfield. The Reconstruction of Southern Education (John Wiley & Sons, 1969), pp. 76–101.

[2] In *Brown* II, the Court remanded the cases to the District Court with instructions, among others, "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties in these cases." 349 U.S. 294, 301 (1955). Nowhere else until its decisions in the group of cases including *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), did the Court provide any clearer definition of the end product intended by *Brown*. In *Green*, however, the Court held that where racially dual schools had previously been operated the end product must be "just schools," not a system still having "white" schools and "Negro" schools, and school boards had a constitutional duty to take meanful steps leading to a "unitary, non-racial system." 391 U.S. 430, 439–442 (1968).

[3] *Bradley* v. *School Board of the City of Richmond*, 382 U.S. 103 (Nov. 15, 1965), reversing 345 F. 2d 310 and the companion case, *Gilliam* v. *School Board of the City of Hopewell*, 345 F. 2d 325 (CA 4, April 7, 1965).

[4] *Augustus* v. *Board of Public Instruction of Escambia County Florida*, 306 F. 2d 862 (CA 5, 1962).

[5] *Braxton* v. *Board of Public Instruction of Duval County*. ——— F. Supp. ——— (S.D. Fla., August 21, 1962); also reported at 7 Race Relations Law Reporter 675.

[6] *Board of Public Instruction of Duval County, Florida* v. *Braxton*, 326 F. 2d 616 (CA. 4, January 19, 1964).

[7] Judge Tuttle cited *Calhoun* v. *Latimer*, 321 F. 2d 302 (CA 5, 1963), holding that it was not error for the District Court to postpone consideration of teacher assignment in the Atlanta system. See *Braxton*, p. 6, *supra*, at 620.

[8] *Lockett* v. *Board of Education of Muscogee County, Dist., Ga.*, 342 F. 2d 225, 229 (CA 5, 1965).

[9] *Price* v. *Denison Independent School District Bd. of Ed.*, 348 F. 2d 1010, 1014–1015 (CA 5, 1965).

[10] The HEW Guidelines for 1965–1966 are reproduced at 30 Fed Register 9981 (Aug. 14, 1965). They may also be seen as an appendix to the Price case cited in n. 9, *supra*, and a copy is attached as an appendix to this statement.

[11] *Guidelines* v. *Methods of Compliance—Plans for Desegregation of School Systems*:

B. Requirements Which All Desegregation Plans Must Satisfy—

1. *Faculty and staff desegregation.* All desegregation plans shall provide for the desegregation of faculty and staff in accordance with the following requirements:

a. *Initial assignment.* The race, color, or national origin of pupils shall not be a factor in the assignment to a particular school or class with a school of teachers, administrators or other employees who serve pupils.

b. *Segregation resulting from prior discriminatory assignments.* Steps shall also be taken toward the elimination of segregation of teaching and staff personnel in the schools resulting from prior assignments based on race, color, or national origin (see E4b below).

[12] *Guidelines*, V. Methods of Compliance—Plans for Desegregation of School Systems:

E. Rate of Desegregation—

4. Every school system beginning desegregation must provide for a substantial good faith start on desegregation starting with the 1965–1966 school year, in light of the 1967 target date.

a. Such a good faith start shall normally require provision in the plan that:

. . . (6) Steps will be taken for the desegregation of faculty, at least including such actions as joint faculty meeting and joint in-service programs.

b. In exceptional cases the Commissioner may, for good cause shown, accept plans which provide for desegregation of fewer or other grades or defer other provisions set out in 4a above for the 1965–1966 school year, provided that desegregation for the 1965–1966 school year shall extend to at least two grades, including the first grade, and provided that the school districts, in such case, shall take into account the steps which would be required to meet the 1967 target date.

[13] In an article published in Saturday Review on March 20, 1965, and upon which the HEW Guidelines rested heavily I thus indicated our then understandings about teacher and staff desegregation: "Desegregation of teachers and professional staffs is ultimately in the picture . . . The problem is one which every district must face and start working on. Every desegregation plan should reveal awareness of the problem and provide assurance that steps will be taken to remove racial discrimination in assignment of teaching personnel. Foster. *Title VI: Southern Education Faces the Facts*, Saturday Review, March 20, 1965, 60, 77.

