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Congressional Record

PROCEEDINGS AND DEBATES OF THE 91st CONGRESS, FIRST SESSION

SENATE—*Tuesday, November 18, 1969*

The Senate met in executive session at 12 o'clock meridian and was called to order by the President pro tempore.

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

Eternal Father, as we stand to acknowledge Thy presence and implore Thy aid, we beseech Thee to control our inmost beings, and so direct our lives that we may do Thy will. If in the pressure of daily duties or the confusion of our times we lose the way, wilt Thou rescue us and bring us to Thyself. Instill within us a more enduring faith and that purer patriotism which, in compassion and love, lifts all men to that fullness of life which belongs to Thy kingdom; for Thine is the Kingdom and the power and the glory forever. Amen.

MESSAGE FROM THE PRESIDENT

As in legislative session, a message in writing from the President of the United States was communicated to the Senate by Mr. Jones, one of his secretaries.

THE JOURNAL

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, November 17, 1969, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

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

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

ORDER FOR ADJOURNMENT TO 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning.

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

EXECUTIVE COMMUNICATIONS, ETC.

As in legislative session, the President pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the need for improved management of repair and maintenance of public school buildings, by the District of Columbia Government, dated November 18, 1969 (with an accompanying report); to the Committee on Government Operations.

PROPOSED LEGISLATION PROVIDING A 5 PERCENT INCREASE IN CERTAIN ANNUITIES

A letter from the Secretary of Defense, transmitting a draft of proposed legislation to amend section 8340 of title 5, United States Code, to provide a 5 percent increase in certain annuities (with an accompanying paper); to the Committee on Post Office and Civil Service.

PROSPECTUS FOR PROPOSED ALTERATIONS

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus for alterations at the Custom House and Appraisers Stores in Philadelphia, Pa. (with an accompanying paper); to the Committee on Public Works.

REPORT OF BUILDING PROJECT SURVEY, ORLANDO, FLA.

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a report of a building project survey for Orlando, Fla. (with an accompanying report); to the Committee on Public Works.

REPORTS OF COMMITTEES

As in legislative session, the following reports of committees were submitted:

By Mr. McCLELLAN, from the Committee on the Judiciary, without amendment:

S. 497. A bill for the relief of the estate of Capt. John N. Laycock, U.S. Navy (retired) (Rept. No. 91–532).

By Mr. DODD, from the Committee on the Judiciary, with an amendment:

S. 2734. A bill granting the consent of Congress to the Connecticut-New York Railroad Passenger Transportation Compact (Rept. No. 91–533).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

H.R. 3666. An act to amend section 336(c) of the Immigration and Nationality Act (Rept. No. 91–534).

By Mr. EASTLAND, from the Committee on the Judiciary, with amendments:

S. 1520. A bill to exempt from the antitrust laws certain combinations and arrangements necessary for the survival of failing newspapers (Rept. No. 91–535).

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

By Mr. MAGNUSON, from the Committee on Commerce, without amendment:

S. 1170. A bill to authorize the Department of Commerce to make special studies, to provide services, and to engage in joint projects, and for other purposes (Rept. No. 91–537); and

H.R. 4284. An act to authorize appropriations to carry out the Standard Reference Data Act (Rept. No. 91–536).

By Mr. TYDINGS, from the Committee on the District of Columbia, with an amendment:

S. 2869. A bill to revise the criminal law and procedure of the District of Columbia, and for other purposes (Rept. No. 91–538).

By Mr. DODD, from the Committee on the Judiciary, with amendments:

S. 849. A bill to strengthen the penalty provisions of the Gun Control Act of 1968 (Rept. No. 91–539).

(See reference to S. 849 when Mr. DODD reported the bill which appears later in the RECORD under the appropriate heading.)

EXECUTIVE REPORTS OF A COMMITTEE

The following favorable reports of nominations were submitted:

By Mr. MAGNUSON, from the Committee on Commerce:

Caspar W. Weinberger, of California, to be a Federal Trade Commissioner.

By Mr. COTTON, from the Committee on Commerce:

Robert Coleman Gresham, of Maryland, to be an Interstate Commerce Commissioner.

BILLS INTRODUCED

As in legislative session bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. DOLE (for himself and Mr. GOLDWATER):

S. 3148. A bill to authorize the Commandant of the U.S. Army Command and General Staff College to award the degree of master of military art and science; to the Committee on Armed Services.

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

By Mr. BYRD of West Virginia:

S. 3149. A bill for the relief of Dr. Arun D. Joshi and Dr. Anjeli Joshi; to the Committee on the Judiciary.

By Mr. JAVITS (for himself, Mr. BAYH, Mr. BROOKE, Mr. CANNON, Mr. CASE, Mr. EAGLETON, Mr. GOODELL, Mr. HARRIS, Mr. HARTKE, Mr. INOUYE, Mr. JACKSON, Mr. MATHIAS, Mr. MCCARTHY, Mr. MCGOVERN, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. NELSON, Mr. PACKWOOD, Mr. PELL, Mr. PROUTY, Mr. RANDOLPH, Mr. SAXBE, Mr. SCHWEIKER, Mr. SCOTT, and Mr. WILLIAMS of New Jersey:

S. 3150. A bill to amend the Public Health Service Act to provide for the making of grants to certain medical and dental schools, which are in dire financial distress, to enable such schools to continue, without curtailment, certain services, functions, programs, and activities which are in the national interest; to the Committee on Labor and Public Welfare.

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

(The further proceedings from this point to the conclusion of morning business were conducted as in legislative session.)

S. 3148—INTRODUCTION OF A BILL RELATING TO MASTERS DEGREE FOR ARMY COMMAND AND GENERAL STAFF COLLEGE

Mr. DOLE. Mr. President, the U.S. Army Command and General Staff College at Fort Leavenworth, Kans., has a distinguished record in the preparation of Army officers to assume the responsibilities and burdens of career leadership. The college is widely known and highly regarded for the quality and rigor of its curriculum. Its course of instructions is considered to be academically equivalent to a collegiate masters program, but presently a graduate receives no degree for his efforts in completing the course.

Each candidate for graduation must demonstrate academic achievement and suitability for entrance into the program, including a satisfactory score on the Graduate Record Examination, which is employed by most civilian colleges and universities as an admissions measuring device. In addition to regular course work, student officers must undertake independent research and submit a thesis by the completion of the year.

A special review committee of the U.S. Office of Education has thoroughly examined the college's entrance procedures, curriculum offerings, and graduation criteria and has concluded the Command and General Staff College meets the high standards set for the granting of degrees by Federal agencies and institutions.

Also, the North Central Association of Colleges and Secondary Schools has indicated its willingness to accredit the college's program should it be given authority to issue degrees.

A proposal was submitted to the 90th Congress which would have granted the Commandant of the Command and General Staff College authority to issue the degree of master of military art and science to graduates of the program. This bill passed the House of Representatives, but was not considered by the Senate.

This proposal had the support of the Department of the Army and of the Commandant of the Command and General Staff College, Maj. Gen. John H. Hay, Jr.

I feel this proposal is meritorious and appropriately grants recognition to the high professional standards of the U.S. Army and its officers.

I am introducing legislation to this effect, and am pleased that my distinguished colleague, the junior Senator from Arizona, has joined me in the sponsorship of this bill. His outstanding military record as an officer in the U.S. Air Force is known to us all, and I welcome his support.

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

The bill (S. 3148) to authorize the Commandant of the U.S. Army Command and General Staff College to award the degree of master of military art and science, introduced by Mr. DOLE (for himself and Mr. GOLDWATER), was was received, read twice by its title, and referred to the Committee on Armed Services.

ADDITIONAL COSPONSORS OF BILLS

S. 3000

Mr. BYRD of West Virginia. Mr. President, as in legislative session, at the request of the Senator from New York (Mr. GOODELL), I ask unanimous consent that, at the next printing, the name of the Senator from South Dakota (Mr. MCGOVERN) be added as a cosponsor of S. 3000, to amend the Foreign Assistance Act of 1961.

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

S. 3112

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask unanimous consent that, at the next printing, the names of the Senator from Montana (Mr. MANSFIELD), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from Utah (Mr. Moss) be added as cosponsors of S. 3112, to require an investigation and study, including research, into possible use of solid wastes resulting from mining and processing coal.

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

SENATE RESOLUTION 284—RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON COMMERCE

Mr. MAGNUSON, from the Committee on Commerce, reported the following original resolution (S. Res. 284); which was referred to the Committee on Rules and Administration:

S. RES. 284

Resolved, That the Committee on Commerce is hereby authorized to expend, from the contingent fund of the Senate, $75,000.00, in addition to the amount, and for the same purposes and during the same period, specified in Senate Resolution 79, Ninety-first Congress, agreed to February 17, 1969.

SENATE RESOLUTION 285—RESOLUTION SUBMITTED AUTHORIZING A STUDY BY THE FOREIGN RELATIONS COMMITTEE

Mr. PROXMIRE (for himself, Mr. GOODELL, Mr. HART, Mr. MCCARTHY, Mr. MCGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PASTORE, Mr. SPARKMAN, Mr. TYDINGS, and Mr. YARBOROUGH) submitted a resolution (S. Res. 285) to authorize a study by the Foreign Relations Committee, pursuant to its jurisdiction in matters relating to the relations of the United States with foreign nations generally and to the United Nations Organization, of the possibilities for international cooperation and cost sharing in the exploration of space, which was referred to the Committee on Foreign Relations.

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

ADDITIONAL COSPONSOR OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 28

Mr. SCHWEIKER. Mr. President, as in legislative session, I ask unanimous consent that, at the next printing, the name of the Senator from New York (Mr. GOODELL) be added as a cosponsor of my resolution, Senate Concurrent Resolution 28, expressing the sense of the Congress with respect to the incorporation into the Interstate System of U.S. Route 219.

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

Mr. GOODELL. Mr. President, I am pleased to join as a cosponsor of Senate Concurrent Resolution 28, introduced by my colleague from Pennsylvania (Mr. SCHWEIKER) and cosponsored by Mr. BYRD of West Virginia, Mr. JAVITS of New York, Mr. RANDOLPH of West Virginia, and Mr. SCOTT of Pennsylvania.

This resolution expresses the sense of the Senate that U.S. Route 219 be incorporated into the Interstate Highway System of the United States as soon as possible.

At the present time, there is a critical lack of modern highways passing through the Appalachian region of New York, Pennsylvania, Maryland, West Virginia, and Virginia. Route 219, which services the region, is a dangerous, obsolete two-lane road, and cannot adequately provide much-needed accessibility into this portion of the country.

As part of the Interstate Highway System, route development activities will become eligible to receive 90 percent funding by the Federal Government under the highway trust fund. This financial assistance would help provide more rapid development of an adequate north-south highway from Buffalo, N.Y., to Bluefield, W. Va.

Route 219 is the major north-south truck route linking the Niagara Frontier with central Pennsylvania and the South. Its development and expansion would create the shortest, fastest, and safest route for interstate traffic. In addition, it would encourage the economic devel-

opment of the counties through which it will pass, as well as adjacent counties.

I have cosponsored Senate Concurrent Resolution 28 to help provide the people of New York and other States in the region safer and faster transportation thoroughfares and greater economic development. I am hopeful that my colleagues will support this resolution.

TAX REFORM ACT OF 1969—AMENDMENTS

AMENDMENT NO. 287

Mr. BYRD of Virginia submitted amendments, intended to be proposed by him, to the bill (H.R. 13270) to reform the income tax laws, which were ordered to lie on the table and to be printed.

(The remarks of Mr. BYRD of Virginia when he submitted the amendments appear later in the RECORD under the appropriate heading.)

NOTICE OF HEARINGS ON S. 721, UNSOLICITED CREDIT CARDS

Mr. PROXMIRE. Mr. President, I wish to announce that the Subcommittee on Financial Institutions of the Committee on Banking and Currency will hold hearings on S. 721, a bill to safeguard the consumer by requiring greater standards of care in the issuance of unsolicited credit cards and by limiting the liability of consumers for the unauthorized use of credit cards, and for other purposes.

The hearings will be held on Thursday, Friday, and Monday, December 4, 5, and 8, 1969, and will begin at 10 a.m. in room 5302 New Senate Office Building.

Persons desiring to testify or to submit written statements in connection with these hearings should notify Mr. Kenneth A. McLean, room 5300, New Senate Office Building, Washington, D.C., 20510; telephone 225–7391.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

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

Bert C. Hurn, of Missouri, to be U.S. attorney for the western district of Missouri for the term of 4 years, vice Calvin K. Hamilton.

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 Tuesday, November 25, 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.

OIL IMPORT CONTROLS

Mr. MUSKIE. Mr. President, the time is approaching when we will soon receive from the President's Cabinet Task Force the long-awaited report on oil import controls. Senators who have been deeply involved in this matter have submitted their ideas and suggestions to the task force, individually and in concert.

Although many good recommendations have been made, one recent submission deserves our special attention.

On November 12, 1969, five members of the Senate Armed Services Committee wrote to Secretary of Defense Melvin Laird suggesting significant changes in the oil import program.

Using the Department of Defense report to the task force as a base, our colleagues on the Armed Services Committee made nine recommendations. These recommended changes, if adopted, will provide the needed consumer benefits in the form of lower cost petroleum products, and at the same time, meet the needs of our national security goals—goals that have been clearly defined by the Department of Defense.

The major points made in this proposal are:

That an active role be given to refineries located in foreign trade zones;

That oil imported overland from Canada and Mexico be eliminated from the import control program; and

That the import quota be raised from 12.2 percent of domestic demand to 20 percent of domestic demand.

The arguments for these changes are sound, and the members of the Armed Services Committee who have prepared these recommendations are to be commended. Senator SMITH, Senator STEPHEN YOUNG, Senator MCINTYRE, Senator INOUYE, and Senator BROOKE have made an outstanding contribution to the deliberations on the issue.

Mr. President, I ask unanimous consent that the text of the letter and the memorandum to the Secretary of Defense be printed in the RECORD.

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

NOVEMBER 11, 1969.

Hon. MELVIN R. LAIRD,
Secretary of Defense,
Washington, D.C.

DEAR MR. SECRETARY: We would like to congratulate you and your Department for your forthright statement of views on oil import control to the President's Task Force. We were deeply impressed by the statement's constructive presentation of the national security aspects of an import control policy. As you know, the legal justification for controlling imports is our national security needs. We therefore consider the views of your Department to be vital to the structuring of a wise, realistic and equitable control policy.

As members of the Armed Services Committee, as well as Senators deeply concerned by the impact of the oil import program on the people we represent, we would like to share with you our thoughts about possible changes in the present structure of the program which would respond directly to the security needs discussed in your Department's presentation to the Task Force.

From an economic standpoint, as the Department of Justice pointed out in its submission to the Task Force, the ideal answer would be a return to free trade in oil. Some members of the Senate, including some signatories of this letter, have supported this position. But, it is also possible, to suggest more limited changes in the program which would achieve a measure of consumer relief and at the same time be fully consistent with defense needs as defined by your Department. The proposed changes set forth in the attached memorandum seem to us a logical outgrowth of your definition of these national security needs. We feel, in fact, that the logic of the Department's own presentation compels a restructuring of the present program along the lines at least similar to those we propose.

A key aspect of our proposed restructuring would be the use of foreign trade zones. This aspect of our proposals should be of special interest to you since your Department is represented on the Foreign Trade Zones Board and would share direct responsibility for executing an oil import policy tied to the use of such zones.

Since you are presently in the process of discharging your responsibilities as a member of the President's Task Force and are reviewing the alternative solutions to the problem, we hope you will keep in mind the points raised in the attached memorandum. We believe our proposals to be compatible with the interests of your Department, as well as with a healthy economy, and hope they will prove helpful to you in your contribution to the efforts of the Task Force.

If you have any comments or questions regarding these matters we shall, as always, be pleased to hear from you.

Sincerely,

MARGARET CHASE SMITH,
U.S. Senate.
EDWARD W. BROOKE,
U.S. Senate.
STEPHEN M. YOUNG,
U.S. Senate.
DANIEL K. INOUYE,
U.S. Senate.
THOMAS J. MCINTYRE,
U.S. Senate.

MORATORIUM

SUBJECT: NATIONAL SECURITY AND OIL IMPORTS

A. Defense submission to task force

Before explaining our recommendations we believe it will be useful to outline briefly the salient points made by the Department of Defense to the Task Force.

1. Oil is a strategic material and from a military standpoint is absolutely essential. Success or failure in any conventional conflict may hinge on oil.

2. Military petroleum capacity cannot be judged simply by measuring productivity and deliverability of crude oil but is measured in terms of refining capacities, pipeline through put, and capacity of storage terminals as well.

3. There must be maintained a capability in the U.S. to supply our own war needs in case existing foreign sources and alternative foreign sources are denied.

4. Mobilization studies show that any type of extended emergency involving the U.S. and its allies cannot be adequately fueled by the U.S. alone.

5. Our national security dictates that we have in existence dependable, capable and willing overseas sources to satisfy our petroleum needs on a global basis.

6. The most secure oil supply source is clearly continental U.S. The most secure foreign sources are Canada and Mexico, and particularly insofar as overland movements are concerned. They are probably as secure as supplies from the U.S. itself. Within the U.S. the least secure supply is that which moves from the Gulf to the East Coast by tanker, thus becoming vulnerable to hostile submarine action.

Shipments from the Caribbean area to the East Coast by tanker are no greater risk than shipments from U.S. Gulf. The Caribbean is more desirable than the U.S. Gulf for West Coast needs. Among all major foreign producing areas, the Middle East is least secure, with Iran less susceptible to supply interruption than other Middle East coun-

tries. North Africa and West Africa are more secure than the Middle East countries.

Supplies from Alaska are not as secure as those from the continental U.S., Canada, Mexico, or the Caribbean. There are obviously no political risks in Alaska but the North Slope is highly vulnerable to enemy action. Moreover, the potential Northwest passage sea route to the East Coast is vulnerable to enemy submarines sheltered by Arctic ice fields. Deliveries to the West Coast are similarly vulnerable, but probably to a lesser degree.

7. There are only two types of threat against which we must protect ourselves from the standpoint of oil availability:

a. A protracted conventional war to which we are a party.

b. A cut-off of supplies resulting from a limited conflict involving some of the producing nations.

Continuity of oil supply in the aftermath of a nuclear exchange would not be a factor of major significance since consumption of oil would be sharply reduced, as would the capacity to refine oil.

8. All experience to date with limited wars indicates that disruptions associated with them are limited in scope. The denial of sources is not apt to be universal, nor do such denials affect all consuming countries equally. Of the two major sources for U.S. military requirements, it is unlikely that the Caribbean area will be affected by this type of hostility, but possible that all or part of the Middle East area could be denied at any time.

9. The more serious threat is the possibility of a protracted general war.

Such a war requires large and continuing military oil requirements and is likely to involve some of the world's major oil supplying nations. It is only the possibility of this kind of a conflict which justifies the maintenance of sufficient U.S. and Western hemisphere spare capacity to make up for the loss of other foreign supplies. Thus, it is only the possibility of this kind of a conflict which justifies the continuation of some oil import controls.

10. In the forseeable future, partial or complete denial of foreign oil to the U.S. would not limit our capabilities for military action. A conventional war of extended duration would probably result in severe oil shortages but the least effect would be felt in the U.S. Europe and Japan are far more dependent on oil as an energy source (55% and 70%) than is the U.S. (44%) and less able to reduce demand by restricting nonessential uses or substituting other energy sources.

11. In the event of a sudden curtailment of foreign oil supplies, particularly if heavy fuel supplies were cut off, government control over U.S. refining and transportation operations and an allocation of producing, transportation and refining resources would have to be initiated.

12. Denial of foreign supplies of residual fuel would be of great significance to the Navy. Except on the West Coast, Navy special fuel oil is entirely of foreign origin. A military supply gap of 45–50 million barrels per year would be created if this oil were cut off. Allocation of available U.S. residual fuel would be required immediately in order to avoid the early immobilization of the fleet. Imposition of government controls would be absolutely necessary.

By far the greater portion of military requirements are below the motor gasoline range of refinery output, and they will be even more so should the Air Force shift to a distillate based jet fuel as is now being considered.

U.S. refinery outputs, now heavily oriented towards gasoline (47% in 1968), would need restructuring to meet military requirements if foreign sources were denied.

13. Adequate U.S. flag or U.S controlled shipping must be available to move U.S. crude oil to refineries dependent on waterborne supplies. Most water-borne supplies consist now of foreign crude oil shipped to the U.S. in foreign flag vessels which might not be available under emergency conditions.

RECOMMENDATIONS

1. Canadian and Mexican oil shipped overland should be allowed to enter the U.S. freely outside of the quota system. There is simply no reason to restrict this oil. As indicated by the Department of Defense in its submission to the Task Force, overland shipments from Canada and Mexico are as secure as our own continental oil supplies, more secure than Gulf Coast supplies which have to be moved to the East Coast by tanker and far more secure than militarily vulnerable Alaskan oil.

With complete freedom of access to the U.S. market, Canadian imports would probably increase from current levels of 600,000 b/d to 1.5 million b/d within two years and to 2.5 to 3 million b/d within 5 to 10 years.

Canadian oil is lower cost oil than our own continental supplies on an average by about 50¢ per barrel. Thus free access of Canadian oil to U.S. markets would cause a price decline in the U.S. which would be likely to force our highest-cost, least-efficient wells to close down. Within a relatively few years, most of our inefficient stripper well production would be phased out as Canadian imports grow. State pro-rationing tied to market demand and designed to protect high-cost wells would become a thing of the past, eliminating an economic misallocation which the C.R.A. study estimates costs the nation 2.3 billion dollars annually.

In the process stripper well reserves of approximately 6 billion barrels would probably be lost until such time as technological advances made their production economical once again. On the other hand, some 12–15 billion barrels of new reserves would be added from Canada, new exploration incentives there would add still further reserves, and our industrial and home consumers, particularly in the middle west, would benefit from lower cost energy.

Moreover, the largest single market for U.S. exports of a wide range of goods, the Canadian market, would expand as Canadians earned more dollars from oil exports to America and could thus increase purchases of other goods here.

The only serious objections raised about increasing our dependence on Canadian oil has been the fact that Canada itself depends on foreign imports to cover oil requirements in the eastern part of the country (from Ottawa Valley east to the Maritime Provinces). Part of that demand is met by crude oil piped to Montreal from Portland, Maine, and part by crude oil and product imports shipped by tanker from foreign sources. We can't depend on Canada, so the argument runs, because in an emergency supplies normally sold to the Western U.S. will be directed to Eastern Canada.

That argument is simply not defensible. In the first place, as Canada's own submission to the Task Force clearly indicates, Canada doesn't have the transportation facilities for shipping oil from its Western provinces to Montreal and points east. Moreover, as part of any overall oil agreement between the two countries, we could logically undertake to supply our crude and finished products from the Gulf Coast to the Montreal market in an emergency while Canada in return could step up shipments to us in the Mid-west.

In view of both the military security of supply and the economic benefits involved, we urge that the Task Force recommend complete freedom of overland Canadian oil shipments on a normal commercial basis. In addition, if Mexico production grows sharply and overland pipeline shipments from that country can be initiated, we urge that they be treated similarly to Canadian oil.

2. We urge that the Federal government develop new methods of insuring emergency spare capacity. The government could, for example, construct extensive storage facilities, establish a national pro-rationing system for efficient large fields, or promote the research necessary to make practicable the exploitation of shale oil and oil from coal in the United States and tar sands in Canada.

3. In determining the level of permissible imports from non-North American sources, a detailed determination should be made by the Department of the Interior with the direct assistance of the Department of Defense of the volume of crude oil needed to cover our essential requirements. Current data suggests that the country could meet any emergency operating on about 80% of current consumption levels. This figure is based on the fact that about 55% of our total oil use is centered in the transportation field. And of total transportation use, about 70% is used by private automobiles, motorcycles, and pleasure boats. In an emergency situation, use of these private vehicles could easily be cut by 50%, without endangering essential industrial and military operations. This would in turn reduce overall consumption of oil by a minimum of 20%.

4. After making a determination of essential requirements the Federal Government will be in a position to establish a rational oil import program. The allowable import rate would be fixed so as to assume continued domestic capacity equal to the essential requirement. We believe that the rate chosen should be reviewed frequently and, at the least, every two years.

If we assume that essential needs equal 80% of our total consumption, then the Federal government could set non-North American imports at, say, 14% of consumption, leaving a 6% pool to be used selectively by the government to promote military, economic and social objectives which could not be achieved by simply allowing the entire 20% to come in under the Oil Import Program as presently administered.

A 14% quota may not seem like a significant expansion from the current 12.2% permissible level. In reality, however, it would provide for sharp growth of non-North American supplies, because at present almost 30% of our total crude imports Districts I–IV come from Canada, which, under the program suggested above would no longer be included in the oil import system. We expect much of the increase in non-North American imports to come from the Eastern Hemisphere rather than Venezuela because Eastern Hemisphere supplies are lower cost than Venezuelan. The expansion of Eastern Hemisphere imports would, of course, help our relations with producing countries in that area, but since such imports would be non-essential, we would not become vulnerable to sudden denial of such supplies in an emergency.

5. We believe that foreign trade zones would be a most useful vehicle in allocating the remaining 6% pool of import allocations. By their nature, refineries located in foreign trade zones require federal approval. Thus the Federal government is in a position to impose the terms under which such zones can operate. The Government could spell out conditions which would enable such zone refineries to achieve national foreign policy, defense, and economic objectives.

6. In foreign trade zone refineries, for example, the following military objectives could be achieved.

a. Zone refineries located on the East and Gulf coasts could be induced to operate largely on Venezuelan oil, providing a dramatic growth in the U.S. market for supplies from that country which would otherwise not take place. The government could,

for example, grant one barrel of product import quota (allowing a company to sell products from the foreign trade zone into the U.S.), for each 3 barrels of Venezuelan oil used at the foreign trade zone refinery. Such an arrangement would assure a very high proportion of non-North American imports from Venezuela—the area deemed most secure among foreign sources by the Department of Defense in its submission to the Task Force.

In fact, as noted, Defense states that Caribbean supplies are equally secure from a military standpoint as our own tanker-shipped supplies from the U.S. Gulf Coast. The encouragement of Venezuelan shipments would also be consistent with long-standing State Department priorities and foreign policy goals in South America.

b. The government could require that only a certain type of refinery be built in a zone, thus ending the Navy's 100% dependence on foreign fuel for its Atlantic and Mediterranean fleets. At present our Navy faces immediate immobilization if foreign sources of Navy special fuel oil are shut off. The DOD in its submission notes that there would have to be a restructuring of the entire U.S. refinery set-up in order to avoid such immobilization in the event foreign supplies were denied.

This situation has developed because U.S. refineries run their plants to maximize gasoline output and minimize the heavy residual fuel oil which is used by the Navy to power its ships. No heavy fuel type refineries are built in the U.S. Meanwhile companies without import quotas desiring to participate in the U.S. heavy fuel market have been forced, under the present oil import program, to build their plants off-shore of the U.S. In the last decade, since import controls were established, there has been a rapid expansion of heavy fuel type refining capacity in the Maritimes, Panama, Trinidad, and elsewhere. New plants are now under construction in the Bahamas and Newfoundland.

In short, we have been exporting our refinery capacity. This is bad news from a balance of payments standpoint, and it is even worse from a military standpoint because in an emergency when such refining capacity would be needed most by the Defense Department, these refineries could not be placed under control of the U.S. government.

According to the Defense Department submission, the great preponderance of its military requirements are products below the gasoline range. Thus, in approving foreign trade zone refineries, the Government could require that such plants produce a high proportion—perhaps 80%—of products below the motor gasoline range.

It is interesting to note that Occidental Petroleum Corporation at Machiasport, Maine, Tenneco at Savannah, Georgia, Steuart Petroleum in Maryland, the Hawaii Independent Refining Company in Honolulu, already plan to build heavy fuel oriented plants of the type recommended. In fact, the revised Occidental refinery plan provides for production 153,000 b/d of low sulphur residual fuel—more than 55 million barrels annually. Thus, this one plant could in an emergency cover the entire shortfall of Navy special fuel oil outlined by the DOD in its submission. A string of such heavy fuel oriented refineries would give the DOD flexibility of supply in an emergency and make it far less vulnerable to denial of foreign supplies than at present. Naturally, such refineries would be under complete U.S. control in any emergency mobilization since they would be located on U.S. soil.

c. A separate but related military issue is the question of dispersal of refinery capacity. During the 10 years of the Oil Import Program, 85% of refinery capacity in Districts I–IV has been built in just two states—Texas and Louisiana. This has increased the concentration of refining capacity in that area, making our refining capability more vulnerable to enemy attack. With absolute control over foreign trade zone approvals, the Federal government can easily, through its approval of zone locations, contribute to a meaningful dispersal of our refining capacity.

d. Another vulnerable military area outlined by the DOD is the lack of U.S. flag tankers. All of the heavy fuel now imported into this country from the off-shore plants described above is shipped in foreign-flag vessels. Under an emergency mobilization we have no control over these vessels, and should they be denied us, it would be difficult if not impossible to increase the flow of U.S. Gulf Coast oil to the East Coast.

Foreign trade zone refineries under existing law would be required to ship products from the zone to the U.S. in U.S. flag tankers. Occidental Petroleum, for example, has estimated that its zone refinery alone would require the addition of 8–12 new T–2 type U.S. tankers to the U.S. flag fleet.

7. Foreign trade zone refineries can also be used to bring a measure of economic relief to those regions of the country which have been burdened unfairly and disproportionately with high prices under the present program. We attach two tables summarizing the trends in retail and wholesale home heating oil prices over the last five years. These show that New England, the Southeastern Atlantic area, and the middle Atlantic area, all are at a considerable price disadvantage compared to the midwest, where refining capacity is sufficient to cover local demand. With free access for Canadian crude as proposed above, the disparity between midwest consumer prices and those along the Eastern seaboard, in the Pacific Northwest and Hawaii, will become even greater unless foreign trade zones are promoted specifically to reduce prices.

District I, which comprises the East Coast, uses 45% of the Nation's oil yet has only 15% of this Nation's refining capacity. No new refineries have been built along the entire East Coast since the Import Program was instituted. Nor are any likely to be constructed there given the economic realities of the situation unless the present program is changed.

8. Use of foreign trade zones should not be restricted solely to the East Coast, although they will be particularly useful in that area. Prices for home heating oil in the Pacific Northwest are also far above the national average and foreign trade zones in that area would be useful.

Similarly prices for all refined products in Hawaii are far above those on the mainland. On the basis of the evidence submitted to the Task Force so far, there seems to be a good case for removing Hawaii from District V and eliminating all import restrictions now applicable to Hawaii. If, however, the Task Force decides to continue import restrictions in Hawaii or to phase them out gradually over an extended period of time, foreign trade zones would be a useful vehicle during such a transitional period.

9. In addition to all of the above military and economic objectives which can be achieved through the use of zones, we believe there are a number of other requirements that the Federal government could consider in connection with granting foreign trade zones. These include possible requirements that:

a. zone refineries maintain at least 10% spare storage and refinery capacity for use in times of emergency;

b. the tightest possible air and water pollution controls be built into any zone refinery and terminal operation;

c. a positive contribution to the U.S. balance of payments be demonstrated by each foreign trade zone refinery applicant;

d. zone refiners meet any other objectives deemed appropriate by the competent local, state and federal officials involved.

Statement on Oil Letter to Defense Secretary Laird

Several members of the Senate Armed Services Committee have today sent to the Secretary of Defense Melvin Laird a position paper urging increased use of Foreign Trade Zones as a part of the Oil Import Control Program. They expressed the hope that the Secretary would consider their proposal in determining the Defense Department's contribution to the soon-to-be-concluded Presidential Task Force review of the Program. Joining in the letter were Senators Margaret Chase Smith (R-Maine), Stephen M. Young (D-Ohio), Daniel K. Inouye (D-Hawaii), Thomas J. McIntyre (D-N.H.), and Edward W. Brooke (R-Mass.). (A text of the position paper is attached).

The five Senators pointed out that their letter is fully consistent with the definition of national security needs as regards oil made by the Department of Defense in its own earlier staff level presentation to the Task Force. They said that their proposal has been offered as a viable accommodation between those who would eliminate the Oil Import Control Program entirely and those who would retain it essentially in its present form. The lawmakers pointed out that if adopted as government policy their recommendations would improve our ability to meet national security needs and, at the same time, greatly increase the annual volume of oil imports to the considerable advantage of American consumers.

The Senators called for the following changes in the present program:

(1) The immediate decontrol of all Canadian and Mexican oil shipped overland into the United States.

(2) An increase in the present quota of 12.2% of domestic demand to 20% of existing demand, 14% of this amount to be wholly decontrolled and the remaining 6% allocated to Foreign Trade Zones.

Additional background information follows:

The Senators have recommended, first, that Canadian and Mexican oil shipped overland into the United States be allowed to enter without any import controls. They have done this because they agree with the Defense Department's recognition, in it's earlier submission to the Task Force, that these sources are fully as secure militarily as continental oil supplies, more secure than U.S. Gulf Coast supplies moved to the East Coast by tanker, and far more secure than militarily quite vulnerable Alaskan oil.

They have recommended, second, that the present oil import quota of 12.2% of domestic demand be raised to 20% of domestic demand. This recommendation is based on their considered judgment that in a prolonged emergency the United States could continue to operate successfully on the 80% of domestic demand which would continue to be supplied from militarily secure sources.

It is their belief that the bulk of the oil coming into the United States under his increased quota—an amount equal to 14% of domestic demand—should come in free of any controls whatsoever.

They feel that the remaining 6%, however, should be allocated to Foreign Trade Zones. Because these zones and their manner of operation must be approved by the Federal government, their activities can be regulated to achieve a number of foreign policy, military, and economic objectives not being achieved under the present program.

For example, the present program is so constituted that no new refineries have been built on the East Coast since the program was instituted in 1959. The East Coast, with 45% of the Nation's oil demand, has at present only 15% of the Nation's refining capacity, which is presently heavily concentrated

along the Gulf Coast. The construction of new refineries at Foreign Trade Zones throughout the Nation would not only benefit consumers but would disperse our refining capacity and thereby make it less vulnerable to enemy attack.

Moreover, most existing refineries have an economic incentive to maximize gasoline production and to minimize the production of heavy fuel oil such as is required by the United States Navy. As a result, the Navy is almost wholly dependent on oil refined in the Caribbean and in the Maritime Provinces of Canada. Since none of these refineries could be controlled by the Defense Department through emergency mobilization, the Navy might well be immobilized if certain types of hostilities broke out. Foreign Trade Zones, however, could be granted incentives to engage in the type of refining which would meet our Navy's needs.

Additional national policy goals might be achieved if East and Gulf Coast refineries operating in Foreign Trade Zones were required to operate on Venezuelan oil. Given the political uncertainties in the Middle East, it would not be prudent for the United States to become overwhelmingly dependent on Eastern Hemisphere supplies. At the same time, however, we have always been able to count on Venezuelan oil throughout long history, even during World War II, the Korean war, the Vietnamese conflict, and two Arab-Israeli wars. Such a requirement would serve foreign policy as well as just military objectives. It would be consistent with President Nixon's and Governor Rockefeller's new Latin American policy which is designed to help all developing countries and particularly those of Latin America.

Other policy objectives which the Senator's recommendations could help achieve are developed in the position paper itself. They feel that the possible realization of these objectives, and the considerable consumer relief entailed by their recommendations, entitle them to serious consideration both by the Department of Defense and by other agencies represented on the President's Task Force.

Mr. BROOKE. Mr. President, I want to thank the junior Senator from Maine for bringing this matter to the attention of the Senate.

In making our proposal to the Secretary of Defense we have tried to offer an alternative that is fully consistent with national security needs as set forth by the Department of Defense in its own earlier staff level presentation to the task force. This recommendation offers both improvement of our ability to meet our national security needs and, at the same time, greatly increases the annual volume of oil imports to the considerable advantage of American consumers.

I am hopeful that all who are concerned with this program will realize that as presently structured it does not and cannot serve the best interest of the country. We must look to the task force for relief from the intolerable burden that this system has placed upon us. The embattled consumers of this Nation agree: major reforms of our oil import system are needed now.

Mr. McINTYRE. Mr. President, I want to thank my distinguished colleague from Maine (Mr. MUSKIE) who has long been an ardent advocate of consumer interests, for his remarks.

As members of the Armed Services Committee our primary focus in analyzing and developing recommendations to modify the existing oil import control program has been keyed to national security goals. At the same time, as Senators concerned with the problems of our constituents, we have been anxious to reduce the unfair burden imposed on oil consumers from the unnecessarily high prices resulting from the present program.

The proposal we have outlined is a moderate one which lies part way between the status quo, advocated by oil industry representatives and the complete elimination of the program, advocated by many of us representing consuming States.

It is designed to appeal as a middle road approach to President Nixon who must soon decide this Nation's future oil import policy. We know the President is beset by mounting pressures on both sides of the import issue. Our proposal is designed to seek an accommodation so that no one wins or loses the oil import battle except this Nation's taxpayers, who will get more security for a smaller expenditure, and this Nation's consumers, who will get more supplies at lower costs.

The oil industry will be benefited by these proposals as well. If adopted, they will signal the end of what has been described by many as a bitter struggle between the oil industry's privileged position and the public interest. I believe that struggle should be terminated for it does industry no good here at home or in its operations abroad. I think it is time the oil industry realized some accommodation must be made—some recognition must be given to the legitimate complaints of the public. For if moderate proposals such as those we have outlined are attacked by the industry, the battle will go on. And the final resolution of this problem is apt to be far more severe on its impact on the industry than these proposals advanced to Secretary Laird.

THE ESTABLISHMENT OF FEDERAL CREDIT UNIONS IN LOW-INCOME AREAS

Mr. SCOTT. Mr. President, on May 27 of this year, I introduced S. 2259 to amend the Federal Credit Union Act to assist in establishing credit unions in low-income areas.

I believe that if my bill were enacted, it would pave the way for a substantial easement of the rigid and inflexible incomes of the poor. It is unrealistic to expect poverty neighborhoods, by themselves, to produce the necessary funds and leadership to form credit unions or other types of legitimate financial institutions to provide the kind of service particular to low-income needs and ability to repay. My bill will make available national leadership and support of good credit programs for the poor by giving the Director of the Bureau of Federal Credit Unions the authority and funds to initiate credit unions in needy neighborhoods.

The Urban Coalition conducted a 4-month survey of innovative credit programs undertaken by bankers, retailers, and credit union officials across the country. A summary was prepared of that survey, entitled "Consumer Credit and the Low-Income Consumer." I believe its findings should have widespread attention; therefore, I ask unanimous consent that it be printed in the RECORD.

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

CONSUMER CREDIT AND THE LOW-INCOME CONSUMER

SUMMARY

Major banks and retail establishments throughout the country have expressed concern with the problems of decay in America's cities. Some have expressed to the Urban Coalition an interest in participating in programs to improve the life of the cities and its residents. "Consumer Credit and the Low Income Consumer" was prepared in response to this interest.

Ours is a credit economy. In 1968, outstanding consumer credit totaled $113 billion. Although convenient access to reasonably priced credit is a problem besetting many segments of our population, it is particularly acute for the poor. Low and middle income citizens, because of limited savings and no resources to fall back on in time of emergency, have a greater need for credit for essential purchases—such as automobiles, household furnishings and even services such as education or health. Yet, in many inner city neighborhoods, there is little or no access to legitimate, reasonably priced sources of credit, such as banks, retail establishments or credit unions. Despite the greater need of the poor, they are forced to rely on high priced, often illegal sources of credit. "Consumer Credit and the Low Income Consumer" seeks to show bankers, retailers and credit union officials specific steps that they can take to make credit available to the poor or to support others who are providing credit. The report is based on more than 20 different models that have already been successfully operated by banks, retailers and credit unions across the country. Information about how these models were developed, how they operate and what their problems have been should help leading financial institutions to determine how they can help to solve one of the most pressing problems of the urban crisis.

We have found a wide variety of activities in the field of consumer credit. They are small in size and constitute only a tiny step in solving a huge problem. But, the projects we have found are a beginning and they tell us much about the realities of what can and cannot be done. Banks, retailers and credit unions which have been persistent and innovative in trying to accommodate the low-income consumer have found—often to their surprise—that the poor do pay. The low income consumer may at times encounter some difficulty in paying bills when due, but in the end, his performance in paying his full obligation is nearly as good as his more affluent suburban counterpart.

ACTION BY BANKS

The Northwestern National Bank of Minneapolis started a loan production office, the Southside Financial Planning Service, which provides financial counseling as well as applications for new savings or checking accounts and loans. The applications are processed in a nearby office of the bank with the assistance of staff members from the loan production office. This approach has enabled the bank to direct services to an inner-city neighborhood without violating Minnesota's branch banking laws.

On the northside of Minneapolis, the Northwestern National Bank has built a new community based financial center. The upper level is for regular banking activities. The lower level is for adult education, counseling and guidance services—including legal referral services.

The First Plymouth National Bank in Minneapolis, which began as an inner-city loan production office, has become a new

black-operated bank organized as a member of the First Bank System, a bank holding company. It provides a variety of services to meet the needs of the community.

Black banks provide important services, jobs and ownership opportunities to the neighborhoods they serve. Studies by the Federal Reserve Board, however, show that they are confronted by serious operating problems. These include: smallness of operation, lack of adequate management and financial resources, heavier service costs and exclusion from many of the major investment opportunities shared by larger banks.

The Freedom National Bank of New York and the Unity Bank and Trust Company of Roxbury, Massachusetts have met these difficulties; they are expanding their operations and meeting the needs of the black community. They have succeeded in attracting corporate deposits, federal tax accounts and state treasury deposits which have substantially increased their growth potential. Since the resources available to all innercity ethnic banks are limited by the markets they serve, public and private individuals interested in advancing their development should do everything they can to make funds from outside the ghetto community available.

The Banco Popular de Puerto Rico operates four branches in the New York City area and provides a focal point for Puerto Rican business and consumer development.

Banco Popular provides extensive counseling to both consumer and business borrowers. This pattern of having to provide extensive counseling is found in most ghetto-related banks. In part, it arises from the lack of business or borrowing backgrounds of many applicants for credit.

When the neighborhood it was serving became an integrated, middle to lower-middle income area, Hyde Park Bank and Trust Company in Chicago re-oriented its services. The bank has created a fast growing Urban Development Division as a way to attract deposits, make minority business loans, increase consumer installment loans and provide the counseling and guidance necessary to properly service these new accounts. Hyde Park Bank and Trust Company has been helped immeasurably by deposits made for developmental purposes by the State of Illinois and by numerous businesses in Chicago and elsewhere.

The State of Illinois has developed a program of depositing state funds in banks which have made special commitments to serve the needs of ghetto or inner-city residents. While all banks in the state presumably have access to state deposits, some funds are reserved for distribution in a pattern calculated to expand the activities of banks which meet a public need above and beyond normal day-to-day operations. Hyde Park Bank and Trust Company has received nearly $3 million in deposits as a result of this special program. All urban states could help to expand low income consumer credit and to aid the economic development of the inner-city by adopting a similar pattern.

A number of ghetto oriented banks have succeeded in attracting deposits from large U.S. corporations, many of which have working accounts with the banks. In addition, many corporations use the ghetto banks as depositories for tax funds which are periodically collected by the Federal Government.

In Newark, New Jersey a group of banks have joined together to establish a guarantee program for consumer lending. The state of New Jersey has agreed to subsidize the banks for the cost of processing each application and local public agencies have agreed to perform credit checks and other services. However, the program has been slow to get off the ground and the banks have succeeded in raising only $120,000 including a grant of $60,000 from the State of New Jersey.

In the Bedford-Stuyvesant area of Brooklyn, the Better Business Bureau of Metropolitan New York has inaugurated a mobile Consumer Information Center which offers lectures to community groups, pamphlets for passers-by and in-depth counseling for the few who choose to avail themselves of it. The Center is financed by a $35,000 grant from the Chase Manhattan Foundation. If the education program were followed by credit, it could have a significant impact.

The Continental Illinois National Bank and Trust Company of Chicago, one of the city's largest banks, has made a major investment in a pilot program of consumer education and will offer the program and materials at no charge to high schools and public agencies in Chicago. It will also offer the course and materials to other banks, businesses and agencies across the country for use in their communities on a cost reimbursement basis.

LIMITED-INCOME CREDIT UNIONS

Although federal and state credit unions have long serviced middle and upper income consumers, recently rapid growth has occurred in limited-income credit unions. These credit unions—often sponsored by OEO agencies—provide lower-priced credit than either banks or retailers can offer. In addition, they can serve as a financial base for community economic development. "Consumer Credit and The Low Income Consumer" shows how the effectiveness of these credit unions can be expanded through cooperative ventures with banks, retailers, corporations and other financial organizations.

There are nine limited-income Federal credit unions in Washington, D.C., with combined assets of $1 million. Data furnished by the United Planning Organization, the Washington area's community action agency which supervises these credit unions, shows that 22% of the loans made by these credit unions are made to people with incomes under $3,000 and that 51% are made to people with incomes under $5,000. The standard interest-rate for Credit Union loans is 1%.

Although the limited assets of some low-income credit unions inhibit their ability to respond to community needs, their growth potential can be greatly expanded through technical assistance and/or the deposit of funds by larger credit unions, by banks and by corporations.

The Bureau of Federal Credit Unions, sponsor of all Federal credit unions, has inaugurated a program, Project Moneywise, to provide consumer education and training for credit union management. It has thereby helped a number of limited-income credit unions to get started. In addition, about one in eight of the limited-income credit unions existing today is subsidized by Office of Economic Opportunity funds. However, there is a need for much more assistance than the federal government has been willing to provide to date.

Although the Federal Credit Union Act provides broad experimental authority, few credit unions have exercised it fully. One of the most innovative programs has been launched by The Consumer Action Program of Bedford-Stuyvesant, Inc. (CABS). This program, supported by the Office of Economic Opportunity, businesses and aided by foundations, has seen the limited-income credit union become the financial focal point of a diversified community development program. Under the sponsorship of the CABS parent corporation and financed by the CABS credit union and others, a cooperative housing development has been organized; a merchant's cooperative has been developed; a nursing home is in the planning stage; and a community business development corporation is envisioned.