[14] *Mapp* v. *Board of Education of City of Chattanooga, Tenn.*, 319 F. 2d 571, 576 (CA 6, 1963).

[15] *Northcross* v. *Board of Education of City of Memphis*, 333 F. 2d 661, 667 (CA 6, 1964).

[16] *Monroe* v. *Board of Commissioners, City of Jackson*, 244 F. Supp. 353 (W. D. Tenn., 1965).

[17] *Rogers* v. *Paul*, 345 F. 2d 117, 125 (CA 8, 1965).

[18] *Rogers* v. *Paul*, 382 U.S. 198, 200 (Dec. 6, 1965).

[19] *Jackson* v. *School Board of City of Lynchburg, Virginia*, 321 F. 2d 210, 233 (CA 4, 1963).

[20] *Griffin* v. *Board of Supervisors of Prince Edward County*, 339 F. 2d 487 (CA 4, 1964).

[21] *Bradley* v. *School Board of City of Richmond, Virginia*, 345 F. 2d 310 (1965).

[22] *Gilliam* v. *School Board of City of Hopewell, Virginia*, 345 F. 2d 325 (1965); *Bowditch* v. *Buncombe County Board of Education*, 345 F. 2d 329 (CA 4, 1965).

[23] Bradley, note 21, supra, at 320.

[24] Bradley, note 21, supra, at 324.

[25] *Bradley* v. *School Board of Richmond*, 382 U.S. 103, 105 (November 15, 1965).

[26] *United States* v. *Montgomery County Board of Education*, 89 S. Ct. 1670 (1969).

[27] *Rogers* v. *Paul*, 382 U.S. 198, 200 (December 6, 1965).

[28] *Dillard* v. *School Board of City of Charlottesville, Va.*, 308 F. 2d 920 (1962).

[29] *Goss* v. *Board of Education*, 373 U.S. 683 (1963).

[30] *Kelley* v. *Board of Education of the City of Nashville*, 2 Race Rel. Law R. 21 (M.D. Tenn. 1957), 270 F. 2d 209 (CA 6, 1959), cert. den. 361 U.S. 924 (1959).

[31] *Green* v. *School Board of New Kent County*, 391 U.S. 430; *Raney* v. *Board of Education*, 391 U.S. 443; and *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968).

[32] *United States* v. *Montgomery County Board of Education*, 89 S. Ct. 1670 (1969).

[33] See, for example, *Brewer* v. *School Board of the City of Norfolk, Virginia*, 397 F. 2d 37 (1968).

[34] United States v. Jefferson County Board of Education, 372 F. 2d 836, aff'd on rehearing en banc, 380 F. 2d 385 (CA 5, 1967), cert. den. sub non. Caddo Parish School Board v. U.S., 389 U.S. 840 (1967).

[35] Bowman v. County School Board of Charles City County, Virginia, 382 F. 2d 326, 330 (SA 4, 1967) for concurring opinions of Judges Sobeloff and Winter intended for Bowman and for the companion Green v. County School Board of New Kent. Virginia, 382 F. 2d 338 (CA 4, 1967).

[36] Briggs v. Elliott was a companion case to Brown v. Board of Education and came out of South Carolina. On remand of Briggs to the District Court of three judges following the Supreme Court's decision in Brown II, Chief Judge John Parker of the Fourth Circuit attempted as a member of the Briggs panel to explain what Brown had decided. He said, in language often quoted thereafter:

"Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination." 132 F. Supp. 776, 777 (E.D.S.C. 1955).

[37] See Bowman, note 35, supra, at 336 ff.

[38] Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959 (CA 4, 1963).

[39] Hawkins v. North Carolina Dental Society, 355 F. 2d 718 (CA 4, 1966).