All this has been made possible by expanding the credit union's field of membership to allow investors from outside the immediate Bedford-Stuyvesant area to support its activities; by getting the Department of Housing and Urban Development to recognize the CABS corporation and credit union as eligible sponsors for non-profit housing under the 221(d)(3) provisions of the Housing Act; by getting the Small Business Administration to recognize CABS as a *bona fide* lending institution eligible to administer a blanket guarantee under the Small Business Administration's programs, and finally, by getting the State of New York to recognize the credit union and the corporation as a proper sponsor for a nursing home.

ACTION BY RETAILERS

Like bankers, retailers willing to involve themselves in the low-income credit market have been faced with the problem of defining new standards of credit eligibility. Middle class measurements simply do not apply to the poor. One bank, the Marine Midland Trust Company of Western New York has developed specific guidelines for its lending officers; others are responding on an ad hoc basis.

The retailers have taken a different approach; in many cases they are working cooperatively with community groups, such as credit unions or welfare rights organizations which help them identify creditworthy individuals and—in some cases—provide credit education.

Kann's Department Store in Washington, D.C., for example, ties in the granting of credit with credit education given by the Community Action Agency. The United Planning Organization in Washington, D.C. provides Kann's with the names of credit applicants whom they have cleared. All applicants have completed a short course in consumer credit practices. Kann's then extends a $50 line of credit to each. The store reports that the vast majority of participants have met their obligations and will be extended additional credit. The delinquency (lateness) ratio on this special project is about double what the department store normally experiences with its customers, but the actual default rate is low. Kann's feels that the program has been a success.

The National Foundation for Consumer Credit, an industry-sponsored organization concerned with research, education and counseling, has developed a pilot consumer education program for low-income persons in the District of Columbia. The project, sponsored initially by Sears, Montgomery Ward, Federated Department Stores and J. C. Penney, is developing a master syllabus for a consumer education course which the sponsors hope ultimately to make available to appropriate counseling groups across the country. There is no intention at present to follow consumer education with the granting of credit.

In Boston, three major department stores—Jordan-Marsh, Filene's and Gilchrist's—have jointly accepted more than 150 names submitted to them by local credit unions for the purpose of establishing credit for low-income people. As a result of experience gained in the program, these same department stores are now willing to also extend credit to members of the National Welfare Rights Organization. Having gained a sense of confidence as a result of "Operation Credit-Worthy", the retail community in Boston reports that it is today more liberal in its credit extension practices and that many individuals who would heretofore have been denied credit have gained access to credit at the leading department stores on their own.

The National Welfare Rights Organization has utilized the picket line to bring pressure on retailers to extend credit to its members. A focal target of the group has been Sears, Roebuck which insists upon the right to evaluate each credit applicant on his or her own merits, rather than to accept membership in the Welfare Rights Organization as a reason for credit alone. On November 1,

1969, a nationwide pilot program will be started by NWRO and Montgomery Ward in which 3,000 welfare recipients, members of the Organization, will each receive $100 in credit. A number of other major stores in Philadelphia, Pittsburgh, New York and Boston are already providing credit to NWRO members.

CONCLUSION

It should be apparent from the variety of projects we have described that each bank or retail store, each business or individual that wishes to involve himself or his company in meeting an urgent need in our urban centers among the poor should be able to find a project suitable to his means and to his commitment.

Low-income credit unions, because of their low operating costs, have the greatest capacity for providing low cost credit to the consumer. As neighborhood organizations sensitive to the needs of fellow consumers, these credit unions are in a position to educate, counsel and provide relatively small per person loans. Their effectiveness can be greatly increased by deposits of public and private funds and by technical assistance from larger credit unions, bankers and others. A federal deposit insurance program for such credit unions would help to broaden their base. Once a viable lending institution is established it provides a base for diverse economic development activities in the community.

Retailers, working with credit unions and other community groups experienced in measuring the credit-worthiness of the low-income consumer found that they can successfully extend credit to the low-income consumer. Often short education courses explaining the mechanisms of this form of credit (unfamiliar to the low-income consumer) make the program more successful. This form of credit, although more expensive than credit union loans, is convenient for household needs, back-to-school purchases and other requirements.

Some banks will want to undertake loan programs of their own. Many banks cannot make profitable installment loans under $600, but low-income consumers need very small loans to take care of immediate needs such as food stamps, rent or auto repairs. These banks may find that they can make a more effective contribution by supporting low-income credit unions through loans, deposits, the provision of security, and management or technical assistance. They can also make a major contribution by inviting ethnic banks located in inner-city communities and banks meeting community needs to participate in their investment programs.

HISTORIC LIME KILNS AT POINT REYES NATIONAL SEASHORE

Mr. CRANSTON. Mr. President, the spectacular beauty of that portion of the California coastline encompassed by Point Reyes National Seashore has been well documented, as has the historic probability that Sir Francis Drake repaired the *Golden Hind* at the Drakes Bay portion of Point Reyes in 1579.

However, since introducing S. 1530, to increase the Point Reyes authorization, I have learned of another curious aspect of the national seashore, having both historical and anthropological interest. Just south of Olema on the eastern border of the seashore are some old lime kilns built about 120 years ago.

I am indebted to Gordon Chan, director of the marine technology program at the College of Marin, for obtaining the pertinent article from the State of California's geologic guidebook of the San Francisco Bay counties. It should be noted that there has been some vandalism to the kilns over the years, which only adds to the urgency that we complete land acquisition and institute complete park management services as soon as possible.

Mr. President, I ask unanimous consent that the article entitled "Old Lime Kilns Near Olema" be printed in the RECORD.

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

OLD LIME KILNS NEAR OLEMA

(By Adan E. Treganza, assistant professor of anthropology, San Francisco State College)

Aside from the debated location of Francis Drake's landing and the Mission San Rafael Archangel building, few places of historic interest in Marin County have attracted as much attention as have the old lime kilns near Olema. Much of this interest can be attributed to two facts—that for many years the original builders of the kilns have remained unknown, and that the setting of the kilns has an air of antiquity. Most impressive is the presence of two large Douglas fir trees growing directly out of the architectural structure of the kilns. Both trees, obviously, started their growth after the kilns were abandoned. The lack of true knowledge concerning the age of these trees has led to speculations that the builders of the kilns were the Russians established at Fort Ross in 1812, or the Spanish padres who erected the Mission of San Rafael in 1817. With the passing years, the cool, moist climate of the Marin coast has caused the stone structure to become so covered wth moss and lichens that it assumes a natural position in the landscape.

The lime kilns are located on the east bank of Olema Creek about 100 yards west of State Highway 1. Because of the topography and the vegetational covering, neither the kilns nor the limestone outcrop can be seen from the highway. The present owner of the property is Mr. Sam Smoot of Petaluma.

Mr. Bliss Brown deserves credit for discovering the historical document establishing the time of construction and the identity of the original builders of the Olema Creek lime kilns. Though his description of architectural features may be subject to several additional notes and some revision, the date of July 13, 1850, presented by him as the original time of building, goes unchallenged.

Speculations that the Russians, established at Fort Ross in 1812, and at Bodega Bay somewhat earlier, could have built and operated the kilns, find no basis in historical fact. From all indications it would appear that the construction of the kilns was a costly and fairly long-term project such as would have been undertaken either by a group of people intending to establish a large settlement or by some group of individuals intending to exploit the limestone deposit for a ready and profitable market. Neither of these situations provides a suitable frame for the picture of Russian penetration into upper California. First of all, the Russians, with the aid of Aleut Indians, were moving southward to obtain sea-mammal skins, and to establish bases in warmer latitudes where they could grow vegetable produce to ship back to their settlements in southern Alaska. Secondly, Russian architecture employed a highly involved notched-wood construction technique, of which an excellent example still remains in the ruins of the old block house at the northeast corner of the compound at Fort Ross. Lime was not used. A ready market for the sale of lime seems improbable, as the nearest purchasers would have been the Spanish settlers on San Francisco Bay, and at that time relationship between the two parties was anything but favorable. Also, the buildings of the mission period consisted in large part of adobe brick set in a mud mortar. Had the Spanish required lime in any great quantity, one would expect to find kilns in a chain from Baja California to San Francisco. Actually, only a few exist. When lime was required by the Fathers at Mission Carmel, for instance, they burned in a kiln abalone shells obtained from the Indian shell mounds.

The land upon which the Olema kilns are situated was originally granted to James R. Berry by the Mexican Government on March 17, 1836; at that time there was no mention of any limestone or kilns. The property must later have changed hands, for the first historical document that bears reference to the lime kilns is dated July 13, 1850. This document established the true identity of the builders of the kilns, thus eliminating much of the mystery surrounding them—especially any implication of an early Russian or Spanish origin. The document consists of a lease between Rafael Garcia, owner, and James A. Shorb, county judge in 1850, and William F. Mercer, a clerk in the judge's court. The lease was to run for a period of 10 years and the significant part reads as follows: "Rafael Garcia, as party of the first part and owner of the land, and James A. Shorb and William F. Mercer parties of the second part. . . ." The lease was to cover ". . . all that tract or parcel of land known as the ranch to the party of the first part and called or named *Ponta lastera de Malo*, for all the liming and timber and wooded purposes." The lessees were to have the privilege of building lime kilns; of quarrying and using limestone; of using wood for burning the kilns; and the entire privilege of the rancho. In exchange for these privileges, the parties of the second part were to give one-third of all the lime burned in the *"kiln or kilns that they may erect or cause to be erected."* At this point it seems quite clear that had any other kilns been present, notation of them would certainly have been made in this rather carefully worded document. It is further mentioned that ". . . the party of the first part is to furnish oxen, carts, and Indians to haul all the lime burnt in the kiln or kilns to the Embarcadero and assist in loading or putting the lime in the vessels. Also the party of the first part may receive his one-third at the kiln or Embarcadero." According to Mr. Brown, the Embarcadero mentioned was probably the one at Bolinas Lagoon, a point from which lumber was being shipped at that time. He suggests that the landing may have been the one located at Inverness Park, as this was but a short distance from the Garcia home. However, the Bolinas Lagoon was closer to San Francisco.

As indicated by all the evidence from historical records and excavation, the lime kilns were operated for a very short period. On March 15, 1852, the land west of the kilns was leased by Gregorio Briones to George R. Morris to cut wood and timber. In this lease the kilns were mentioned, as they constituted one of the boundary markers; the lease also stated that the kilns were being operated by a Spaniard, who may have been employed by Shorb and Mercer. The description, however, did not suggest any large-scale operation. On September 25, 1856, Garcia sold the tract of land containing the kilns to Daniel and Nelson Olds. This sale was made 4 years before the lease to Shorb and Mercer was to have expired, yet there is no mention in the deed of any transference of the lease. From all indications, it would appear that the financial venture by Shorb and Mercer was a failure. Material evidence also militates against the idea of any large-scale operation for any length of time. By trenching the dumps in front of the kilns and by counting the sequence of layers of

charcoal-ash and overburned limestone, it has been determined that no one kiln has been fired more than four times, and that there have probably been no more than 12 firings for all the kilns. When abandoned, the smallest of the kilns (no. 1) was loaded but had not been fired. The amount of material removed from the face of the quarry is of no great significance. Taking into account the large amount of limestone used in the actual construction of the kilns, it is evident that very little stone was quarried and prepared for firing. Thus, both the source of material and the reject from firing indicate that there was no large-scale operation.

The greatest obstacle in dating the kilns has been the presence of the Douglas fir trees. One of these trees, 6 feet 5 inches in circumference, has grown directly out of the floor of kiln 3. A larger tree, 11 feet 4 inches in circumference and 40 inches in average diameter, has grown up between the outer retaining wall (casing) and the central kiln. In 1935 the Marin County Agricultural Commissioner attempted to determine the age of the larger tree by taking a core boring and counting the annual growth rings. Unfortunately, the increment auger could take only an 8-inch sample, thus leaving about 12 inches to the center of the tree in which the number of rings had to be estimated. Inasmuch as rings are very compact and narrow near the outside of a tree, but increase in width as the center is approached, any estimate as to the number of rings contained in the unsampled inner 12 inches would be subject to considerable error.

In 1949 the author was able to obtain a much larger increment auger. With it two samples were taken—a complete one from the small tree, and one within 2½ inches of the center of the large tree. The one from the big tree was taken on the same level and just to the side of the 1935 test. The samples are now in the Museum of Anthropology, University of California. They were examined by Dr. Cockrell, dendrologist at the University of California; he estimated the age of the tree to be 70 to 80 years. Two distinct methods were used to estimate the number of rings on the unrecovered 2½ inches. In the first method, the number of rings contained on the last inner one inch of the sample were counted and multiplied by 2.5; the result, added to the known 59 rings, gave 70 years as the age of the tree. In the second method, the inner 2½ inches of the small tree was substituted for the 2½ inches not obtained from the big tree. Since the two trees grew under almost the same environmental conditions, their growth patterns should be approximately the same. Through this method an age of 69 years was obtained. Since the tree was sampled about 4 feet above the ground level, the loss of about 10 rings could be assumed. Taking into consideration possible errors, a safe estimate of the age of the large tree would be 70 to 80 years. According to Dr. Cockrell, the growth rate of the tree was not unusual, considering that there was sufficient water, little competition, and certainly no calcium deficiency.

The trees, spectacular as they appear, can henceforth be eliminated as a confusing factor in determining the age of the lime kilns. As nearly as can be ascertained, the kilns were last in operation in 1852, some 97 years ago. Allowing the large tree its maximum age (80 years), there remains a period of 17 years between the time the kilns could have been abandoned and the time the seedling fir took root. It therefore seems most certain that the lime kilns along Olema Creek date from 1850.

Maps made in 1862 show the kilns on the east side of Olema Creek, and a house and road on the west side of the creek. The house is reported to have burned down, but about 50 yards down the creek from the kilns the remains of the stone fireplace may still be seen. Sections of the road remain, but they are badly cut up by earth slides and obscured by vegetational growth.

Excavation in and around the base of the kilns did not produce a single cultural object of any consequence. However, the rubbish dump associated with the house was located and partially excavated. From this dump was recovered a great quantity of broken porcelain, glass, iron objects, square nails, and the stem of a clay tobacco pipe. All the material recovered appeared to be characteristic of the post-1850's. This would be in accordance with the known historic date of the kilns, assuming the occupants of the house were also the operators of the kilns. Directly across the creek from the kilns the hillside adjacent to the water has an unnatural appearance, suggesting possibly that some sort of structure might once have occupied the area; however, test pitting failed to produce any cultural material.

At present the greater part of the kilns still stands intact, though through natural agencies and vandalism by people seeking moss-covered garden stone, some of the more important features have been destroyed. Someone has torn down and hauled away the vertical walls of an undetermined structure at the north end of the kilns. Also missing is the entire front casing and fire arch from kiln 3. The large Douglas fir growing out of the top of the wall in front of kiln 2 has so weakened the structure as to place it in immediate danger of total destruction. Since 1913 the roots of this tree have pushed out an entire section of the front retaining wall and have partially destroyed the inner part of the fire box in kiln 2.

Though the gross features of the kilns are rustic, it is nevertheless apparent that the builder was an experienced stone-mason well versed in the building of kilns suitable for burning limestone. Judging from the consistency throughout the structural detail, the kilns were erected as a well-planned unit under the direction of one person. Considerable time and labor must have been expended on the construction.

The structure consists of three barrel-shaped kilns surrounded by angular casings. The angular offsets on the front facade are the result of building around the contour of the hill, and for structural support. On the north end joining kiln 3 is a rectangular structure of uncertain use, which probably served as a storage bin for burned lime. It is a passageway 4 feet 3 inches wide, 11 feet long and 32 inches deep, which extends back to the outer casing of the northernmost kiln. The sides of this structure are built up with stone and lined with lime mortar. At one time there were straight vertical walls rising along both sides of the passage.

The three kilns are made basically on the same plan, though they differ considerably in their dimensions and vary in minor architectural detail. Some idea of the sequence of construction can be obtained on the basis of the type of mortar used. It is reasonable to assume that no lime mortar was available until the first kiln was constructed and fired. This assumption is borne out by examination of kiln 1, the smallest of the three, wherein the fire box and casing were laid up entirely in a clay matrix. This clay, where it has been in contact with the heat, has been partially metamorphosed into a poorly fired, dull red brick; however, it has proved itself a good bonding material. Kilns 2 and 3, and the structure at the north end, were all laid up in a combination of this same clay and a lime mortar, the latter presumably being derived from the first firing of the small kiln.

Following traditional form, the quarry is located above the top of the kilns. This provided easy access for loading the shafts. Examination of the quarry face indicated no drilling, or use of powder; instead a stripping technique following the dip and strike of the fracture zones along a near-vertical face was apparently used. The talus debris gives every indication of having been reduced to a fairly uniform size by means of a sledge hammer. The quarry is in a fine-grained dark-gray limestone lens in the Franciscan formation. Some of the specimens on the talus slope below the quarry face contain impurities, but the material in the loaded kiln was fairly uniform and of relatively pure grade.

The practice of burning limestone to obtain lime is an extremely ancient one. It was not until very early in the twentieth century that any radical or new improvements were introduced into the industry. With the exception of the method used to remove burned lime from the shaft, the Olema Creek lime kilns were remarkably like kilns operating in 1913 in the eastern United States.

A stipulation in the Mercer and Shorb lease called for the lime to be transported to an Embarcadero by means of ox carts and Indian labor. At the waterfront it was to be loaded on vessels and shipped, presumably to the port of San Francisco. That lime from the Olema kilns ever reached San Francisco or any other destination is, however, unlikely, for only a brief period of operation is indicated, which probably resulted in considerable financial loss to the original builders and operators.

SELECTED REFERENCES

Brown, B., The old lime kilns of Marin County: California Hist. Soc. Quart., vol. 19, 1940.

Eckel, Edwin C., Limestone deposits of the San Francisco region: California Div. Mines Rept. 29, pp. 348–361, 1933.

Harrington, M. R., Shell lime at Carmel Mission: Masterkey, vol. 19, no. 2, 1945.

Hoover, M. B., Historic spots in California, Stanford Press, 1937.

Warren, E. E., Manufacture of lime: U.S. Bur. Standards, Technological Papers, no. 16, 1913.

STAND UP AND BE COUNTED

Mr. MUNDT. Mr. President, for the past several months there has been much pro and con discussion as to whether the debate on the Vietnam war moratorium activities was undermining the efforts in Paris to negotiate a just and lasting peace. The answer to that question was received yesterday when the negotiators for North Vietnam made plain that they are counting on growing protests in the United States to speed the end of the war on their terms.

Mr. President, we all want peace. We want a lasting and just peace. It is time that all Americans join hands in the spirit of unity and strength which brought us from an infant nation founded by the landings at Plymouth Rock to the position of world leadership for freedom we have today.

Mr. President, I ask unanimous consent that an article published in the Washington Evening Star of November 13 be printed in the RECORD.

I also ask unanimous consent to have printed in the RECORD an editorial published in the Watertown, S. Dak., Public Opinion, which reprinted a letter from a South Dakotan serving in Vietnam. It offers a perceptive viewpoint on the moratorium days and their effect on the President's efforts to secure a just and lasting peace.

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

[From the Washington Star, Nov. 13, 1969]

HANOI CLAIMS WAR WILL BE SHORTENED BY U.S. PROTESTS

PARIS.—North Vietnam and the Viet Cong made plain today that they are counting on growing protests in the United States to speed the end of the Vietnam war on their terms.

U.S. Ambassador Henry Cabot Lodge told the Communists they were harboring "false expectations." He said, "The great majority of the American people support President Nixon as he seeks a just peace."

This exchange took place at the 42nd weekly session of the Vietnam peace talks while opponents of the war in the United States marshaled their forces for a massive demonstration this weekend.

Nixon's Nov. 3 broadcast was denounced by North Vietnamese Ambassador Xuan Thuy as "A speech for war."

He said Nixon's declaration "has aroused a strong wave of protest in American public opinion."

"It is certain the American people will oppose with increasing vigor the Nixon administration's policy of aggression," he continued.

WON'T MODIFY DEMANDS

In the meantime, Hanoi's man warned, North Vietnam will not modify its demand for unilateral U.S. withdrawal from South Vietnam and the overthrow of the Saigon government. If Nixon refuses to comply he said, "the people of the world will certainly strengthen their solidarity with the Vietnamese people."

Lodge accused the North Vietnamese and the Viet Cong allies of preferring "propaganda to making practical progress toward peace."

"You continue to rely on false expectations about events in the United States and South Vietnam rather than on joining us in seeking a settlement with justice for all parties," he declared.

CITES HOUSE BACKING

As evidence of American support for Nixon, Lodge cited a House of Representatives resolution backed by 300 members who he said declared their "support" for the President in his efforts to negotiate a just peace in Vietnam.

The U.S. envoy also cited letters of encouragement from 59 of the 100 members of the Senate. He called the House resclution "remarkable" and said the two together represented "a very unusual event."

"Let me say," Lodge added, "that our strength as a nation does not mean that we are inflexible. We ask you to match our flexibility and desire for peace now. Join us in serious negotiations."

In a telephone call from Nixon's office yesterday, some sponsors of the House resolution talked with Lodge.

REJECTS HANOI CHARGES

Ambassador Pham Dong Lam of South Vietnam delivered a 3,000-word rejection of Hanoi's charge that the "Vietnamization" program is "a scheme to prolong the war."

"The government of Vietnam is only searching for a just and genuine basis for peace in the South in order to channel all the abilities of the people and all the resources of the country into building the nation," Lam said.

"The Vietnamization program is conceived in this spirit."

Lam also announced that his government is releasing 62 North Vietnamese prisoners of war and asked Hanoi for a meeting to arrange the procedure.

"These 62 prisoners of war are sick and wounded soldiers who, after receiving medical treatment, are now in condition to be sent home," Lam said. "The aforesaid individuals have also expressed the desire to return to their home in the North."

Mrs. Nguyen Thi Binh, head of the provisional revolutionary government delegation to the talks, focused as well on the antiwar movement in America.

"The American people, more and more disgusted and disappointed by the prolongation" of the war "will certainly not let President Nixon . . . prolong that immoral war indefinitely," she said.

"No deceitful trick, no deterrent or repressive measures taken by the Nixon administration can stop the antiwar movement of the American people."

"That movement surged up strongly on the Oct. 15 Moratorium Day and is spreading over the United States," she added. "The more the Nixon administration endeavors to Vietnamize the war the deeper it runs headlong into failure."

Mrs. Binh said the only "honorable way" out of the war for America is to accept the 10-point program of the Viet Cong.

[From the Watertown (S. Dak.) Public Opinion]

STAND UP AND BE COUNTED!

(EDITOR'S NOTE: The following letter was sent to the Public Opinion by Major William B. Benshoof, former Revillo resident, now an Air Force pilot serving in Vietnam. We think it offers an unusually perceptive viewpoint on the recent war "moratorium day", why the United States does not pull precipitously out of Vietnam, and the attitude of a majority of fighting men in that far-off country.)

Editor, Public Opinion:

Even though I've been away from eastern South Dakota for quite a long time, I guess I still consider the "Public Opinion" my home town paper. It naturally follows that when I want to speak out I turn to you. I grew up in Revillo, graduated from S. D. State University and have been in the U.S. Air Force since.

The current moratorium demonstrations are pretty disturbing to us over here. Most of us have lost buddies and have acquaintances in the "Hanoi Hilton." Goodness knows, we want it over, too. A lot of us are on our second tour away from our families which makes it even tougher. I don't know what upsets me most, the lack of respect shown for my commander-in-chief or the idea that he may be forced to pull out prematurely. Both thoughts are sickening to me.

War is an economic waste, plain and simple. When a shell or bomb explodes it destroys itself plus anything near it. It also follows that war is not necessary for economic prosperity. Spending can easily be kept at a high level by redirecting funds into other projects i.e., education, public construction, etc.

Naturally I haven't discussed this with President Nixon or his predecessors, but I'll guarantee you that he would give most anything to attain some sort of honorable peace. The pressure being put on him with the moratorium business must be terrible. Nonetheless, being an honorable man, he must pursue the course of action which will neither leave the free world unprotected or dishonor those who have already paid the price.

We are building up the ARVN as fast as possible while helping to secure what has already been gained militarily. Along with this, reductions in troops are being carried out and more will be possible soon. We are on the spot because if we pull out too fast, they could attack again inflicting irreparable losses on the fledgling ARVN. Losing isn't the American way either, you know.

Why war: If war is such a waste, etc., why don't we all simply lay down our arms and live in peace? This can be answered very simply through human nature. Nations are made up of people and run by people. Just as all people are not moral and just, neither are nations. In the absence of some opposing force, some will act in their own interests to take from others.

A good analogy is, why does Watertown have a police force? The opposing force! It may be hard for us to comprehend, but not all nations were formed around Christian principles such as ours. We should be proud to the point of tears. You may ask, "Why must we be the opposing force"? Well, someone has to do it.

I'm not going to expound on what wars are just or unjust, but I will say this: I'll believe my President and those before him before I'll take up with the North Vietnamese or Viet Cong. We hired President Nixon for a four year term. He is doing his level best to do a job for us, so let's give him some support. Next time we can elect a "peace-nik" if we want to.

I'm banking on the fact that at least in my little corner of South Dakota there are a few Americans left who have a little respect for the office of the President of the United States. It would sure make us who are serving over here feel a lot better if you would stand up and be counted.

WILLIAM B. BENSHOOF,
Major, USAF.

"DEMOCRATIC VISTAS"—REMARKS BY HARRY McPHERSON TO THE WOMEN'S NATIONAL DEMOCRATIC CLUB

Mr. MUSKIE. Mr. President, Harry McPherson, who served with great distinction as general counsel to the Democratic Policy Committee, Deputy Undersecretary of the Army for International Affairs, Special Assistant to the Secretary of the Army for Civil Functions, Assistant Secretary of State for Educational and Cultural Affairs, and Special Counsel to President Johnson, recently spoke before the Women's National Democratic Club.

Although Mr. McPherson's remarks were entitled "Democratic Vistas" and were addressed to a partisan audience, I am impressed by his well-balanced analysis of some of the doubts at present besetting all Americans and by his suggestions for restoring faith in our basic democratic ideals. I commend his message to Senators and ask unanimous consent that they be printed in the RECORD.

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

DEMOCRATIC VISTAS

(By Harry McPherson)

I chose "Democratic Vistas" as a title so that I could talk about the outlook for our Party, and for democratic ideals in America.

Anyone who speaks confidently about either takes a lot of risks. I think there has never been a time in this century—with the possible exception of the late '20's and early 30's—when the values most people live by were under such attack, and when understanding was so clouded. Ten or twenty years from now we will probably describe it complacently as "a time of transition," but that doesn't do us much good now. We are confused about ourselves, and that hurts. We are deprived even of the feeling that what we are transiting to is likely to be better than what we have.

Many of the beliefs we have lived by—and by "we" I mean the American center—have been strained so severely by events that their continued vitality is in doubt. Much of what we held to be self-evident at the beginning of this decade seems now, in the words of the old Scottish verdict, not proved.

Let me be specific and talk about some of those beliefs. I am going to simplify, at the risk of being simplistic, in order to provoke your thought and comment.

We believed, at the beginning of the 60's, in the limitless potential of the American economy, if properly stimulated, to bring the good life to all. To a majority it has. But for many millions, things are no better now than they were ten years ago, and for a large number of people things are worse. What's more, after several years of experiment and considerable expenditure of funds, there is no common agreement on a remedy.

We believed that the "Negro problem", as it was called, could be solved if we could only force civil rights legislation through the Congress. We did, and it wasn't. The riots taught us that "the problem" was deeper and more complex than that. Then we decided that a great deal of compensatory help was needed, but we weren't sure what was most effective, and we were further confused by the frequent hostility of the recipients, who felt that we were making decisions for them that they should make themselves. After a time we decided that the problem lay in ourselves, in white racism; but when we escalated our rhetoric in an effort to expunge that evil, we alienated a great many voters, including many who had customarily supported our political spokesmen. At the moment we are in neutral—torn between our consciences and our reluctance to exacerbate our divisions.

We believed in urban renewal, and now many urban scholars and many city poor think of it as a threat or a monstrosity or both.

We believed in aid to depressed areas; that was one of the programs we thought most urgently needed passing, back in the early 60's; and who can say today what has become of it?

We believed in aid to education, and we still do; but so far as I can tell, we are presently without the means to tell what Title I has achieved. It is probably fortunate that despite our uncertainty about its effectiveness, aid to education develops its own lobby as it goes along, and may bring results even if we don't know why or how.

We believed, like most people, in the basically stabilizing value of material goods; those who had cars and roads to drive them on, television sets, and labor-saving devices were likely to be more content than those who didn't. But now our chief concern is that the cars are poisoning the air, and even 400 horsepower ram-jet engines can't compensate for that, especially when they are carrying us at 15 miles an hour behind a procession of others over what used to be the American earth. The quality of television speaks for itself, and the labor-saving devices can't be fixed this month.

We believed in youth, particularly in college-educated youth; but now youth—*particularly* college-educated youth—has made it clear that it doesn't believe in us. That is unsettling, and not a little irritating. I'll say more about that later on.

In international affairs, others of our beliefs have taken their lumps. The luster is off foreign aid. Though the need for it is as great as ever, we've heard more about its failures than its successes, and on top of our boredom with it and our impatience with those who have received it, we now have the rationale that we need the money here at home.

When we began this decade, we thought our gravest international problem after peace with the Russians, was in meeting our obligations abroad with sufficient military force and flexibility. What we needed was not more weapons of massive retaliation, but transports, helicopters, APC's, mobile artillery and automatic weapons. We needed systematic planning. We needed specialists in jungle warfare and hard-nosed AID and political cadre. When we had all this, we could meet a war of communist insurgency and defeat it before it got out of hand, before it required massive infusions of our manpower. We could do this, no matter what the political climate in the country where the war was fought.

This belief is no longer widely held.

Some, who did not cotton to military power as the best answer to threats of aggression, put their faith in the United Nations. Last year's president of the General Assembly, a Central American, told us in effect that that faith was misplaced, at least at the present time; that demogoguery was more common than statesmanship among the members of the world body. One does not have to be an Israeli to share that opinion.

All right, enough. Assuming for the moment that a number of our 1960 beliefs have not weathered well, or at the very least have been shaken, what do we do now?

There are a number of alternatives, and substantial numbers of people have already taken one or more of them.

One is to decide that these beliefs were never any good, that they were superficial and self-serving; that they appeased the conscience, but were never anything more than the opiate of the liberals. Since our society is sick, racist, imperialist, and obsessed with material goods, nothing decent can come of it until the system is destroyed and the society re-constituted. This of course is the indictment of the New Left, of many articulate college kids. The young have created a kind of Salem, in which the weaknesses of their elders are daily excoriated with the tyrannical righteousness of a hanging judge. A good many of their elders, stung by charges that contain some truth, as well as tantrum, have begged forgiveness, and turned on their unrepentant contemporaries with the passion of the converted—or at least with the self-protective cunning of trusties. This phenomenon seems particularly evident among college faculties, television commentators, editorial writers and columnists. Its driving force is guilt, and it is probably insatiable even if the whole country ends up crowded into the confessional.

Another alternative is to decide that the government programs that grew out of liberal-centrist beliefs were generally misdirected and futile, because they weren't addressed to what really ails us: namely, the alienation of modern man, the absence of community, anomie, powerlessness, and so on. Again, there is truth in that. Poets and novelists have been writing about it at least since the 1920's and J. Alfred Prufrock, and one result of multiplying the college population five times over is that many more people are exposed to that mordant analysis. But the problem with this alternative, in my view, is that it suggests that there are things government programs can do directly to fill the emptiness in individual life. And that creates just the kind of unsatisfiable anticipations about which complaints have recently been made. Maybe there are such things; maybe "participation" is one of them, if it means something better than shock-troop violence. But I think we are going to have to find personal meaning and community and effectiveness as by-products of government action to make this a more humane and attractive country, rather than as the fruits of a War on Anomie Programs.

Still another alternative is to play it cool, "lower our voices", as President Nixon said, and let things ride for a while. After a period of intensive law-making, exhortation, dire warnings and challenging prescriptions, this has undoubted political merit. Liberals tend to nag, and after a while the naggers get sore and want to be left alone with a beer and the tube. Whoever promises to let them alone is bound to win favor. The problem with this alternative—beyond the fact that it goes against nature in most Democrats—is that it is often nothing more than a stylistic cover for a basic lack of concern. If you don't intend to *do* anything about poverty, urban blight, pollution, racial discrimination, consumer frauds, and the spoilation of the countryside, you first stop talking about them. Problems don't go away just because of that, but when trouble breaks out, at least you aren't accused of having made a lot of speeches and launched a lot of programs that didn't solve them. As I say, this has political merit, but in my opinion it is ultimately irresponsible.

Another alternative is to say we just don't know enough to build new beliefs about what must be done; we need a crash program of social and economic research and analysis. We *don't* know enough, but there is an obvious danger here that waiting around for a scholarly censensus on our probelms and their remedies will be waiting too long.

In the international field, one popular alternative is to hold that since Vietnam proves we can't do everything, by extension it proves that we shouldn't try to do anything. This nation, which has borne the principal burden of maintaining world peace for a quarter of a century—and in a time of unparalleled, explosive danger, has managed to contain and stabilize most of the sharpest threats to peace—should now, it is argued, adopt a kind of laissez-faire approach to aggression. Maybe Vietnam has exposed an American *hubris* that needed exposing, but I don't believe abdication by the most powerful democracy of its world responsibilities is the lesson we ought to draw from it. It is unfashionable to make historical analogies, particularly if they refer to the days before the Second World War, but I think what we learned then, and what has until recently been commonly accepted as true—that democracies ignore aggression at their peril, that we cannot go it alone, either in a fortress America or a love-in America, that our need for reform and regeneration here at home does not diminish our concern for what happens elsewhere—I think these lessons, though they are now more than thirty-years old, can still be trusted. Restraint, yes; retreat, no.

Now, having frowned on these alternatives, I ought to come up with my own. I considered saying that it is too early, that we ought to wait and see what Mr. Nixon vetoes and threatens to veto, and that will be our new set of beliefs. That is how we did it in the fifties, when Mr. Eisenhower was vetoing Democratic legislation, and it carried us into the mid-sixties. In the sixties, of course, we ran into the problem of putting our beliefs into programs and our programs into effective action. Sometimes they worked splendidly; sometimes we succeeded chiefly in becoming more realistic.

But I won't take that out. It's only fair that I give you something to shoot at.

First, my program is to elect and reelect as many Democratic Senators, Congressmen, and Governors as we can in 1970. The main reason is that historically Democrats produce whatever progressive ideas get produced; Republicans come in when the country gets tired of producing and wants a coffee break. By 1970 the country will have had its coffee and it will be time to work again.

Second, it is time to turn our attention to the second part of legislative activity, the part that comes after the great dramatic struggles to get programs adopted. That is the fight for adequate appropriations. The best antipollution bill in the world, the most hopeful education act, the broadest anti-poverty program, cannot clean a single river, teach a single child, or help a single family unless enough money is appropriated for them. Through the appropriations process, the Congress can destroy the potential of these programs by subtle attrition, just as if the country had risen as one man against them. The concerned center ought to have the sticking power to stay with good programs and see that they are funded.

Third, Democrats in Congress should ex-

amine—outside the Appropriations Committees, as well as within—the effectiveness of the programs they passed in the 1960's. Where they are not producing desired results, we ought to know why. It may be because they are poorly managed; it may be because they have been starved; it may be because they were erratically aimed in the beginning. I for one would rather find out in the open, under the aegis of men on the Hill who are basically sympathetic to them, than to have efforts begun with such concern and hope put to death in the dark downtown.

Fourth, I would like to hear Democrats talking again about the country's urgent needs—the needs of our cities, our poor, our racial minorities, of everyone who wants a fair shake in the marketplace and a tolerable environment. Vietnam and college radicals and Judge Haynsworth aren't the only things worth discussing. And as to the fear that forgotten, lower middle-class white Americans will get bitter if we start talking about the blacks and the poor again, I think that is misplaced and exaggerated. I don't believe lower middle-class whites want a country where millions of people are held in perpetual bondage and bitterness. Much of the writing I have seen about them by upper middle-class liberals contains a barely concealed contempt for their opinions and instincts. I think Democrats who regard this large group of Americans as being interested in a better country for everyone, and as something more than a muttering crowd of racists, will do all of us a favor and still avoid backlash against themselves.

Fifth, I hope our Democratic attitude toward the activist young will be marked by patience, sensitivity, a desire to understand, candor, and—adult manliness. There is much to be learned from them: their perception of the weakness of many of the arrangements and compromises that grown men have believed necessary, the calculated way in which we blind ourselves to what is unpleasant and uncomfortable, the gap between what we say and do, and so on. It is very hard to learn from young people who tell us what they see in a disrespectful, sometimes obscene way. The instinct of some grownups is to tell them to bug off, it's not their world to run; a variation on this is in telling *other* grown-ups, in a vice presidential kind of way, what we think about the kids. Other adults, as I said earlier, simply defect and become kidults. The most successful approach I have seen is the one that seems to come naturally to generous and confident men. It embodies a readiness to change where change is called for, without worrying too much about loss of face. It is candid about the real problems men deal with as they do business, teach, practice, and govern. It is firm in its belief that the new Salem of the young, with its doomsday jeremiads and denunciations, is no place to live the good life. And it is clear that, however much we adults might want to find the fountain of youth, we are not willing to fake having found it for the sake of youthful acceptance.

Sixth and last, I think the beliefs we started out with, and that I described at the beginning, have in common a good purpose. In many cases the purpose inspired claims that were beyond our achieving, but that does not make them bad purposes. On the contrary, our purpose should still be to eradicate poverty; to end racial discrimination and its social and economic effects; to rebuild our cities more attractively; to improve the quality of education; to distribute wealth more equitably; to demand better and safer consumer goods; to work for improved public arts; to stop the spoiling of the air, the water and the land; to contribute to man's security against war, tyranny and aggression. Maybe these things can't be done as quickly as we once thought, or with the tools we have given ourselves. But they ought to be done as quickly as possible, and with the right tools. And if Democrats don't try to do them, who will?

U.S. GOVERNMENT IS IN CONTROL OF EVENTS IN VIETNAM

Mr. McGEE. Mr. President, in the wake of the past weekend's moratorium events in Washington, it is a good idea to take a new look at the latest address by Mr. Nixon, our President. As the weekend was building up this was done by John Roche in his column published in the Washington Post of Friday, November 14, 1969.

Mr. Roche observes that what President Nixon has done, it is hoped, is to let the American people know that our Government is not drifting from one desperate improvisation to another, but is in control of events in South Vietnam. This is indeed an important point. I ask unanimous consent that the column be printed in the RECORD.

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

[From the Washington Post, Nov. 14, 1969]

IMPORTANCE OF NIXON VIET SPEECH LIES IN EFFECTIVENESS AGAINST HYSTERIA

(By John P. Roche)

Since my readers, whether favorable or critical, would hardly have been holding their breath awaiting my reaction to President Nixon's Vietnam address, I have held back comment until some perspective could be established. Needless to say, I thought it was a first-rate speech—serious, frank, and direct. I personally could have spared the side-shots at the Johnson administration, but then I recall that in the early 60s we Democrats blamed everything but bad weather on poor Ike.

What was important about the President's speech was its effectiveness in countering the politics of hysteria that has dominated discussions of Vietnam these last three years. The critics of the war managed to seize the commanding rhetorical heights. A singularly talented lot, they have utilized with devastating effectiveness the best Madison Avenue techniques. We got the political equivalent of cigarette slogans—the "immoral war," the "corrupt and unrepresentative Saigon regime" etc. I actually heard a radio interview a while back which began with the commentator asking "How do you justify this vicious, immoral war?"

Of course, what disturbs most Americans about the war is not its alleged immorality. They have become increasingly disturbed by our seeming incapacity to win it. To put it differently, a substantial majority of our people, became convinced that the United States government simply didn't know what it was doing. They are quite aware, as Mr. Nixon said, that the North Vietnamese, cannot humiliate the United States. Thus they take refuge in bitterness and its Siamese twin, isolationism.

It is interesting in a mordant way to watch the historical growth of this sense of disillusionment. The Gallup rating on President Johnson's handling of the war took its first massive dip at the time of the Buddhists "riots" in the spring of 1966. (I put riots in quotes because I witnessed several of these events and I have seen better riots on any random Saturday night in South Boston, but the American journalists in Saigon really gave these trivial demonstrations a ride.)

The real drop in confidence, however, came in the wake of the Tet offensive in January, 1968. In military terms, Tet was a shambles for the North Vietnamese, but politically it was a master stroke. Indeed, I argued at the time that this was its purpose, and evidence that has come in since confirms this judgment.

As the average American became more and more convinced his government was the prisoner of events rather than their master, his sense of rage and frustration increased. Simultaneously, the crescendo of antiwar sentiment went over the rational edge into the abyss of hysterics. And because the majority was sullen and bitter, the antiwar militants had the field virtually to themselves.

But what seemed, particularly to European observers, to be a massive antiwar movement in fact had two components; those who were antiwar (a quite small minority) and those who were opposed to losing the war in political terms, the first priority for those supporting the war has been to divide these two segments. We tried but were unsuccessful, largely because the whole energy of the Johnson administration was devoted to putting out of fire, to coping with a savage, resourceful enemy that had gotten the jump on us in 1965. This is no excuse—excuses have no places in politics.

What President Nixon has hopefully accomplished is precisely the correct strategy. He has indicated to the "silent majority" that our government is in control of events, that we are not drifting from one desperate improvisation to another with no end in sight. If his analysis of the failings of his predecessor seems harsh, his courage in nailing his colors to the mast must be admired by all those who feel that our commitment in Vietnam cannot be betrayed without fearful implications for the future of world peace.

THE PEACE MARCH

Mr. GOODELL. Mr. President, last weekend, a quarter of a million Americans poured into the Nation's Capital for an overwhelmingly peaceful march for peace. Anyone who participated in the march, as I did, will never forget it as an outpouring of concerned citizens who love their country and who abhor violence here and in Vietnam.

It is a disservice for any public official to try to equate this dignified and solemn march with the isolated and irresponsible behavior of a handful of extremists—who were easily contained by the parade marshals and the police.

Mass public demonstrations have now made their point, and the very success of the march makes further demonstrations of a similar kind unnecessary at this time. We must not risk having tempers rise in confrontation, and letting the persuasiveness of the peace movement be dissipated in violence.

The peace movement must now undertake a new direction—one that aims at convincing those still in doubt, rather than reconvincing those who participated in the October and November demonstrations. This involves organizing for peace in our respective communities, and mobilizing public opinion at the local level.

Particular attention should be given to developing support throughout the country for prompt congressional action on the war. Congress must exercise the responsibility it shares with the President for ending this tragic conflict.

I will continue to press for enactment of S. 3000—the bill I recently introduced which would require withdrawal of all

American military personnel from Vietnam by December 1, 1970.

The Senator from South Dakota (Mr. McGOVERN) has agreed to cosponsor S. 3000.

I will also support Senate Congressional Resolution 39, a sense of Congress resolution introduced by Senator McGOVERN, which calls for the prompt and complete disengagement of all American troops from Vietnam.

ARBITRARY TERMINATION OF FRANCHISES

Mr. HART. Mr. President, the Subcommittee on Antitrust and Monopoly has pending before it the Fairness in Franchising Act introduced by Senators AIKEN, BAYH, DODD, and myself. The bill would prohibit the arbitrary termination of a franchise by a franchiser.

I recently have had brought to my attention a decision of the Honorable Joseph F. Gagliardi, judge of the Supreme Court of the State of New York, county of Westchester, which I believe shows clearly the need for such legislation.

The case involved a gasoline dealer whose past performance was admittedly more than satisfactory during the 3-year period immediately before the termination. The reason for the termination was that the oil company wanted the location for a different purpose. Judge Gagliardi, in a most thorough opinion, decided that under present law he had no choice but to dismiss the complaint for failure to state a cause of action. Thus, the dealer, who had expended his time, effort, and money in establishing a successful business, was turned out without any recompense for his years of efforts. I shall quote one sentence from Judge Gagliardi's opinion:

> It has been the sacredness of contractual obligations which has prevented courts of equity from imposing justice in many circumstances.

In his opinion, Judge Gagliardi expressed the wish that this case may provide the stimulus necessary to enact remedial legislation. I, for one, join him in that sentiment.

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

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

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF WESTCHESTER, INDEX NO. 7343–1969, DIVISION OF THE TRIPLE T SERVICE, INC., D/B/A EASTCHESTER SERVICE CENTER, PLAINTIFF, V. MOBIL OIL CORPORATION, DEFENDANT

OPINION JOSEPH F. GAGLIARDI, JUDGE, SUPREME COURT, NEW YORK, SEPTEMBER 5, 1969

Engelman, Kiernan & Fishman, Esqs., Attorneys for Plaintiff, 230 Park Avenue, New York, N.Y.

GAGLIARDI, J. Motion by plaintiff for an injunction *pendente lite*; and cross-motion by defendant for an order dismissing the complaint for failure to state a cause of action, are disposed of in accordance with the following decision.

Plaintiff, the lessee of certain premises operated as an automobile service station in the Town of Eastchester, brings this action for a permanent injunction to restrain defendant, the lessor, from terminating a "franchise" or "distributorship" agreement. On July 5, 1966, the parties executed a retail dealer contract and service station lease for a term of three years, both agreements to commence on August 1, 1966, and end on July 31, 1969, unless renewed as provided for in the agreements. Said contracts in fact superseded a certain similar agreement dated July 17, 1964, that plaintiff had executed with the defendant or one of its affiliates. Plaintiff has been operating an automobile service station on the demised premises since July 17, 1964, and alleges that he has expended substantial sums of monies for improvements thereon.

The July 5, 1966 retail dealer contract denominates defendant as "seller" and plaintiff as "buyer" of defendant's products listed in the agreement. The contract provides that the seller shall sell and the buyer shall buy not less than the minimum nor more than the maximum quantity of specified products for any contract year.

Pursuant to the contract and the separate lease agreement of even date, plaintiff was obligated to purchase various petroleum products and automobile accessories from defendant and pay a monthly rental computed on the purchases of motor fuel. Pursuant to a "Rent Security Rider" incorporated in the lease, plaintiff deposited $1,500 as security which sum was returnable to him upon termination of the agreements and in "the event that (plaintiff) shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of said Lease and Retail Dealer Contract * * *." The parties also entered into an equipment loan agreement whereby defendant loaned plaintiff certain equipment necessary to the successful operation of the service station. Plaintiff agreed to maintain insurance and indemnify defendant against liability for injuries caused any person on the demised premises. These agreements are standard forms used by the defendant and common to the industry.