[40] Griffin v. Board of Supervisors, 322 F. 2d 332 (CA 4, 1963), reports the decision to abstain. A thoughtful and useful collection of materials on abstention appears in Currie, Federal Courts 500–530 (1968).

[41] England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964).

ADJOURNMENT

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 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 59 minutes p.m.) the Senate adjourned until Tuesday, November 18, 1969, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate November 17, 1969:

IN THE MARINE CORPS

The following named (staff noncommissioned officers) for temporary appointment to the grade of second lieutenant in the Marine Corps, subject to the qualifications therefor as provided by law:

Albright, James A.
Armstrong, Russell P.
Ash, James B.
Bacon, Welles D.
Bahr, Wayne D.
Beard, Fred W.
Bowman, Charles F. N., Jr.
Boyd, Joseph S.
Brake, Robert L.
Brown, Donald R.
Clark, Owen D.
Edwards, Sidney B.
Ethington, Riley S.
Hall, John E.
Henry, John D.
Howard, Sylvester
May, Richard P.
Menart, Joseph A.
Morgan, Richard C.
Parker, Frederick D.
Phillips, Hugh F.
Randel, Garrett V. H., Jr.
Roamer, Richard H.
Robin, Edmond L.
Rudolf, Robert M.
Skinner, Lloyd L.
Smith, Charles L.
Smith, Delmer
Smith, Lyle W.
Sunn, Larry A.

ASSISTANT TO THE COMMISSIONER OF THE DISTRICT OF COLUMBIA

Graham W. Watt, of Ohio, to be Assistant to the Commissioner of the District of Columbia, vice Thomas W. Fletcher.

IN THE COAST GUARD

The following-named officers of the Coast Guard for promotion to the grade of commander:

Walter E. Mason, Jr.
John R. MacDonald
John N. MacDonald
Earle K. Hand
Thomas C. Volkle
Hugh M. McCreery
James Napier, Jr.
Ronald D. Stenzel
Bobby C. Wilks
Donald E. Hand
Gordon H. Dickman
Albert L. Olsen, Jr.
James H. Scott
George P. Asche
Paul L. Lamb
William Senn
Milton J. Stewart
Delmar F. Smith
Harold E. Geck
John J. Clayton
Charles F. Galley, Jr.
Bruce S. Little
Bobby G. Burns
Hodges S. Gallop, Jr.
Dalton J. Beasley
David W. Irons
Mathew Woods
Leo J. Kelley
Howard C. Beeler, Jr.
Gerald C. Hinson
Calvin F. Langford
Melvin J. Hartman
Harold U. Wilson, Jr.
John F. Dunn
George L. Gordon
Royce R. Garrett
Benjamin R. Sheaffer
Kearney L. Yancey, Jr.
John V. A. Thompson
Roger V. Millett
Charles S. Wetherell
Hugh L. Murphy, Jr.
Richard A. Decorps, Jr.
Mitchell J. Whiting
John B. Lynn
John W. Kime
Harlan D. Hanson
Richard J. Green
James E. Brown, Jr.
George D. Passmore, Jr.
Louis K. Bragaw, Jr.
Richard J. Collins
Charles S. Niederman
George P. Vance
Ronald R. McClellan
John C. Wirtz
David R. Markey
Robert A. Johnson
Keith D. Ripley
John I. Maloney, Jr.

The following-named Reserve officer to be a permanent commissioned officer in the Coast Guard in the grade of lieutenant:

Jack K. Stice.

EXTENSIONS OF REMARKS

L. E. "GUS" SHAFER, MERRIAM, KANS., SCULPTOR AND PAINTER

HON. ROBERT DOLE

OF KANSAS

IN THE SENATE OF THE UNITED STATES

Monday, November 17, 1969

Mr. DOLE. Mr. President, unfortunately Kansas is not generally recognized as a foremost proponent and participant in art.

I say unfortunately because, in our State, there is not only a growing awareness and appreciation of art, but also a growing number of men and women who are creating on canvas some rather excellent and significant art works.