The retail dealer contract and lease each provide in paragraph two thereof that the original term of the agreements shall be for three years and is automatically renewable for successive three year periods "provided that it shall terminate at the end of any current period (originally or renewal) by notice from either party to the other, given not less than 90 days prior to such termination, * * *." Said paragraph also gives the defendant the right to cancel the agreement on 30 days' notice during the first 12 months of the agreements.

On April 25, 1969, defendant's district manager notified plaintiff by certified mail that defendant elected to terminate the lease agreement because a "further renewal of the lease would be inadvisable." Plaintiff thereafter learned that defendant's proposed reason for termination is its desire to convert the property into a diagnostic and repair service center. Plaintiff notified defendant that such conversion would require changes in the applicable zoning ordinances and requested defendant to extend the term of the lease until such time as defendant could lawfully operate a diagnostic center. Plaintiff also requested that defendant attempt to locate another area where plaintiff could operate a service station. Defendant has refused the first request and done nothing about the second.

The parties appear to agree that plaintiff's performance has been more than satisfactory during the latest three-year period. Nor does plaintiff claim that defendant did not fulfill its obligations under the contract and lease. Furthermore, no questions of fraud, duress, deceit, coercion, mistake, misrepresentation or ignorance are raised. Nevertheless, plaintiff contends that defendant's arbitrary action is not in good faith as requested by the Uniform Commercial Code and is an attempt to seize the good will created by plaintiff during his five-year leasehold. Plaintiff further contends that defendant's failure to renew constitutes unfair practices under the Federal Trade Commission Act (15 USC § 45[a][1]) and amounts to conduct in illegal restraint of trade under the Sherman Act (15 USC § 1[d]). However, on a motion to dismiss pursuant to CPLR 3211 the Court may, as requested by plaintiff in his affidavit in opposition to the cross-motion, consider such motion as one for summary judgment (Mareno v. Kibbe, 32 A D 2d 325 [2d Dept.]), and plaintiff must come forward with evidence which will raise an issue as to the facts pleaded (CPLR 3211, subd. [c]; Leonard v. Leonard, 31 A D 2d 620). Considering the allegations in the complaint as to violations of federal statutes, and in the absence of any evidence contained therein or in the motion papers and affidavits submitted hereon which "show a genuine issue of fact" (Silinsky v. State-Wide Ins. Co., 30 A D 2d 1, 6), those "causes of action" are dismissed (see 8 Encyclopedia, New York Law of Contracts, ch. 29; City Trade & Ind. v. New Cent. Jute Mills Co., 25 N Y 2d 49). Nevertheless, "[a] motion to dismiss a complaint cannot be granted if it contains any valid cause of action" (Rosenblatt v. Birnbaum, 16 N. Y. 2d 212, 216). The Court looks to substance and not form (Kaufman v. Sweigard, 27 A D 2d 717) and it must determine whether plaintiff has sufficiently set forth a cause of action for improper termination of a sales contract under the Uniform Commercial Code. "The inquiry is whether the pleader has a cause of action rather than whether he has properly stated one" (Kelly v. Bank of Buffalo, 32 A D 2d 875).

Before discussing the merits it should be noted that the relief requested by plaintff (a temporary and eventually a permanent injunction) is not provided for in the Code (Uniform Commercial Code, Article 2, Part VII; see 17 ALR 3d 1010 et seq., Anno., "Uniform Commercial Code—Sales"). However, it does provide that where the seller fails to deliver the goods the buyer, in a proper case, may obtain specific performance (Uniform Commercial Code § 2–711[2][b]). The Code further provides that specific performance "may be decreed where the goods are unique or in other proper circumstances" (Uniform Commercial Code § 2–716[1]). Official Comment 2 to the last cited section states in pertinent part:

"The test of uniqueness under this section must be made in terms of the total situation which characterizes the contract. Output and requirements contracts involving a particular or peculiarly available source or market present today the typical commercial specific performance situation * * *."

While the complaint herein seeks a permanent injunction it is clear that the effect of a favorable decision will be to require defendant to maintain its business relationship with plaintiff, albeit perhaps at a different location. This is a form of specific performance which is properly accorded to requirements contracts and other agreements akin thereto (cf. 12 Carmody-Wait 2d, Injunctions §§ 78:37, 78:41). As will be indicated *infra*, the federal courts have not hesitated in the exercise of their equitable discretion to grant injunctions under the "Dealer's Day-in-Court Act" (15 USC § 1221) despite the absence of any statutory injuctive remedy specifically conferred upon the franchisee. Moreover, Governor Rockefeller did not approve the proposed New York State franchise legislation, which shall also be discussed hereafter, on the ground that the injunctive remedies granted to franchisees was too broad and that it would be advisable to leave to the courts any question of injunctive relief. Clearly, the power to issue injunctions is inherent in the courts (Schwartz v. Lubin, 6 A D 2d 108, 110–111), and it is the policy of this State to make the remedy more available, not to restrict it (Peo. ex rel. Bennett v. Laman, 277 N.Y. 368, 383). Since the avowed purpose of the Code is to enable the judiciary to fashion relief according to the commercial nature of the transaction an in-

junction *pendente lite* or permanent in nature may, in the exercise of discretion, be granted pursuant to established principles (Polin v. Kaplan, 257 N.Y. 277; Butterick Pub. Co. v. Loeser & Co., 232 N.Y. 86; Belmont Quadrangle Drilling Corp v. Galek, 137 Misc. 637; Spielman v. Sigrist, 72 N.Y.S. 2d 861; Berrien v. Pollitzer, 165 F. 2d 21; CPLR 6301; 12 Carmody-Wait 2d, Injunctions §§ 78:46–48).

The ultimate question raised herein is whether franchisers or distributors with tremendous bargaining power can terminate agreements with franchisees pursuant to their contract but without cause? Plaintiff offers for the Court's consideration a plethora of cases concerning price fixing and restraint of trade, which is not this case, and cases involving the "Dealer's Day-in-Court Act" (15 USC § 1221; see General Business Law § 197). While the federal legislation governing the automobile industry is not applicable at bar, it and other recent developments, may serve as a helpful guide in aiding the Court in reaching a proper resolution of the issues presented.

The "Dealer's Day-in-Court Act" gives the automobile dealer a cause of action, where none previously existed, for damages where the automobile manufacturer has failed to act in "good faith" (15 USC § 1222). Temporary injunctions have been granted enjoining termination of automobile franchises in "bad faith" (see *e.g.*, Bateman *v.* Ford Motor Co., 302 F. 2d 63; 310 F. 2d 805). The avowed purpose of the legislation is to alleviate the imbalance of bargaining power between automobile dealers and manufacturers, which imbalance would appear to exist in the gasoline-service station industry. Even today Congress is considering extending similar protection to small business distributors (S. 2321, S. 2507 [1967]; S. 1967, H.R. 12074 [1969]). The proposed legislation is known as the "Fairness in Franchising Act" and would require franchisers engaged in interstate commerce to show "good cause" in terminating or failing to renew franchise agreements. "Good cause" is defined as failure by the franchisee to comply with reasonable contract provisions or the use of bad faith by the franchisee in carrying out the terms of the franchise. Termination cannot occur unless 90 days' advance written notice is given.

During 1966 and 1967 hearings on the proposed federal legislation were conducted by the subcommittee on antitrust and monopoly. Significant opposition to the bills came from all areas of industry. Noteworthy is the opposition put on the record by the defendant Mobil Oil Corporation (see 1968 hearing minutes, Committee on the Judiciary, "Franchise Legislation" p. 508–510). The gist of defendant's opposition may be tersely summarized as follows: existing contract and antitrust law is more than adequate "to prevent abuse of the franchise relationship." Congressional action on the proposed legislation has been delayed and the matter was referred to the Committee on the Judiciary.

More recently, the New York State Legislature attempted to enact franchise legislation similar in import to the proposed federal legislation (S. 4915). The legislation would have amended the General Business Law by providing a new Article 9–c, entitled "Franchise Distribution." The new act would require franchisors to act in a fair, equitable and honest manner and in accordance with reasonable standards of fair dealing when granting, modifying, terminating, canceling or failing to renew a franchise. The legislation would also require the franchisor when failing to renew a franchise to purchase from the franchise all facilities and inventory at fair market value, including good will. It is interesting to note that in its declaration of policy the Legislature stated:

"The legislature hereby finds that because of the substantial growth in the distribution of goods and services through installation of the franchise system, in industries engaged in commerce or activities affecting commerce, which system is presently estimated to account for ten per centum of the nation's gross material product and twenty-five per centum of all retail sales that the interest of many thousands of small franchises requires that the great disparity in economic power now heavily weighted in the favor of franchisors be reduced by providing that the franchisor must deal in a fair and equitable manner with its franchisees as to all aspects of the franchise relationship; and that the existing judicial remedies to afford relief to franchisees from injurious practices or [sic] franchisors are limited, ineffective, and too costly and franchisees should be provided with a means of simple, direct, and full legal relief against franchisors failing to deal in a fair and equitable manner.

"It is hereby declared to be the policy of this state, through the exercise by the legislature of its power to regulate commerce partly or wholly within the state of New York to correct as rapidly as practical the inequities in the franchise system in such industries so as to establish a more equitable balance of power between franchisors and franchisees, to require franchisors to deal fairly and equitably with their franchisees with reference to all aspects of the franchise relationship and to provide franchisees direct, simple, and full judicial relief against franchisors who fail to deal fairly and equitably with franchisees."

Unfortunately for plaintiff the Governor was "constrained to withhold" approval of the bill "because of the unreasonable injunctive rights it would grant dealers" (memo filed with S. 4915, May 26, 1969).

Under general contract principles and in absence of special circumstances, courts will not interfere with the parties contractual obligations (Graf v. Hope Building Corp., 254 N. Y. 1). As our Court of Appeals has so aptly stated: "[i]t is not enough to induce a court of equity to interfere that a bargain is hard and unreasonable. Every man is presumed to be capable of managing his own affairs, and whether his bargains are wise or unwise, is not ordinarily a legitimate subject of inquiry in a court of either legal or equitable jurisdiction" (Parmelee v. Cameron, 41 N. Y. 392, 395). Furthermore, it has been held that where a contract gives either party thereto the absolute unqualified right to terminate upon notice, the court is precluded from inquiring whether such termination was actuated by an ulterior motive (Brown v. Retsof Mining Co., 127 App. Div. 368 [2d Dept.], app. dism. 195 N. Y. 605). Furthermore, in personal employment contracts terminable by either party after a specified period of time, the courts have been hesitant in upholding the employee's cause of action for damages for improper discharge where he knew of the "precarious tenure of his position" (Douglass v. M. Ins. Co., 118 N. Y. 484, 489). Moreover, in other various contractual situations, termination clauses exercisable by either party upon reasonable notice have invariably been upheld by the courts (see 10 N Y Jur, Contracts § 422; 9 Williston on Contracts [3d ed.] § 1017A; 5A Corbin on Contracts § 1229); although every commercial contract carries with it the implicit obligations of good faith and fair dealing so as not to place one party at the mercy of the other (O'Neil Supply Co. v. Petroleum H. & P. Co., 280 N. Y. 50, 54; Wigand v. Bachmann-Bechtel Brewing Co., 222 N. Y. 272, 277; Simon v. Etgen, 213 N. Y. 589, 595; Richardson on Contracts [1956 ed.] §§ 357–362). Nevertheless, the implied obligations of good faith and fair dealing merely relate to obligations incurred by the parties during the term of the contract unless the relationship is continued beyond the expiration date (New York Tel. Co. v. Jamestown Tel. Corp., 282 N. Y. 365; see Leyotte v. Canadian Johns-Manville Co., 387 F. 2d 607). Accordingly, it would appear that unless plaintiff has some statutory cause of action he cannot prevail on this motion.

Plaintiff contends that the Uniform Commercial Code requires defendant to exercise "good faith" in terminating his agreements and that the clause permitting defendant to terminate without cause is unconscionable. Defendant, for its part, does not question the applicability of the aforementioned statute but argues that it in no way affects its rights under the contract. At first blush one might assume that the Uniform Commercial Code does not reach franchise or distributorship agreements (Uniform Commercial Code § 2–102; 1967 Duke L. Journal 465, 471, Gellhorn, "Limitations on Contract Termination Rights—Franchise Cancellations"; 22 Business Lawyer 1075 [1967]). However, the courts have not been reluctant to enlarge the type of commercial transactions clearly encompassed within the spirit and intendment of the statute (see Agar v. Orda, 264 N.Y. 248, holding that under the former Personal Property Law [Uniform Sales Act]—the predecessor to the Uniform Commercial Code—a sale of corporate stock certificates constituted a sale of "goods"; Vitex Manufacturing Corp. v. Caribtex Corp., 377 F. 2d 795, holding damage remedies provided for in the Uniform Commercial Code available in a non-code case; also see Recchio v. Manufacturers Trust Co., 55 Misc. 2d 788). Furthermore, in *Hertz Com'l. Leas. Corp.* v. *Transportation Cr. Cl. H.* (298 N.Y.S. 2d 392), the court held that the Uniform Commercial Code governed the rights of parties to an equipment leasing contract. The court there noted (at 395):

"In view of the great volume of commercial transactions which are entered into by the device of a lease, rather than a sale, it would be anomalous if this large body of commercial transactions were subject to diffferent rules of law than other commercial transactions which tend to the identical economic result."

That reasoning would appear to be of persuasive force here since franchising presently accounts for at least twenty per cent of all retail business equalling $80 billion in annual sales (115 Congressional Record, April 25, 1969). That the retail dealer contract is not so alien in every day commercial transactions and therefore falls within the purview of the Uniform Commercial Code seems clear (see Sinkoff Bev. Co. v. Schlitz Brewing Co., 51 Misc 2d 446, holding beer distributorship contract within terms of the Code; Mastrian v. William Freehofer Banking Co., 45 Pa. D & C 2d 237, 5 UCC Rep. Serv. 988, holding "sales distributorship arrangement" within purview of the Code). The Code is designed to "provide its own machinery for expansion of commercial practices" and is intended for the courts to develop the law "in light of unforeseen and new circumstances and practices" within reason (Uniform Commercial Code, § 1–102[2][a], Official Comment 1). However, the Code provisions governing sales are limited in scope to "transactions in goods" (Uniform Commercial Code § 2–102) and by no means application of judicial sophistry can the lease of real property be deemed to fall within its intendment (Newton v. Allen, 220 Ga. 681, 141 S E 2d 417; 17 ALR 3d 1010, 1029, Anno., "Uniform Commercial Code—Sales"). Consequently, if plaintiff be entitled to an injunction at all, such relief may only be directed against the termination of his retail dealer contract.

At this posture of the pleadings, however, plaintiff has failed to convince the Court that the retail dealer contract and lease were in fact separate contractual agreements (see Tibbetts Contr. Corp. v. O & E Contr. Co., 15 NY 2d 324, 338; Portfolio v. Rubin, 233 N.Y. 439; 7 Encyclopedia, New York Law of

Contracts §§ 1405–1407). The lease itself provides for a rental computed upon the sales of defendant's products; and the retail dealer contract, in turn, states the obligations of the parties as to purchases and deliveries. Furthermore, the lease conditions the return of plaintiff's security deposit upon his compliance with the provisions of both the lease and the retail dealer contract.

Of course, the "paramount function" (Perlmutter v. Beth David Hosp., 308 N.Y. 100, 106) of the franchise is to provide defendant a means whereby it can sell its products while maintaining a degree of control over the retailer-franchise. Nevertheless, the nature of the transaction and the intention of the parties as reflected by their writings inescapably indicate that each made a single primary promise to the other, to wit: plaintiff to pay a rental computed upon sales and to use his best efforts in marketing defendant's products; defendant to lease the demised premises including equipment facilities and to use its best efforts in making necessary deliveries (cf. Uniform Commercial Code § 2–306[2]). If the Court were to separate the sale and leasing concepts (Perlmutter v. Beth David Hosp., *supra* at 104) and construe the agreements otherwise, it would be writing a new contract for the parties "and the new contract so written * * * might be, for all we know, most unjust to one or the other party" (New Era Homes Corp. v. Forester, 299 N.Y. 303, 306). In short, if plaintiff were to prevail on this motion as to the retail dealer contract, the Court would be holding that the parties had intended plaintiff to have a "floating" franchise, which is akin to giving plaintiff a paddle in a dry creek. Plaintiff has failed to persuade the Court that this was the parties' intention. Moreover, the best evidence of intention is usually found by the way the parties conduct themselves as regards the contracts. At bar defendant elected to terminate the *lease* agreement and, yet, the parties have treated such election as terminating the entire franchise business relationship. Their conduct renders inescapable the conclusion that the parties intended the agreements to be indivisible (cf. Borles, Inc. v. Westinghouse Broadcast, 29 A D 2d 430).

While the Code generally provides that sales contracts carry the obligations of good faith, diligence, reasonableness and care (Uniform Commercial Code § 1–102[3]), this is a codification of pre-Code case law which was also codified in the predecessor statute and merely relates to the honesty imposed upon the parties during the *term* of the contract (former Personal Property Law § 156[2]; Uniform Commercial Code § 1–201[19]; Leyotte v. Canadian Johns-Manville Corp., 387 F. 2d 607, *supra;* cf. Tele-Controls, Inc. v. Ford Industries, Inc., 333 F. 2d 48). Consequently, unless the termination clause be deemed unconscionable there is no implicit requirement that it be exercised other than as provided for in the contract.

Nevertheless, assuming that the contracts are divisible and that the Code applies to the retailer dealer contract (Uniform Commercial Code § 2–106[1]; Foster v. Colorado Radio Corp., 381 F. 2d 222; see 1968 Annual Survey of American Law [NYU] 221–222), the Court shall discuss plaintiff's contention that the termination clause is unconscionable.

The Code provides that "when it is claimed" that a clause may be unconscionable the court "shall" afford the parties an opportunity to present evidence (Uniform Commercial Code § 2–302[2]). It has been held that once the court accepts the possibility of unconscionability the hearing called for is mandatory (Sinkoff Bev. Co. v. Schlitz Brewing Co., 51 Misc. 2d 446, *supra;* see 1 *Anderson's* Uniform Commercial Code, § 2–302:5; cf. Wilson Trading Corp. v. Ferguson, Ltd., 23 N Y 2d 398, footnote 2). However, the Court is of the opinion that that part of the termination clause reviewed here (the Court expresses no view as to the 30-day notice provision during the first 12-month period), is not unconscionable *per se* since the basic test is whether under the circumstances existing at the time of the making of the contract and "in light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided" as to oppress or unfairly surprise a party (Uniform Commercial Code § 2–302, Official Comment 1; Wilson Trading Corp. v. Ferguson, Ltd., 23 N Y 2d 398, 403, *supra;* Hawkland, Sales & Bulk Sales [PLI 2d ed.] pp. 22–24). The test does not reach the question of allocation of risks because of superior bargaining power (Uniform Commercial Code § 2–302, Official Comment 1) and, in any event, neither party claims lack of mutual benefits inuring from the reciprocal covenants. Moreover, while recent cases concerning warranty disclaimers (Walsh v. Ford Motor Co., 59 Misc 2d 241) and exorbitant financing charges (Star Credit Corp. v. Mulina, 59 Misc. 2d 290; Jones v. Star Credit Corp., 59 Misc 2d 189), appear to have adopted a broader test (see Bender's, UCC Service, § 2–302), the factual considerations peculiar to those cases have not emerged herein and plaintiff claims neither surprise nor oppression (see State Bank of Albany v. Hickey, 29 A D 2d 993). Furthermore, the Court of Appeals had occasion recently to observe that there is nothing inherenty wrong in having a termination clause such as the one at bar in a franchise agreement (407 E. 61st Garage v. Savoy Corp., 23 N Y 2d 275; see 1A Corbin on Contracts § 265); and the Code itsef does not prohibit termination clauses on reasonable notice (Uniform Commercial Code § 2–309[3]; see Sinkoff Bev. Co. v. Schlitz Brewing Co., 51 Misc 2d 446, *supra*). Additionally, the Federal Congress has gone on record that 90 days' notice is more than ample to permit a franchise to adequately wind up his affairs (S. 1967; 115 Congressional Record, *supra;* also see Uniform Commercial Code § 2–309, Official Comment 8, which speaks of "a substitute arrangement").

Plaintiff raises one other question which is set forth in his affidavit. The claim educed is that plaintiff has abitrarily been singled out and denied a franchise renewal while it is the custom of the gasoline-service industry to renew franchise agreements unless the franchisee has failed in a material respect to adhere to the contract provisions. Consequently, plaintiff contends, it was the intention of the parties when the contracts were executed to renew the franchise *ad infinitum* unless plaintiff gave defendant cause for acting otherwise. Assuming for this limited purpose that the retail dealer contract is so distinct and apart from the lease that the Code applies, plaintiff's contention is without merit.

It has been said that parties who contract, knowing of a prevalent usage, by implication incorporate the usage in their agreement even where the contract seems clear and unambiguous (Vold, Law of Sales [2d ed.] pp. 53–58). However, New York case law apparently has admitted such evidence only where the contract provisions were ambiguous (see Uniform Commercial Code § 2–202, New York Annotation, coumant 2). The Uniform Commercial Code has effected a change as regards sales contracts and evidence of custom or usage in the trade is admissible to determine the parties' true intention even if the contract terms are not ambiguous (Uniform Commercial Code § 2–202, Official Comment 1[c]; also see Uniform Commercial Code §§ 2–314[3], 2–316[3][c]); and evidence of custom and usage is admissible in certain circumstances in order to fix the duration of the contract (6 Encyclopedia, New York Law of Contracts §§ 903, 904). Nevertheless, the Code itself codifies the well established rule in the law of contracts that evidence of custom or usage in the trade is not admissible where inconsistent with the express terms of the contract (Uniform Commercial Code § 1–205[4]; Pink v. Amercian Surety Co., 283 N.Y. 290, 296; Newhall v. Appleton, 114 N.Y. 140; Hopper v. Sage, 112 N.Y. 530, 535; Walls v. Bailey, 49 N.Y. 464–469; Richardson on Evidence [9th ed.] § 602). At bar the express terms of the contract cover the entire area of termination and negate plaintiff's argument that the custom or usage in the trade implicitly adds the words "with cause" in the termination clause. The contracts are unambiguous and no sufficient basis appears for a construction which would insert words to limit the effect of the termination clause (cf Mtr. of Hart, 31 AD 2d 548 [2d Dept.], app. dism. 24 N.Y. 2d 738). Only language *consistent* with the tenor of the otherwise complete agreement is admissible under the guise of "custom and usage" and the Code effects no change in that doctrine. Accordingly, the parol evidence rule precludes plaintiff from offering evidence that would vary and change the express terms of the written agreements (see Laskey v. Rubel Corp., 303 N.Y. 69; Uniform Commercial Code § 2–202).

An offshoot of the above argument that plaintiff might allege in an amended pleading is that the parties by their course of dealing modified the agreement or placed their own construction upon its terms. Nevertheless, assuming once again that the retail dealer contract alone is subject to the Code, the argument is fruitless.