One such Kansas is L. E. "Gus" Shafer of Merriam, a sculptor and painter of national acclaim, who translates the life of the Old West into bronze and oils.

Mr. President, I ask unanimous consent to include an article about Mr. Shafer from the Johnson County Herald of November 12.

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

L. E. "GUS" SHAFER, KANSAS SCULPTOR AND PAINTER

(By Elizabeth Barnes)

It was not only our pioneer settlers who braved the hazards of an unknown land to build the history of this area.

There are among us many devoted souls who are giving to the community and to the world what will become a precious heritage. These people, though they little realize it, are also making history.

As a rule you do not hear much about these people until some signal honor is dumped at their door. So, if you have not already done so, meet Leonard E. (Gus) Shafer, 8308 West 61st. St., Merriam, sculptor and painter, who perpetuates in bronze and oils the life of the Old West.

Born on a farm in western Kansas in 1907, Gus early developed a love of the west from his grandfather, who hunted big game with Buffalo Bill. He also learned the ways of animals through his chores about the farm, and of the wild creatures from his excursions through the rugged prairie land about him.

Gus has been painting since early boyhood. He had his first one-man showing when only fifteen years old in an old mortuary near his home. His father purchased one of the paintings exhibited there, an old Dutch windmill, that now hangs in the artist's bedroom.—not an original composition, Gus confesses, but a copy of an illustration in an old school geography.

His interest in clay modeling also began early. He dug the clay from a bank near his home.

Gus was left motherless at the age of ten. Two years later he left home to take a job on a neighboring ranch, tending cattle and choring about. For his first year's pay, in addition to his keep, he received a pony for his very own. The next year bought a fine saddle and bridle for it.

Next he took up selling magazines for the Hearst Publishing Company, and was soon working hard for a scholarship to Grinnell College. Out of 450 applications, Gus was the winner, which entitled him to full expenses. For three semesters he stayed at Grinnell, finally leaving for Kansas State College where he continued to work his way through to graduation.

In 1930 he brought his family to Kansas City where he set up his own office as a commercial artist. Here, as he had time, he continued his paintings of his beloved west, putting on canvas scenes that had been familiar to him. He utilized vacation times to visit the old west, scouring the country side, talking with old timers, and visiting libraries in search of old maps and materials of a bygone era. Nothing was more exciting to him than to drive into a ghost town and round up somebody who could tell him of its past. Or to drive up to some old ranch home (often a rather dangerous undertaking, for the people in secluded areas were wary of strangers, and like as not Gus would be looking down a gun barrel until he could explain the nature of his visit.)

In his sculpturing, Gus started out with wood carving until an accident with a power saw cost him several fingers about three years ago. Then he turned to fashioning his figures in clay, or rather in an oil residue which serves the purposes better.

In the three short years in which Gus has devoted himself to sculpturing, he has won not only national recognition, but acclaim in other countries, as well.

He now has four foundries where his figures are cast, two in New York City, one in Topeka and one in Carrara, Italy. The Royal Worcester Porcelain Works of London, has also asked permission to cast his figures in porcelain.

There are six agencies and display offices which handle the Gus Shafer pieces—the Kennedy Sales Gallery in New York City, Hall Bros. in Kansas City, Phippens in Topeka, and agencies in Tucson (Arizona) and Aspen (Colorado). A special showing of Shafer's work (probably the largest ever assembled in one place) was at Hall Bros. on the Plaza during the recent American Royal.

To date Gus has completed around 40 pieces for casting in bronze. Of these, only the bust figure of his grandfather is not for sale. Each casting is numbered and is limited in number, ranging from perhaps ten to 25 or 30 castings of each. Prices range from $450 for a small figure up to $10,640.00 for a piece in silver. Only the first two castings may be done in silver. Gus reserves No. 3 of each piece for himself.

This limitation on number of castings makes a Gus Shafer piece close to an exclusive. A buyer for investment will try to purchase the lower numbers for the original price put on a piece automatically increases with each succeeding piece, in which the purchase of a No. 1 piece will find his buy worth the most as the years go by.