As it is well established that a contract is to be construed most strongly against its maker (Simon v. Etgen, 213 N.Y. 589, *supra*), it is equally well settled that the parties through previous or subsequent conduct may place their own construction upon its terms (City of New York v. New York City Ry. Co., 193 N.Y. 543, 548; Neuhaus v. L.I.R.R. Co., 30 A.D. 2d 825, affd. 23 N.Y. 2d 987; Battista v. Carlo, 57 Misc. 2d 495). Once again the Code rejects those New York cases which require ambiguity in the contract before evidence of course of dealing or performance is admissible (Uniform Commercial Code § 2–202[a]; cf. City of New York v. New York City Ry. Co., *supra;* Woolsey v. Funke, 121 N.Y. 87; Syms v. Mayor, etc., of N.Y., 105 N.Y. 153). Nevertheless, the express terms of the agreement govern where the evidence offered is inconsistent therewith (Uniform Commercial Code §§ 1–205[4], 2–208[2]). At bar, plaintiff would be put to the formidable task of overcoming paragraph 14 in the contracts which provides that defendant's "right to require strict performance shall not be affected by any previous waiver or course of dealing" (cf. Uniform Commercial Code § 2–209). Additionally, Official Comment 4 to section 2–208 of the Code observes that "a single occasion of conduct does not fall within the language of this section" (concerning course of dealing and performance). Accordingly, even the July 5, 1966 "renewal" of the franchise, using the most liberal appellation applicable to the execution of the agreements sued upon, cold not constitute a course of dealing or performance. As a matter of fact, defendant at its first opportunity under the superseded agreement elected to terminate the franchise. Consequently, under the circumstances and pursuant to precedent, defendant's motion must be granted and plaintiff's motion denied.

Finally, it should be noted that plaintiff is not being given leave to replead for two reasons. First, he did not request permission to plead over (CPLR 3211[e]). Secondly, there is nothing that plaintiff could allege in a new pleading that would aid him in overcoming the obstacles discussed in this opinion. Assuming leave was granted and plaintiff met another motion to dismiss by alleging that the parties had intended plaintiff to have a "floating" franchise. The result,

of necessity, would be identical even if the Code applied solely to the retail dealer contract. The termination clause is valid and not unconscionable and evidence of custom or course of dealing to vary otherwise clearly expressed terms is inadmissible.

The Court is not unsympathetic to plaintiff's plight but "[s]tability of contract obligations must not be undermined by judicial sympathy" (Graf v. Hope Building Corp., 254 N.Y. 1, 4, *supra*; see Mico Mgt. Corp. v. Scaraggi, 59 Misc 2d 984). It has been the sacredness of contractual obligations which has prevented courts of equity from imposing justice in many circumstances. Nevertheless, it is anticipated that ameliorative legislation covering business distributorship will shortly be a reality and perhaps this very case may provide the stimulus necessary to enactment. Copies of this opinion shall be sent to the appropriate legislative committees. The Court cannot legislate (but cf. Flanagan v. Mount Eden General Hospital, 24 N.Y. 2d 427) and is constrained to grant defendant's motion and deny plaintiff's motion despite the apparent inequities.

Submit order on notice.

WHITE PLAINS, N.Y. *September 5, 1969.*

JOSEPH F. GAGLIARDI,
Judge, Supreme Court.

ENGELMAN, KIERNAN & FISHMAN, ESQS.,
Attorneys for Plaintiff.

BLEAKLEY, PLATT, SCHMIDT, HART & FRITZ, ESQS.,
Attorneys for Defendant.

FREEDOM OF SPEECH AND ASSEMBLY

Mr. MUSKIE. Mr. President, there have been many reactions to the events of the past week, including the peace marches in Washington and their potential impact on the attitude of the President and his administration. I found the lead editorial in this morning's Washington Post particularly incisive, and I commend it to Senators. I ask unanimous consent that the editorial, entitled "No," be printed in the RECORD.

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

[From the Washington Post, Nov. 18, 1969]

No

The effort by this administration to characterize the weekend demonstration as (a) small, (b) violent, and (c) treacherous will not succeed because it is demonstrably untrue. If citizens had had the opportunity to witness the weekend on television, they would know it to be untrue; as it is, they will have to ask those who were there—either kids or cops, no matter. For sheer balderdash it would be difficult to exceed Herbert G. Klein's estimate: "Had it not been for the highly effective work of the Washington police, of the National Guard . . . for the reserve forces of the Defense Department and the complete cooperation of all elements of the government . . . and the work of the Justice Department . . . the damage to Washington (Saturday night and the night before) would have been far greater than . . . the . . . riots after the death of Martin Luther King."

That statement is inaccurate on every count save the first—the enormously effective and professional performance of the Washington police department. Not necessarily in order of importance, thanks should be tendered to (a) the marchers, (b) the volunteer marshals, (c) the police and Chief Wilson, (d) the Mobe leaders, (e) Mayor Washington, and (f) the scores of organizations, churches and others, and individuals who went out of their way to exhibit what the mayor called "neighborliness."

What this administration, and the Attorney General in particular, does not seem capable of grasping is the simple truth that if the demonstrators had wanted serious violence they had the numbers to create it. Does anyone seriously believe that Washington's undermanned police force could contain 5,000 or 50,000 or 150,000 demonstrators bent on violence? The answer is No, and the demonstrators didn't want trouble. The fringe groups—Weatherman, crazies—did want trouble, and got it. To the Attorney General, this is evidence that the Mobe lost control and broke its nonviolent pledges. Is it reasonable to hold the Mobe leaders (and, by implication, all those thousands who marched) responsible for the actions of 50 or 200 or 500 people? No, it is not. The Mobe does not control Weatherman—and that is not an apology, it is a fact. There is evidence now that Weatherman demanded $20,000 from the Mobe as the price for peace; the Mobe refused, and the wild ones marched on the Saigon embassy. What there is now is a split between the antiwar moderates and the extremists; it is a serious split, but if John Mitchell tries hard enough he can probably heal it. He is one of the few men in the country who can.

"I do not believe that—over-all—the gathering here can be characterized as peaceful," was the way the Attorney General put it. He places in evidence the fact that at the "major confrontation" at Dupont Circle "20 persons were arrested." If the arrest of 20 people then, less than 300 people overall out of a crowd of a quarter of a million, constitutes a "major confrontation" engineered by the leaders of that crowd—then, what we may have here is a failure of communication.

These men—Mitchell, Klein and others who have had a hand in making policy in this matter—are not dumb or weak but small, men who somehow naturally see themselves as beleaguered adversaries. It seems clear from their statements, and from the accounts of participants at the command post in the Municipal Center over the weekend, that the Nixon administration was less interested in trying to keep the march peaceful than in trying to make it seem less large and more violent than it really was, and in trying to scare the daylights out of that putative Silent Majority at the same time.

So yesterday, as is the fashion with this administration, we had the qualifying statement from the White House press secretary, Ron Ziegler. Yes, it was a pretty large crowd; yes, it was, when you think about it, fairly peaceful. More moderate, more generous, more truthful than the other statements—but there is no reason to think that what Ziegler says is what the President thinks. On Saturday and Sunday, the President by his own account was preoccupied with the football games. It was a fine afternoon for watching football, he is quoted as saying on Saturday, and for sheer piquancy, we have not heard the likes of that since Marie Antoinette.

VETERANS DAY

Mr. DOLE. Mr. President, on Veterans Day, LOU WYMAN, the distinguished Representative from the First District of New Hampshire, spoke in Manchester, N.H.

Representative WYMAN'S address is so timely and his remarks relate so directly to the problems of civil disobedience and Vietnam that I ask unanimous consent that his speech be printed in the RECORD.

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

SPEECH OF REPRESENTATIVE LOUIS C. WYMAN

Friends and fellow veterans—it is an honor to be invited to address you this Veterans Day 1969. Thank you for the invitation. You are concerned Americans. So am I. All is not well with our world. This we realize as we seek responsible solutions to pressing problems.

Veterans of World War One fought—it was said—to make the world safe for democracy. They were valiant and they prevailed but the world blew it afterwards by failing to provide a meaningfully effective international keeper of the peace.

Veterans of World War 2 fought to stop fascist aggression inspired by a madman who conceived of his people as a super race. His mass genocide will stand in history as the most horrible example of man's inhumanity to man. Yet after that war . . . in the rush to demobilize and regain life as usual . . . we again neglected to fashion an international organization that was capable of operating to preserve world peace.

Today . . . a brief quarter of a century later . . . localized wars . . . or the threat of them . . . endanger the security of mankind and threaten world peace once again. This time the menace that is surfacing is that of the totalitarian aggression of world communism that . . . just as fanatically as Hitler . . . is dedicated to the overthrow and destruction of the free nations of the world.

Consider in this connection that:

1. The war in Vietnam could not last thirty days without being supported and supplied by the Soviet Union.

2. The Arab states are openly armed and encouraged by the Soviet Union.

3. Korea was Chinese Communist aggression . . . pure and simple.

One week ago last night President Nixon announced an American policy to have the men of South Vietnam assume the combat operations in that country in their own self defense. This announcement was said by some to involve nothing really new. This is not so . . . for the President is massively disengaging U.S. troops from involvement in a land war on the continent of Asia to which American ground forces ought not to have become committed in the first place. This is not because our national self-interests are unrelated to threatened Communist domination of Southeast Asia . . . but because this was and is a manifestly untenable locale in which to become involved in a long confrontation. Not only are the problems of supply enormously expensive but Asian soil is a morass of quicksand in which all of our forces could be swallowed up while Communist manpower there is numbered in the hundreds of millions.

The American President's response was not to the so-called moratorium. It was a recognition of the realities of logistics both military and political. Last November's election clearly expressed public dissatisfaction with our former President's handling of the war in Vietnam. Substantial changes were indicated. Public dissatisfaction found expression in unrest and demonstrations culminating in those of last October 15th. Now it is suggested that events a few days hence may not be as peaceful.

What puzzles me in this connection is the continued protest while our President is withdrawing troops? He *must* assure protection of those remaining while the withdrawal process goes on. With a half a million Americans stuck on a small peninsula surrounded by ocean or hostile territory they could not physically be withdrawn faster than 25,000 a month if all the ships and planes we have were used to get them out. In the meantime should the enemy step up its attacks the prospect would be that of the spectacle of American retreat while under attack . . . inviting another Dunkirk and rendering the United States subject to ignominy on an international basis Surely even our more rebellious young peopli want no part of such infamy.

Yet there are those at home, who, while

veterans die abroad . . . commit acts of violence, engage in civil disobedience, and announce in advance that they intend to take the law into their own hands and be the judge of what laws will be obeyed and what will not. They even say as Jerry Rubin, head of the so-called "Yippies," said in Chicago—

"Law—there isn't any real law in America. What you people have here is coercion. And you call it freedom. There won't be any real freedom in this farcial society until the workers realize that the so-called law is made against their best interests; in other words, man, there ain't no law—the students realize this now, and when the workers do, you fellows better start running, because we're going to remake the law in our own fashion as citizens ought to do."

This is not the first time this Nation has witnessed such conduct. But never before has it been so blatant.

Many veterans returning from overseas, where they have risked their lives to make it safe for marchers and protesters, are itching to get their hands on them. The potential for violence in reaction is every bit as great as it is from the deliberate few who continue to calculate and plot civil unrest. These challenges to the structure of social order in America must be responsibly dissolved.

The constitutional guarantees of freedom of speech and assembly in America do not apply to unlawful conduct. They do not protect deliberate law breaking or acts or violence toward persons or property.

Freedom does not and cannot license the right to destroy freedom itself. Those who would take the law into their own hands in the cause of protesting the war in Vietnam are every bit as destructive of our constitutional form of government as the syndicated criminal or the purveyor of narcotics. We are a Government of law and not of men. This we must remain. It is not for any citizen whether his persuasion is to the right or to the left . . . to take the law into his own hands no matter the annoyance of the moment. Unless such violence and the threat of it through mob action is checked . . . no man's family nor his property will be safe in the United States of America.

Those who contemplate violence in demonstrations . . . whether on the war or civil causes . . . or in sympathy with the American Nazi party . . . must know that a determined citizenry will meet violence with whatever force is necessary to preserve this nation. A pat on the wrist or the suggestion of being misunderstood is no longer the public response. They want it made crystal clear to those who take to the streets with clubs or stones or guns that if they want to get their heads broken just rush a policeman. If they want to get kicked out of school just occupy the principal's office. If they want to get arrested, and enjoy a criminal record for the rest of their natural lives just tear up an American flag.

While veterans everywhere staunchly defend the constitutional right of peaceful and law-abiding dissent . . . they are sorely perplexed by the Fulbrights in public life who sometimes appear to be blissfully unaware of the worldwide struggle in which we are engaged. They watch with dismay while the enemy is given aid and comfort by the public statements of some in public office indicative of an opinion within America—that incidentally is fortunately that of a small minority—that we no longer have the national will to make sacrifices essential to our own survival as a free nation.

The extent of the harm that is done in this manner is illustrated by the publication by radio Hanoi of the full text of a speech on September 26th by Senator Stephen Young of Ohio describing the Vietnam war as immoral and calling for a coalition government in Saigon despite the public record of what happens to nations that attempt coalition governments with Communists. What was the source of the Senator's speech? The Congressional Record!

Such figures do immeasurable harm to the cause of responsibly ending the tragic war in Vietnam. They must realize this, yet they continue.

To date . . . We have lost nearly 40,000 American lives in little Vietnam plus hundreds of thousands of casualties. In the meanwhile . . . the enemy . . . both the Viet Cong and the North Vietnamese regular troops continue to attack and kill both our men and our allies. All the wanting out at this end . . . all the longing for disengagement. All the graphic depiction of the horrors of war will not change one iota the fact of the enemy's continuing aggression nor the strategic significance to the balance of power in the world of South Vietnam and its adjacent states.

Phased differently all the wishing in the world that Communist fanaticism will disappear will not make it disappear. On the contrary, to the extent such wishing translated into action manifests weakness or surrender . . . It is bound to encourage further Communist aggression . . . not only in the Far East . . . but as it reaches for power in this hemisphere. Those responsible for determining the course of events at this time in history faced with such facts, owe it to the same youth that manifests discontent with the involvement in Vietnam . . . as well as the great majority of other young people in our land, to insure that the balance of power in the world remains on the side of freedom.

I have said before . . . and I say again now . . . that if the time ever comes that the balance of power has shifted to the Communists and they feel that they can administer an attack upon us from which we can neither recover nor effectively retaliate . . . they will do so with no more compunction than you would have in killing a fly on your windowpane.

Those in this country who urge outright appeasement and retreat in Vietnam or elsewhere merely encourage further Communist aggression. If we run out on our South Vietnamese allies . . . just turn tail and withdraw wholesale . . . not a single nation in the world will ever trust the United States of America again.

At the same time, it is inexcusable that we should have committed men to this unfortunate battlefield without backing them up in the field with civilian policies that permitted our Air Force to meaningfully destroy major target areas being used by the enemy to supply the guns and ammunition and weapons of war used to attack our men. This policy of so-called avoidance of confrontation has been ghastly in the enormity of its offense to our men in the field, whose frustration in the conduct of this war . . . because of civilian limitations on military tactics and operations . . . must exceed the frustrations of the young people who understandably don't want to go to Vietnam and be shot at under similar conditions.

We have very seriously depleted our reserves in this war in Vietnam; 6,000 aircraft destroyed . . . 40,000 Americans killed . . . More than 100,000 seriously wounded . . . 83 billion dollars spent . . . 25 billion dollars annually going down the drain . . . and darn little left in the United States or the field with which to respond to aggression upon us from another direction.

All this the top Soviet powers must witness with pleasure for they have yielded but little. In rough example, it is Stalingrad in reverse . . . except that, of course, veterans know and the world knows that Vietnam could not continue a month without Soviet support in money and material, so that again the hard truth is that the Soviets are making war on us in Vietnam.

I said after the President's speech last Monday, that I was hopeful . . . but not optimistic . . . that the policy of gradually scaling down the fighting in Vietnam would cause the war to shrink in dimension. If withdrawal on our part continues while under attack . . . I can foresee a time when to protect a reduced number of Americans remaining in Vietnam . . . the President may be required to resort to ultimatum. If most of our combat troops have departed . . . If a majority of what sea power was there available has been turned over to the South Vietnamese . . . and if there is little in the way of meaningful aerial power readily available by way of response . . . there may be only one resort that the American President will have in terms of a backup to his ultimatum. This resort is that which has sought to be avoided ever since this unfortunate involvement in the Far East was initiated. Thus, we will have come full scale around the clock . . . except that it is 40,000 American lives late.

I wish that I could tell you that I felt that confrontation between communism and capitalism would disappear in the sunlight of brotherhood and mutual understanding. I wish I could state that Communist leaders would accede to a mutual cease fire to be supervised by the United Nations—that they would permit self-determination in South Vietnam—that they would agree not to slaughter those South Vietnamese who have helped us defend them once we have left.

Unfortunately, lacking an enforceable commitment, it is likely that Communist aggression will again break loose in South Vietnam once we have gone. We cannot withdraw completely without a solemn and enforceable commitment from both the Viet Cong and North Vietnam not to murder the South Vietnamese population or we render the entire Viet Nam operation virtually meaningless. Either Vietnam is worth it to us or it is not. If it is not we ought never to have decided to become involved there in the beginning. If it is, the significance of such a commitment in terms of its relationship to our national self-interest is undeniable.

Former President Johnson, presumably on the advice of the Joint Chiefs of Staff, the National Security Council and the Civilian Secretaries of State and Defense, decided that it was. Either this decision when made was right or it was wrong. If it was wrong it is tragically late to find this out. If it was right, then unless things have materially changed, it is contrary to the best interests of the United States to let South Vietnam go without protection. In the meantime certain truths are evident.

The only way to preserve the continued freedom and high standard of living of the people of the United States of America—who, incidentally, represent but a small fraction of the world's total population but yet have more than half of the world's wealth—is to stay so strong that no one dares to attack us or our friends.

What is at stake, therefore, in the ultimate decision as to how to resolve this impassé in the Far East is the survival of our way of life. Those in the Congress and amongst our people who either fail to recognize this or . . . recognizing it . . . play politics with appeasement to perpetuate themselves in office, do our Nation a profound public disservice.

Long ago . . . those who fashioned dictatorships and monarchies doubted that a representative democracy in a republican form of government could work. Their doubt was based largely upon the conviction that selfish motivation and political propaganda would cause the majority, who determine policy in such a form of government, to reject sound doctrine or distasteful but necessary governmental decisions.

I am confident that a majority of our peo-

ple will think the present crisis through and that they will support those persons in public office who make the necessary and responsible decisions so as to preserve our union. Failure to do this invites the complete collapse of representative government and the consequent loss of freedom for our people and their children to follow them.

Freedom is a very precious thing. Our forefathers fought for it in fashioning this country and our form of representative government. We have had to fight for it repeatedly against forces seeking world domination. Such a force again threatens us.

On this Veterans Day 1969, then, let us stand firm in the resolution that this great land of ours shall remain the home of the free.

THE DISEASE IS DENSITY

Mr. MONDALE. Mr. President, I have long been deeply concerned with the squeezing of more and more Americans into less and less space. Certainly there could and should be viable alternatives of how and where to live than in our increasingly congested major metropolitan areas.

Because of my interest in this situation I have, from time to time, called excellent portrayals on this general subject to the attention of the Senate.

One of the most vivid articles on this subject was published in the Saturday Review of November 9, 1969, entitled "Can Anyone Run a City?" It is written by Gus Tyler in a fashion which should certainly arouse many to a concern for the mammoth environmnetal problems of tomorrow.

In opening, Mr. Tyler tells us quite shockingly—

What is the universal malady of cities? The disease is density.

In closing he says:

What is needed is national concern for the commonweal in the location and design of new cities: a kind of inner space program.

Mr. President, I commend the article to the attention of all who are concerned with our urbanization crisis and ask unanimous consent that it be printed in the RECORD.

ORDERLY URBAN-RURAL GROWTH AND DEVELOPMENT

Mr. MUSKIE. Mr. President, in recent years, the idea of building whole new cities and towns has been raised as a proposed new direction to follow in achieving orderly urban-rural growth and development.

Mr. Gus Tyler, assistant president of the International Ladies' Garment Workers' Union, has spoken on the wisdom of this approach. He provides insights into the problems of urban growth and rural decline and his evaluation of the concept of new cities.

I join the Senator from Minnesota (Mr. MONDALE) in asking unanimous consent that the article be printed in the RECORD.

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

[From the Saturday Review, Nov. 8, 1969]

CAN ANYONE RUN A CITY?

(By Gus Tyler)

Can anyone run a city? For scores of candidates who have run for municipal office across the nation this week, the reply obviously is a rhetorical yes. But if we are to judge by the experiences of many mayors whose terms have brought nothing but failure and despair, the answer must be no. "Our association has had a tremendous casualty list in the past year," noted Terry D. Schrunk, mayor of Portland, Oregon, and president of the U.S. Conference of Mayors. "When we went home from Chicago in 1968, we had designated thirty-nine mayors to sit in places of leadership. . . . Today, nearly half of them are either out of office or going out . . . most of them by their own decision not to run again." Since that statement, two of the best mayors in the country Jerome P. Cavanagh of Detroit and Richard C. Lee of New Haven—have chosen not to run again.

Why do mayors want out? Because, says Mayor Joseph M. Barr of Pittsburgh, "the problems are almost insurmountable. Any mayor who's not frustrated is not thinking." Thomas G. Currigan, former mayor of Denver, having chucked it all in mid-term, says he hopes "to heaven the cities are not ungovernable, [but] there are some frightening aspects that would lead one to at least think along these lines." The scholarly Mayor Arthur Naftalin of Minneapolis adds his testimony: "Increasingly, the central city is unable to meet its problems. The fragmentation of authority is such that there isn't much a city can decide anymore: it can't deal effectively with education or housing."

Above all, the city cannot handle race. Cavanagh, Naftalin, and Lee—dedicated liberal doers all—were riot victims. Mayor A. W. Sorensen of Omaha had to confess that after he'd "gone through three-and-a-half years in this racial business," he'd had it.

Although frictions over race relations often ignite urban explosives, the cities of America—and the world—are proving ungovernable even where they are ethnically homogenous. Tokyo is in hara-kiri, though racially pure. U Thant, in a statement to the U.N.'s Economic and Social Council, presented the urban problem as world-wide: "In many countries the housing situation . . . verges on disaster. . . . Throughout the developing world, the city is failing badly."

What is the universal malady of cities? The disease is density. Where cities foresaw density and planned accordingly, the situation is bad but tolerable. Where exploding populations hit unready urban areas, they are in disaster. Where ethnic and political conflict add further disorder, the disease appears terminal.

Some naturalists, in the age of urban crisis, have begun to study density as a disease. Crowded rats grow bigger adrenals, pouring out their juices in fear and fury. Crammed cats go through a "Fascist" transformation, with a "despot" at the top, "pariahs" at the bottom, and a general malaise in the community, where the cats, according to P. Leyhausen, "seldom relax, they never look at ease, and there is continuous hissing, growling, and even fighting."

How dense are the cities? The seven out of every ten Americans who live in cities occupy only 1 per cent of the total land area of the country. In the central city the situation is tighter, and in the inner core it is tightest. If we all lived as crushed as the blacks in Harlem, the total population of America could be squeezed into three of the five boroughs of New York City.

This density is, in part, a product of total population explosion. At some point the whole Earth will be as crowded as Harlem—or worse—unless we control births. But, right now, our deformity is due less to overall population than to the lopsided way in which we grow. In the 1950s, half of all the counties in the U.S. actually lost population; in the 1960s, four states lost population. Where did these people go? Into cities and metropolitan states. By the year 2000, we will have an additional 100 million Americans, almost all of whom will end up in the metropolitan areas.

The flow of the population from soil to city has been underway for more than a century, turning what was once a rural nation into an urban one by the early 1900s. Likewise, the flow from city to suburb has been underway for almost half a century. "We shall solve the city problem by leaving the city," advised Henry Ford in a high-minded blurb for his flivver. But, in the past decade, the flow has become a flood. Modern know-how dispossessed millions of farmers, setting in motion a mass migration of ten million Americans from rural, often backward, heavily black and Southern counties to the cities. They carried with them all the upset of the uprooted, with its inherent ethnic and economic conflict. American cities, like Roman civilization, were hit by tidal waves of modern Vandals. Under the impact of this new rural-push/urban-pull, distressed city dwellers started to move—then to run—out. Hence, the newest demographic dynamic: urban-push and suburban-pull. In the 1940s, half the metropolitan increase was in the suburbs; in the 1950s, it was two-thirds; in the 1960s, the central cities stopped growing while the suburbs boomed.

Not only people left the central city; but jobs, too, thereby creating a whole new set of economic and logistic problems. Industrial plants (the traditional economic ladder for new ethnic populations) began to flee the city in search of space for factories with modern horizontal layouts. Between 1945 and 1965, 63 per cent of all new industrial building took place outside the core. At present, 75 to 80 per cent of new jobs in trade and industry are situated on the metropolitan fringe. In the New York metropolitan area from 1951 to 1965, 127,753 new jobs were located in the city while more than three times that number (387,873) were located in the suburbs. In the Philadelphia metropolis, the city *lost* 49,461 jobs, while the suburbs gained 215,296. For the blue-collar worker who could afford to move to the suburbs or who could commute (usually by car) there were jobs. For those who were stuck in the city, the alternatives were work in small competitive plants hungry for cheap labor and no work at all.

Ironically, the worthwhile jobs that did locate in the cities were precisely those most unsuited for people of the inner core, namely, white-collar clerical, administrative, and executive positions. These jobs locate in high-rise office buildings with their vertical complexes of cubicles, drawing to them the more affluent employees who live in the outskirts and suburbs.

This disallocation of employment, calling for daily commuter migrations, has helped turn the automobile from a solution into a problem, as central cities have become stricken with auto-immobility; in midtown New York, the vehicular pace has been reduced from 11.5 mph in 1907 to 6 mph in 1963. To break the traffic jam, cities have built highways, garages, and parking lots that eat up valuable (once taxable) space in their busy downtowns: 55 per cent of the land in central Los Angeles, 50 per cent in Atlanta, 40 per cent in Boston, 30 per cent in Denver. All these "improvements," however, encourage more cars to come and go, leaving the central city poorer, not better.

Autos produce auto-intoxication: poisoning of the air. While the car is not the only offender (industry causes about 18 per cent of pollution; electric generators, 12 per cent; space heaters, 6 per cent; refuse disposal, 2.5 per cent), it is the main menace spewing forth 60 per cent of all the atmospheric filth. In 1966, a temperature inversion in New York City—fatefully coinciding with a national conference on air pollution—brought on eighty deaths. In 1952, in London, 4,000 people died during a similar atmospheric phenomenon.

The auto also helped to kill mass transit, the rational solution to the commuter problem. The auto drained railroads of passengers; to make up the loss, the railroads boosted fares; as fares went up, more passengers turned to autos; faced with bankruptcy, lines fell behind in upkeep, driving passengers to anger and more autos. Between 1950 and 1963, a dozen lines quit the passenger business; of the 500 intercity trains still in operation, fifty have applied to the ICC for discontinuance. Meanwhile, many treat their passengers as if they were freight.

Regional planners saw this coming two generations ago and proposed networks of mass transportation. But the auto put together its own lobby to decide otherwise: auto manufacturers, oil companies, road builders, and politicians who depend heavily on the construction industry for campaign contributions.

The auto is even failing in its traditional weekend role as the means to get away. On a hot August weekend this year, Jones Beach had to close down for a full hour, because 60,000 cars tried to get into parking lots with a capacity of 24,000. The cars moved on to the Robert Moses State Park and so jammed the 6,000-car lot there as to force a two-hour shutdown.

Overcrowding of the recreation spots is due not only to more people with more cars but to the pollution of waters by the dumping of garbage—another by-product of metropolitan density.

Viewed in the overall, our larger metropolises with their urban and suburban areas are repeating the gloomy evolution of our larger cities. When Greater New York was composed of Manhattan (then New York) and the four surrounding boroughs, the idea was to establish a balanced city: a crowded center surrounded by villages and farms. In the end, all New York became citified. Likewise, the entire metropolitan area is becoming urbanized with the suburbanite increasingly caught up in the city tangle.

The flow from city to suburb does not, surprisingly, relieve crowding within the central city, even in those cases where the city population is no longer growing. The same number of people—especially in the poor areas—have fewer places to live. In recent years, some 12,000 buildings that once housed about 60,000 families in New York City have been abandoned, with tenants being dispossessed by derelicts and rats; 3,000 more buildings are expected to be abandoned this year. The story of these buildings, in a city such as New York, reads like a Kafkaesque comedy. For the city to tear down even one of these menaces involves two to four years of red tape; to get possession of the land takes another two to four years. Meanwhile, the wrecks are inhabited by human wrecks preparing their meals over Sterno cans that regularly set fire to the buildings. By law, the fire department is then charged with the responsibility of risking men's lives to put out the fire, which they usually can do. However, when the flames get out of hand, other worthy buildings are gutted, leaving whole blocks of charred skeletons—victims of the quiet riot.

Other dwellings are being torn down by private builders to make way for high-rise luxury apartments and commercial structures. *Public* action has destroyed more housing than has been built in all federally aided programs. As a result, the crowded are more crowded than ever. Rehabilitation instead of renewal doesn't work. New York City tried it only to discover that rehabilitation costs $38 a square foot—a little *more* than new luxury housing.

The result of all this housing decay and destruction (plus FHA money to encourage more affluent whites to move to the suburbs) has been, says the National Commission on Urban Problems, "to intensify racial and economic stratification of America's urban areas."

While ghetto cores turn into ghost towns, the ghetto fringes flare out. The crime that oozes through the sores of the diseased slum chases away old neighbors, a few of whom can make it to the suburbs; the rest seek refuge in the "urban villages" of the low-income whites. Cities become denser and tenser than they were. In the process, these populous centers of civilization become—like Europe during the Dark Ages—the bloody soil on which armed towns wage their inevitable wars over a street, a building, a hole in the wall. Amid this troubled terrain, the free-lance criminal adds to the anarchy.

All these problems (plus welfare, schooling, and militant unions of municipal employees) hit the mayors at a time when, according to the National Commission on Urban Problems, "there is a crisis of urban government finance . . . rooted in conditions that will not disappear but threaten to grow and spread rapidly." The "roots" of the "crisis"? The mayor starts with a historic heavy debt burden. His power to tax and borrow is often tethered by a rural-minded state legislature. He has lost many of the city's wealthy payers to the suburbs. His levies on property (small homes) and sales are prodding Mr. Middle to a tax revolt. The bigger (richer) the city is, the worse off it is. As population increases, per capita cost of running a city goes up—not down: density makes for frictions that demand expensive social lubricants. Municipalities of 100,000 to 299,000 spend $14.60 per person on police; those of 300,000 to 490,000 spend $18.33; and those of 500,000 to one million spend $21.88. New York City spends $39.83. On hospitalization, the first two categories spend $5 to $8 per person; those over 500,000 spend $12.54; New York spends $55.19.

Expanding the economy of a city does not solve the problem; it makes it worse. Several scholarly studies have come up with this piece of empiric pessimism: if the gross income of a city goes up 100 per cent, revenue solve the problem ;it makes it worse. Sevrises only 90 per cent, and expenditures rise 110 per cent. Consequently, when a city's economy grows, the city's budget is in a worse fix than before. This diseconomy of bigness and richness applies even when cities merely limit themselves to prior levels of services. But cities, unable to cling to this inadequate past, have had to step up services to meet the rising expectations of city dwellers.

The easy out for a mayor is to demand that the federal coffers take over cost or hand over money. But is that the real answer? The federal income tax as presently levied falls most heavily on an already embittered middle class—our alienated majority. Unable to push this group any harder and unwilling to "soak the rich," an administration, such as President Nixon's, comes up with revenue-sharing toothpicks with which to shore up mountains. Nixon has proposed half a billion for next year and $5 billion by 1975, while urban experts see a need for $20- to $50-billion each year for the next decade. A Senate committee headed by Senator Abe Ribicoff calls for a cool trillion.

But even if a trillion were forthcoming, it might be unable to do the job. To build, a city must rebuild: bulldoze buildings, redirect highways, clear for mass transportation, remake streets—a tough task. But even tougher, a city must bulldoze people who are rigidified in resistant economic and political enclaves. The total undertaking could be more difficult than resurrecting a Phoenix that was already nothing but a heap of ashes.

What powers does a mayor bring to these complex problems? Very few. Many cities have a weak mayor setup, making him little more than a figurehead. If he has power, he lacks money. If he has power and money, he must find real—not symbolic solutions to problems in the context of a density that turns "successes" into failures. If a mayor can, miraculously, come up with comprehensive plans, they will have to include a region far greater than the central city where he reigns.

A mayor must try to do all this in an era of political retribalism, when communities are demanding more, not less, say over the governance of their little neighborhoods. In this hour, when regional government is needed to cope with the many problems of the metropolitan areas as a unity, the popular mood is to break up and return power to those warring factions—racial, economic, religious, geographic—that have in numerous cases turned a city into a no man's land.

Is there no hope? There is—if we putter less within present cities and start planning a national push-pull to decongest urban America. Our answer is not in new mayors but in new cities; not in urban renewal but urban "newal," to use planner Charles Abrams' felicitous word.

We cannot juggle the 70 per cent of the American people around on 1 per cent of the land area to solve the urban mess. We are compelled to think in terms of new towns and new cities planned for placement and structure by public action with public funds. "All of the urbanologists agree," reported *Time* amidst the 1967 riot months, "that one of the most important ways of saving cities is simply to have more cities." The National Committee on Urban Growth Policy proposed this summer that the federal government embark on a program to create 110 new cities (100 having a population of 100,000, and ten even larger) over the next three decades. At an earlier time, the Advisory Commission on Intergovernmental policy on urban growth, to use our vast untouched stock of land to "increase, rather than diminish, Americans' choices of places and environments," to counteract our present "diseconomics of scale involved in continuing urban concentration, the locational mismatch of jobs and people, the connection between urban and rural poverty problems, and urban sprawl."

New towns would set up a new dynamic. In the central cities, decongestion could lead to real urban renewal, starting with the clearing of the ghost blocks where nobody lives and ending with open spaces or even some of those dreamy "cities within a city." The new settlements could be proving grounds for all those exciting ideas of city planners whose proposals have been frustrated by present structures—physical and political. "Obsolete practices such as standard zoning, parking on the street, school bussing, on-street loading, and highway clutter could all be planned out of a new city," notes William E. Finley in the Urban Growth report. These new towns (cities) could bring jobs, medicine, education, and culture to the ghost towns in rural America, located in the counties that have lost population—and income—in the past decades. Finally, a half-century project for new urban areas would pick up the slack in employment when America, hopefully, runs out of wars to fight.

The cost would be great, but no greater than haphazard private developments that will pop up Topsy-like to accommodate the added 100 million people who will crowd America by the year 2000. Right now we grow expensively by horizontal or vertical accretion. We sprawl onto costly ground, bought up by speculators and builders looking for a fast buck. Under a national plan, the federal government could buy up a store of ground in removed places at low cost or use present government lands. Where private developers reach out for vertical space, they erect towers whose building costs go up geometrically with every additional story. On the other hand, as city planners have been

pointing out for a couple of decades, "it has been proved over and over again by such builders as Levitt, Burns, and Bohannon" that efficient mass production of low-risers "can and do produce better and cheaper houses." Cliff dwellings cost more than split-levels.

The idea of new towns is not untested. "There is little precedent in this country, but ample precedent abroad," notes the Committee on Urban Growth. "Great Britain, France, the Netherlands, the Scandinavian countries—all have taken a direct hand in land and population development in the face of urbanization and all can point to examples of orderly growth that contrast sharply with the American metropolitan ooze." To the extent that the U.S. has created new communities it has done so as by-products: Norris, Tennessee, was built for TVA to house men working on a dam; Los Alamos, Oak Ridge, and Hanford were built for the Atomic Energy Commission "to isolate its highly secret operations."

What then is the obstacle to this new-cities idea? It runs contrary to the traditional wisdom that a) where cities are located, they should be located, and b) that the future ought to be left to private enterprise. Both thoughts are a hangover from a hang-up with laissez faire, a Panglossian notion that what is, is best.

The fact is, however, that past reasons for locating cities no longer hold—at least, not to the same extent. Once cities grew up at rural crossroads; later at the meeting of waters; still later at railroad junctions; then near sources of raw material. But today, as city planner Edgardo Contini testified before a Congressional committee, these reasons are obsolete. "Recent technological and transportation trends—synthesis rather than extraction of materials, atomic rather than hydroelectric or thermoelectric power, air rather than rail transportation—all tend to expand the opportunities for location of urban settlements." Despite this, the old cities, by sheer weight of existence, become a magnetic force drawing deadly densities.

Furthermore, concluded Mr. Contini and a host of others, "the scale of the new cities program is too overwhelming for private initiative alone to sustain, and its purposes and implications are too relevant to the country's future to be relinquished to the profit motive alone." The report of the Urban Growth Committee stresses the limited impact of new towns put up by private developers such as Columbia, Maryland and Reston, Virginia. "They are, and will be, in the first place, few in number, serving only a tiny fraction of total population growth. A new town is a 'patient' investment, requiring large outlays long before returns begin; it is thus a non-competitive investment in a tight money market. Land in town-size amounts is hard to find and assemble without public powers of eminent domain. Privately developed new towns, moreover, by definition must serve the market, which tends to fill them with housing for middle- to upper-income families rather than the poor."

The choice before America is really not between new cities and old. Population pressure will force outward expansion. But by present drift, this will be unplanned accretion—plotted for quick profit rather than public need. What is needed is national concern for the commonweal in the location and design of new cities; a kind of inner space program.

VIETCONG ATROCITIES

Mr. ALLOTT. Mr. President, during the demonstrations of the last weekend a proportionately small number of participants carried North Vietnamese flags. It can only be assumed that these people carried them out of ignorance, because it is difficult to believe that anyone marching in what he believes to be the cause of peace would ally himself with murderers and torturers.

It should be clear by now to most Americans that the Vietcong and the North Vietnamese have murdered and tortured on a scale that would do credit to Genghis Khan and Tamerlane.

Of course, the worst atrocity of the Vietnamese war was the massacre at Hue during the 1968 Tet offensive. As late as November 6 of this year, seven more mass graves from that massacre were uncovered. It is estimated that about 300 more civilians were killed and buried in these graves.

Mr. President, I ask unanimous consent to have printed in the RECORD the story of the Hue massacre, as by Horst Faas, the Associated Press Pulitzer Prize-winning photographer and reporter. Mr. Faas said:

This atrocity is the reason I say that no matter how you feel about the Vietnam war, it is impossible to have any sympathy for the Viet Cong.

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

THE MASSACRE AT HUE: ITS DEATH WAIL LINGERS

(This is the gruesome story of the worst atrocity of the Vietnam war.

(It is a story told by Horst Faas, Associated Press Pulitzer Prize-winning photographer and reporter. Faas has covered the Vietnam war since June, 1962, and has photographed countless battles and was himself severely wounded while photographing American soldiers in one of those battles.

("Nothing I have seen in this war has left me as shocked and angered as the massacre of the battle of Hue," Faas said.

(During their Tet offensive of 1968, communists gained temporary control of a large part of the city of Hue.

(It was during this period they perpetrated one of the worst atrocities of this or any war.

(Communist soldiers systematically went from door to door in the battered and terrorized city rounding up civilians.

(By the time allied forces had regained Hue, some 2,000 residents of the city were unaccounted for—most of them feared to have fallen into the clutches of the Communists.

(By the spring of this year there was no doubt what had happened to them.

(South Vietnamese officials and soldiers had discovered and were uncovering mass graves on the outskirts of Hue containing the bullet-shattered bodies of innocent civilians who had been executed by Communist soldiers.

("This atrocity is the reason I say that no matter how you feel about the Vietnam war it is impossible to have any sympathy for the Viet Cong," Faas stated.

(Here is Faas' story on the massacre of Hue.)

DIEN BAI, VIETNAM.—"A few hours after dark they told us that we will go to wash in the river and then meet with a cadre for a political lecture. The Viet Cong leader said we should give him all valuable belongings and our bundles because we would not need them for this walk.

"We were among thirty prisoners of the Viet Cong. They had captured me and the others on the first day of Tet and marched to the Dong Son pagoda, two hours walk east of Hue.

"Then they tied us up with strips of rattan. My hands were free, but the arms behind my back were hurting because the bands were so tight. We were tied together with a rope, one behind the other. I was the last in line.

"Five guards led us from the pagoda to a jungle near the cemetery. Then they pulled the first man out into the sand and into a trench. We all had to follow because we were tied to him.

"I opened the knot at the end of the rope and suddenly knew that I could run away.

"The guards stopped near the trench with machine guns and the Viet Cong who had led us into it jumped out and ordered all to kneel down.

"When everybody got down I ran, right and left behind the tombs till I reached the woods. They were shooting after me.

"When I could not breathe anymore, I hid under the brush. I heard the shooting and the cries. They had murdered the other prisoners."

Militiaman Phan Duy, 26, of Dong-Di hamlet in Phu Thu District, who thus survived the massacres committed by Communist troops, watched as workmen slowly uncovered yard after yard of execution trenches.

Fifteen trenches have been discovered in desolate sand flats eight miles east of Hue, where Phan Duy ran for his life around midnight of February 18, 1968.

In the five trenches opened so far, 248 dead have been found and it is estimated that about 750 prisoners were executed here.

The sand flats of Dien Bai Village, dotted with the monuments and tombs of an old Buddhist cemetery, are only one area in three districts east and southeast of Hue where mass graves were located recently.

There are grave trenches in at least three other locations and it is feared that most of the 2,000 persons missing in Hue since the 1968 Tet fighting may have been murdered.

Since March 26—interrupted only by the Holy Week—mass graves have been opened almost daily.

The grim job of excavating all of the mass graves will take at least 30 more days, officials say.

The mass graves of Dien Bai are in what allied officials say is now a "pacified" area. After years of Viet Cong control and terror over this region, allied troops drove the enemy off into the mountains to the west.

At dawn, old women and children, carrying baskets of fruit and vegetables swinging from carrying poles now trip toward the Hue markets along the same narrow dirt roads over which the victims of the massacres stumbled to their deaths.

Also in the procession are hundreds of relatives hoping—yet fearful—that the fate of their loved ones might at last be resolved.

The trucks halt at the edge of low, gray dunes stretching between paddies and the sea.

The women and old men squat sullenly on the ground.

Rusty cartridges of a Russian submachine gun lie in the white sand at the bottom of one trench, apparently from bullets fired by the executioners.

The trenches—each about 50 feet long and straight—are a stone's throw apart.

Between them are old foxholes, rusty C-ration cans and other debris of war telling of battles fought across the graves between American soldiers and the Communists.

A bullet-pierced American helmet is half-covered by the sand. A tank track, churning over one of the execution trenches, has left a deep depression.

The trench to be excavated is clearly recognizable; a long, three foot wide depression overgrown with bright green grass standing out amid the coarse scrub of the dunes.

Women distribute surgical gloves and face masks. From a bottle they pour alcohol over the gauze.

Eight grave-diggers, mostly barefoot and wearing shorts, begin to open the length of the trench.

Three feet down, they find the corpses, stacked against each other in a straight line. With small shovels, sand is removed right and left of the line.

With their hands, the workers lift the bodies from the graves onto plastic sheets.

The grave-diggers lift the skull of every body out first, gently brushing away the sand.

Two men check the dental structure and the length and color of the hair. They report the results through their facemasks to four young men and girls registering all identifications in pads. A number for future identifications is put on each skull.

One unidentified victim is found to have a plastic image of Buddha on a silver chain clenched between the teeth.

The torsoes of the corpses, with arms and legs huddled in the crouching, kneeling position in which the victims were killed, are lifted out by grave-diggers.

In monotonous voices, officials announce to the waiting men and women what they find as they rip clothing apart, search pockets for identification papers and military tags.

Militiaman Nguyen My, who has stood beside the trench for two hours, suddenly falls to his knee, howling like a wounded animal. Then his voice becomes a whimper and he touches a piece of uniform with the name tag of his brother Nguyen Duc. With trembling hands he pulls his dead brother's picture from his wallet, showing it around.

The brother's remains are wrapped in a plastic sheet. The package looks like the mummy of a child.

Two black-clad militiamen carry the corpse away on a makeshift bamboo stretcher. Soldier Nguyen My, crying, stumbles behind.

The day before he had found his other brother, Nguyen Doan, in another mass grave. All three had been captured during the Tet offensive. Only Nguyen My escaped.

As the hot day wears on, almost every yard of trench yields a body.

The grave-diggers run short of plastic sheets and bodies are laid out in the sand.

A woman, digging with her fingers through a heap of bones, shrieks and collapses, tears streaming down her face. She wails and beats her hands on the ground, rocking back and forth. After her husband's body is wrapped she embraces the bundle. Other women drag her away and support her as she follows the stretcher-bearers.

Some of the women return after burying one relative, looking for others. One peasant woman found her husband and two sons within two days in different execution trenches.

Such scenes are repeated along the road, to which the bodies are carried and again at the schoolhouse where they are laid out and lists of identification marks are tacked to the walls.

More than 300 unknown victims await a mass funeral unless relatives can identify and bury them in family plots.

The number of persons waiting at the graves has become larger each day.

Many citizens of Hue have tried to believe their relatives were taken away by the Viet Cong to serve as soldiers, laborers or just to be indoctrinated for the Communist cause. Now they know that the Viet Cong meant death.

PRESIDENTIAL WORLD TRADE MESSAGE

Mr. SCOTT. Mr. President, President Nixon has presented a balanced approach to world trade. He has recognized the need for open markets but, more importantly, he has also recognized the hardship now faced by some of our domestic industries, such as textiles. Of additional importance to my own Commonwealth of Pennsylvania is the rising level of shoe imports which I hope can be curtailed, or at least remedied, by means of effective legislation.

The President's proposed Trade Act of 1969 will provide some remedy for those industries which are adversely affected by rising import levels. Whenever increased imports are the primary cause of serious injury, relief will now be available to both the industry involved and its employees. I believe that the essence of the President's proposals lies in his assertion that—

U.S. trade policies must respect legitimate U.S. interests, and that to be fair to our trading partners does not require us to be unfair to our own people.

Free trade will not mean much to the working man who is out of a job. I hope that the President's plan will help to remedy the serious situations some of our industries now face in addition to bolstering our position on the world market.

STRATEGIC ARMS LIMITATION

Mr. McGOVERN. Mr. President, on November 10, Dr. Wolfgang K. H. Panofsky, one of this country's most eminent scientific authorities, delivered what I consider to be an immensely important address at the University of Chicago, dealing with the Strategic Arms Limitations Talks—SALT—between the United States and the Soviet Union.

Dr. Panofsky noted that several of the major strategic weapons systems which are coming of age at the present time have the inherent tendency to justify differing Soviet conclusions about our intentions. Thus, while the Safeguard ABM is described as a means of preserving our deterrent, it is also consistent with a plan to develop a first-strike capability. While multiple independently targetable reentry vehicles have been offered as a device for penetrating a Soviet ABM, they, too, can be viewed as a threat to the Soviet Union's deterrent forces—particularly when they are described as enhancements of our ability to strike hard targets. The fact that we are moving ahead on both in combination gives special force to the arguments of those elements within the Soviet Union who ascribe warlike intentions to the United States.

From this he draws a conclusion with which I heartily agree that—

A small step in arms limitations may be harder to negotiate and be in fact more dangerous to U.S. and also Soviety security than a large step: Because of the multiple strategic roles of these systems impeding development of just one of them may be dangerous to either side. The more restrictive the SALT treaty can be on the further evolution of MIRV's and ABM, the more substantial will be the success of the treaty in achieving stability.

In addition, Dr. Panofsky notes that in terms of policing an arms control agreement the physical activity which we would undertake in deploying other kinds of weaponry, such as bomber defenses, probably cannot be readily discerned from the early steps in deployment of such provocative systems as ABM's and MIRV's. Hence, where inspection is concerned, he points out that—

The more far-reaching the prohibition of the SALT treaty, the less important the question of cheating becomes . . . A freeze of the "status quo" at present levels of strategic armaments is easier to police than a treaty specifying agreed numbers of components (missiles, radars, etc.) of permitted strategic systems. It is easier to recognize changes than to interpret in detail what is discovered.

It is my fervent hope that the Nixon administration recognizes the significance of these arguments, and that it is moving into the SALT discussions with a firm determination to achieve far-reaching agreements.

I must say in this respect, however, that recent disclosures of the opening posture to be taken in Helsinki are most discouraging. I have been unable to see any justification for the continuation of our MIRV testing program during the months immediately preceding the talks, and I am even more alarmed to note that our negotiators do not plan to seek a mutual moratorium on MIRV tests as the first order of business. This latter, minimal step has been urged by no less than 42 Members of the Senate who are sponsoring the resolution submitted by the Senator from Massachusetts (Mr. BROOKE).

Mr. President, because I believe it offers a high level of understanding on the relationships between weapons now under congressional consideration and the prospects for meaningful arms control agreements, I ask unanimous consent that the statement be printed in the RECORD.

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

STRATEGIC ARMS LIMITATION

(By W. K. H. Panofsky)

After World War II representatives of the United States and the Soviet Union have sat down together 5,000 times to discuss the limitations of armaments of their two nations. In spite of these efforts to do something about the arms race both countries combined have spent $1 trillion, that is one thousand billion dollars, on military expenses. This sum is so enormous that it is difficult to visualize: It represents approximately the total productive effort of the U.S. for a period of two years.

Why can't we do better? It is obvious that both countries have over-riding interests to do something about this madness; both countries could have used this enormous effort on more constructive pursuits than escalating the threat of one against the other. Both countries would have in fact greater security if neither had engaged in this arms race.

The achievements stemming from these 5,000 meetings have been woefully inadequate, although not totally negligible: We have the Limited Test Ban Treaty, we have the U.N. resolution banning nuclear weapons in space, and we have the beginnings at least of a treaty on the non-proliferation of nuclear weapons. Yet all this is very small relative to the rate at which the arms race is progressing, and it does not take much mathematics to predict that the further we go along the road of military build-up on both sides the harder it will be to turn back without disaster.

Most arms limitation negotiations involving the Soviets and Americans have involved many other nations also; however the "strategic" arms race, that is the build-up of those weapons of mass destruction involving

long-range nuclear weapons, is the province of the Soviet Union and the United States only; America and Russia possess a nuclear arsenal greatly in excess of any other nation and an arsenal vastly more than they would need to inflict total destruction on one another. It should therefore be more productive to hold bilateral talks, that is directly between the Soviet Union and the U.S., to limit the strategic arms race rather than to negotiate in as complicated a forum as the 18-nation disarmament conference (ENDC) which has been going on in Geneva for several years.

The idea of bilateral talks between the Soviet Union and the U.S. was first proposed over three years ago and personally introduced to Mr. Kosygin by President Johnson and Mr. McNamara at their meeting in Glassboro, New Jersey. It appeared the talks on strategic arms limitation, generally known as the SALT talks, would have a good chance to materialize before the end of the Johnson Administration, but the cooling off of relations brought on by the Soviet invasion of Czechoslovakia intervened and the Nixon Administration has taken its time to formulate plans of its own. Now the U.S. officially had been prepared to start talking for some time but the Soviets have just now agreed to a specific time and place for preliminary talks, to begin at Helsinki in mid-November. All this delay has occurred in the face of the formal treaty obligation assumed by both nations in connection with the nuclear nonproliferation treaty to pursue seriously steps to limit their strategic weapons.

Clearly all this hesitation in the face of an overriding common interest to get rid of the burden and dangers of strategic weapons must be the result of some serious indecision and infighting on both sides of the Iron Curtain. What the conflicts are in the Soviet Union in arriving at definite plans we can only surmise—on the other hand from Congressional Hearings, public statements and newspaper "leaks" it is becoming fairly clear how the sides are drawn in the United States in trying to influence the U.S. position in the forthcoming SALT talks.

Both sides in the strategic arms race suffer from the lack of a clearly defined policy on their strategic objectives, and how each side is willing to modify its strategic objectives as a result of the SALT talks. U.S. strategy has been described in many public statements and Congressional Hearings by such jargon as deterrence, damage limiting capability, first strike capability, second strike capability, counterforce, countervalue, etc. What does all this mean? All this jargon is really a symptom of a dilemma. All military planners know "in their hearts" that should nuclear war break out, prediction of the outcome is really a hopeless task. The amount of destructive power available to both sides is so enormous that with all the computers and "think tanks" in the world one has little confidence in most conclusions of "war game" calculations. Therefore the primary stated policy of both nations has been prevention of nuclear war through deterrence, that is maintaining armaments at such a level that, should the one side attack first, then the other could strike back and destroy the opponent's society. Yet the lingering problem remains—what should be done in case deterrence fails, that is if war should break out anyhow by accident, by gradual escalation, or by inadvertent involvement of the two super powers in conflicts stirred up by third parties. To counter this possibility the strategists have invented "damage limiting" as a strategic objective, that is they would like to be prepared to minimize damage to the home country if deterrence should fail.

What does a strategy of "damage limiting" imply? It means that we attempt to protect our population through Civil Defense and ABM, and that we direct some of our airplanes and missiles to destroy those few airplanes and missiles which have not yet been launched against us.

But here we have the dilemma: the very things we would have to do to limit damage to the U.S. in nuclear war are qualitatively the same steps we would take if we planned a "first strike" against the USSR. As we increase the "damage limiting" forces we possess, the Soviet side would conclude that we would be more difficult to deter from a sudden attack against them; in other words, if we protect our population if war should break out, then the other side would have to raise its total destructive power in order to be convinced that we would be "deterred" from striking first. Clearly this argument applies equally whether you discuss it from the point of view of the Soviets or the Americans. Therefore the strategy of deterrence and the strategy of damage limitation effectively countermand one another, yet in all official pronouncements both ourselves and the Soviets espouse both.

This ambiguity in official attitude reflects of course an internal struggle on both sides of the Iron Curtain among the traditional military men who want to retain the ability to "fight a war and prevail" even in the nuclear age, and the group of advisors, among them the majority of civilian scientists, who see sanctuary only in prevention of nuclear war. It is clear that one can not hope for much progress in the SALT talks unless both sides implicitly or explicitly agree that reducing strategic arms to a minimum deterrent level is the common objective worth striving for at this time. Both even with such a consensus there can be a wide margin of opinion as to how large a "minimum deterrent force" should be.

The current, much publicized debates on ABM and a moratorium on testing of MIRV's directly reflects the ambiguity of U.S. thinking. Let me elaborate on these controversies and how they relate to SALT.

As you know, ABM was first discussed as a defense of the cities and their population against Soviet long-range ballistic missiles. The opponents of massive deployment of ABM to defend cities, and I among them, have concluded that such a defense would be an enormously expensive technical enterprise and would buy very little; the protection offered could be negated by an increase of Soviet offensive forces at less cost than what we would have spent in providing the defense; therefore the result would simply be another step in the arms race with no increase in protection for anyone, and with much greater destruction, should war break out. This type of criticism had apparently been accepted by the Nixon Administration and accordingly the President withdrew the Johnson "Sentinel" city defense plan and instead substituted the "Safeguard" system which is intended primarily to protect the Minuteman land-based missile forces in North Dakota and Montana. In this new role ABM would increase U.S. deterrence by defending our Minuteman forces: a first attack by the Soviets could not result in destroying the ability of Minuteman to strike back. Unfortunately this strategic decision was not paralleled by a corresponding shift in engineering of Safeguard—the actual system which is now approved for deployment will do very little in protecting Minuteman, and also can easily be interpreted to be actually a first step for a city defense. Safeguard Phase II actually is intended to be a "thin" city defense against China, but its configuration is such that the Soviets may be forced to conclude that their deterrence against the U.S. is to some extent impaired.

This situation illustrates that ABM can and does have an ambiguous role: It can either serve a purely deterrent role such as defending Minuteman, or it can assist in a damage-limiting role if it defends cities, and it is very difficult for an opponent to tell which is which.

Our view of Soviet ABM is even more confusing since we can only interpret the limited information which we have; the only ABM system which we definitely know about is a very marginal deployment around Moscow; there have been "on again, off again" systems, and there are anti-aircraft defenses which may or may not also have a potential ABM role.

The situation with MIRV is similarly ambivalent as we shall see. The term MIRV stands for "Multiple Independent Re-entry Vehicles." This is a fancy way of saying that a single missile can carry a number of independent warheads carrying nuclear weapons which can be targeted against several objectives at once. MIRV's again have a dual function: On the one hand they can be used as a "penetration aid" against the enemy's defenses: the enemy's ABM can be penetrated if he has too many incoming warheads to shoot at. For this particular mission MIRV's would not need high accuracy. On the other hand if MIRV did have high accuracy then it would become a threat against the other side's retaliatory force; high accuracy would make it possible to take out simultaneously such a large number of the other side's implaced missiles in a single strike to keep most of them from striking back. It is for this reason that widespread deployment of MIRV, combined with high accuracy raises a spectre of a first strike.

This MIRV threat was pointed out by Secretary Laird when he advocated the Safeguard as a defense against the Soviet SS–9, which he described as a potential MIRV. Actually the SS–9 missile, as far as we have observed, lacks essential elements to make it a MIRV; some versions of the SS–9 carry three separate warheads, but there is doubt whether each can be independently directed at separate targets. Nevertheless, because of the high explosive power of the SS–9 it would become a great threat against the U.S. Minuteman silos should it be developed into a full-fledged MIRV. A halt on MIRV testing would eliminate this danger.

The U.S. position in relation to its MIRV's has been far from unambiguous also. Historically the decision to develop MIRV's in the U.S. came as a response to penetrate a surmised Soviet ABM system which, however, did not make anywhere near as much progress as we had feared; yet our MIRV plans continued. U.S. MIRV tests appear further advanced than those of the Soviets—we have successfully tested MIRV's both for Poseidon and Minuteman; if forced to discontinue MIRV testing as a result of SALT, or a MIRV moratorium, we could still produce these devices with sufficient performance to serve in a deterrent role, i.e. to penetrate Soviet defenses.

As I mentioned above, if penetrating Soviet defenses remained the only motive, then low accuracy for U.S. MIRV's would have been sufficient. However, last year the U.S. not only undertook extensive tests of its MIRV's but also proposed a program to increase the accuracy of U.S. missiles. This would be very difficult to justify if penetrating Soviet defenses were really the only objective. In fact Secretary Laird candidly testified in the Senate that the purpose of increasing accuracy was to improve our efficiency against "hard targets." This is clearly inconsistent with the strategy of deterrence and unquestionably will give rise to Soviet fears of U.S. intent against striking first against their missile force.

Dr. John Foster, Director of Defense Research and Engineering, tried to back-paddle from Secretary Laird's statement that upgrading of MIRV accuracy was intended against hard strategic targets: He testified in Congress that this increased accuracy was needed against such items as industrial targets such as steel mills. This statement is technically insupportable. Even if one gives

industrial targets a rather substantial resistance to blast, the *presently* programmed yields and accuracy for both Poseidon and Minuteman III are fully adequate to give a very high probability to destroy such targets.

The first slide shows a picture of the damage to a machine shop at Hiroshima caused by the first 20 KT nuclear bomb at a miss distance over half a mile. The presently programmed MIRV's for Poseidon and Minuteman have explosive power considerably larger than that of the Hiroshima bombs and are designed for accuracy higher that the "miss" which caused the devastation in the picture. It appears difficult to justify an improved accuracy program to do better than this!

What does all this discussion of MIRV and ABM have to do with the problem of formulating a U.S. position for SALT? The next slide summarizes the conclusions from the previous discussion about the ambivalence of ABM and MIRV. We can now understand that, depending on how MIRV's and ABM's are deployed, and depending on their physical characteristics they can be viewed *either* as *protecting* the domestic deterrent forces or as *threatening* the deterrent forces of the other side. Specifically deployment of ABM by the Soviets has given the incentive for U.S. development of MIRV, deployment of multiple warheads by the Soviets has given an excuse for U.S. deployment of Safeguard, the possible role of Safeguard in protecting cities will give rise to Soviet fears of being able to maintain their deterrent against us, the possibility of improving the accuracy of American MIRV's appears to threaten Soviet missile silos etc. In short, because of this ambiguity, the whole ABM and MIRV complex becomes an inextricable part of the next large step of the arms race and the world would be better off without either.

It is much easier to assure compliance with treaty terms which prohibit a weapons system entirely than with a provision which permits a specified number of weapons. A "zero ABM" provision in SALT would be much easier to enforce than an agreement limiting both sides to a level corresponding to the U.S. Safeguard. Since ABM and MIRV's pose an inter-related set of problems we can see that the Safeguard decision greatly complicates the SALT talks.

It is this intertwined situation which makes the conclusion clear that a small step in arms limitation may be harder to negotiate and be in fact more dangerous to U.S. and also Soviet security than a large step: Because of the multiple strategic roles of these systems impeding development of just one of them may be dangerous to either side. The more restrictive the SALT treaty can be on the further evolution of MIRV's and ABM, the more substantial will be the success of the treaty in achieving stability.

Starting from this conclusion we are immediately thrown into the complex question of policing the terms of a treaty. We are living in an era of mutual mistrust between the Soviet Union and the U.S. This circumstance, combined with the long-standing tradition of the Soviet Union for secrecy, raises both the question of cheating by the Soviet Union against the provisions of a treaty, and of abrogation of such a treaty following clandestine preparations. We know relatively little about the decision-making processes in the Soviet Union's military strategic issues; although our technical information on Soviet systems is remarkably good, it is nowhere as detailed as we think the information is which the Soviets have about our systems. Most people are quite pessimistic that we will be able to negotiate into the SALT treaty a substantial amount of "on-site inspection" of Soviet installations, although this possibility cannot be excluded; most of you know that lack of agreement on such inspections proved to be the stumbling block which prevented the partial nuclear test ban treaty to become a comprehensive treaty, including prohibition of underground nuclear explosions. Therefore a great deal of attention has been given to evaluating the extent to which the SALT treaty could be verified on the basis of "unilateral intelligence," that is from information which we gather through our miscellaneous surveillance techniques of Soviet activities. How effective these techniques are in detail is impossible to discuss in public; suffice it to say here that even in private there is substantial disagreement as to how good a job we can really do in verifying Soviet activities. The opponents of a far-reaching SALT treaty tend to emphasize the ease by which the Soviet could clandestinely develop and test forbidden military systems and then suddenly "trot out" completely developed military systems which would endanger the strategic balance between the Soviet Union and the U.S. The spectre of "instant ABM" and "instant MIRV" suddenly appearing, followed by a Soviet ultimatum, is being raised. The fear of a superhuman clandestine effort on the part of the Soviets resulting in a sudden shift in the strategic balance under a treaty, has caused our more conservative military planners to oppose far-reaching arms limitation moves in the past and they are expected to do so in relation to SALT.

Yet it is true in general that under the more restrictive arms limitation agreements cheating will be much less dangerous toward upsetting the strategic balance than if the arms race continued with only small restraints. This point was illustrated above in relation to ABM and MIRV.

If one carries conservatism in military matters viewed in isolation to the extreme, any basis for a negotiable position is, of course, destroyed. The degree of absurdity to which this kind of thing can lead became apparent recently when one compares the testimony given by the Defense Department witnesses in support of the Safeguard ABM system with the testimony given to justify continued MIRV testing and deployment as needed to penetrate certain Soviet air defense systems (the SA–2 and SA–5 systems) in a possible ABM role. Specifically the SA–2 system is a very simple but very extensively deployed anti-aircraft defense in the Soviet Union; it has also been used in Viet Nam. The possibility was raised that the SA–2's would have some potential of shooting down incoming U.S. ICBM's and thereby would protect Soviet cities; the U.S. deterrent would then be endangered. At the same time when justifying the Safeguard System Defense Department witnesses maintained that a system as complex as the one proposed would be required to carry out the much simpler task, namely the job of protecting the hardened Minuteman sites.

Next I am showing a comparison of the qualitative features of the Soviet SA–2 system and the U.S. Safeguard ABM. Clearly, in trying to be conservative our Defense Department is giving the Soviets credit for an incredible performance with a very primitive system which we deny exists for the much more sophisticated devices which we are proposing should be built.

A similar degree of "one way" conservatism pervades the argument relating to our ability to verify possible Soviet violations of a SALT treaty. One of the frequently proposed measures to control the further evolution of MIRV technology and deployment would be to prohibit testing of intercontinental ballistic missiles which appear to carry MIRV warheads, or even to prohibit or severely restrict the test firing of such missiles entirely. The question then naturally arises as to how well we can monitor the firing of such vehicles by the Soviet Union, both in regard to the total number of firings and in terms of the characteristics of the devices under test. Naturally the experts differ in their assessment of our ability to find out what the Soviets are doing. However, as was again revealed in recent Congressional testimony, most of the debate deals with the wrong subject, namely whether we can correctly identify a few single test firings carried out clandestinely or specifically designed to hide their true purpose. What is ignored in these discussions is the total picture in which such "cheating" would have to be carried out: The Soviets would have to make a deliberate decision in the face of their treaty obligation to man a large-scale program starting from design and engineering, through a clandestine test program and leading to secret deployment, and they would then have to have the confidence that the resulting system would be reliable enough that it could be used in a first strike role against the U.S. to inflict so much damage that the U.S. could not retaliate. Even if single tests escape detection, the likelihood that this long sequence of events will remain unnoticed and will have an important military consequence is very, very small.

Focusing these discussions on the physical detectability of a single test tends to obscure the basic issue: Are the kind of risks which would be involved in pursuing cheating on the scale required affecting the strategic balance acceptable to the Soviet Union?

What we face here is a symptom of the wrong avenues we are apt to pursue when purely technical reasoning, combined with highly conservative military planning, are being considered in isolation. We are contriving situations in which the Soviets could accomplish technological feats which we could not conceive of performing ourselves and we are visualizing complex scenarios where the normally conservative Soviet military planners are pursuing a long-range, clandestine course which would shift their strategic pattern overnight once the covers were removed.

Any decisions on arms limitations involve a balance of risks to the survival of the U.S. and the World. We cannot rationally pursue a course where we are willing to take no military risks at all in pursuing arms control negotiations, while we are willing to expose ourselves to the ever-increasing risk of war and annihilation which the unchecked growth of the arms race implies.

A debate similar to the "MIRV" cheating controversy centers around possible Soviet evasion of limitations on ABM deployment. ABM's are complex systems: they require radars, computers, interceptor missiles, control centers and communications. Yet many such facilities are also common to other military installations, in particular those connected with Air Defense: I mentioned previously that in Congressional Hearings Defense Department witnesses raised a possible threat that the Soviet SA–2 and SA–5 anti-aircraft defense systems could be "upgraded" into ABM. Without arguing about the technical feasibility and costs of such a move, it is clear that revamping of Soviet Air Defense into an effective ABM would be a very large scale undertaking. Such an activity would be almost impossible to conceal; to prevent evolution of ABM by these means under the guise of improvements of Air Defense installations it would be good if SALT would prohibit new or modified Air Defense installations also. This conclusion is again part of the general pattern demonstrated before: *The more far-reaching the prohibition of the SALT treaty, the less important the question of cheating becomes.* A second, equally important conclusion is: A *freeze* of the "status quo" at present levels of strategic armaments is easier to police than a treaty specifying agreed numbers of components (missiles, radars, etc.) of permitted strategic systems. It is easier to recognize changes than to interpret in detail what is discovered.

A "freeze" would tend to perpetuate for the time being many of the asymmetries between the U.S. and the Soviet Union: the Soviets

are "ahead" of the U.S. in terms of total megatonnage of nuclear arms; we are ahead of them in number of bombers and missiles. Both nations could destroy the other's civilization many times over; neither side could hope to attack the other without risking its own survival. The strategic arms race would be halted and the way might be paved for future reductions. Yet only the future will tell whether in the present atmosphere of mistrust and under the spectre of large scale Soviet clandestine programs, agreement on such far-reaching, but simple, treaty terms can be reached.

The spectre of sudden emergence of hitherto secret Soviet ABM or MIRV systems developed clandestinely under a treaty has given rise to another debate which is possibly of even more far-reaching significance than the debate about the SALT treaty itself. This is the controversy about the controls on the growth of technology. All of you have been exposed to the increasing clamor about man's need to put reins on the technology of his own creation lest technology control him. We have become painfully aware that when we make decisions to improve our standard of living through new technological devices we are often very short-sighted in assessing the consequences of each new step. We are apt to balance the short-range benefit of a new device only with the immediate *monetary* cost. What we tend to ignore are the long-range *social* as well as financial costs of many of our decisions in terms of disturbing the environment through pollution, through ecological damage, etc. In the military area we are now being faced with the claim of some of our military spokesmen that we must not impede development of new military technology in order to be prepared to cope with unexpected clandestine military developments of an opponent. To put it in blunt terms—the military technicians maintain that evolution of military technology is inexorable and that we must adjust our lives and political and strategic decisions to live with that evolution. I claim that such an assumption is both dangerous to man's very existence and is also insupportable on its own merit. Our knowledge of science will indeed increase continuously—the facts of nature are there to be explored and they will not remain hidden, nor should they remain hidden. However, the step from science to military technology involves a protracted series of planned deliberate steps extending over many years; man can decide through his political processes to either undertake such steps or not to.

Although the Limited Test Ban prohibiting atomic explosions in the atmosphere and in outer space has been only a relatively minor move in the field of arms control it nevertheless is a major milestone in demonstrating that a barrier against unchecked evolution of military technology can be erected. This, of course, was the real reason why the Limited Test Ban was fought so vigorously. I see no reason why we should acquiesce to the development of the ever-increasing lethality of our weapons; if we subscribe to the belief that technology has a life of its own and that its progress in any direction, however anti-social, cannot be impeded, then it is indeed true that man has lost control over his own destiny.

I have gone far afield in discussing the specific issues underlying the debate involving the U.S. preparation for the SALT talks, and of course I do not know in detail what the issues are which are being debated in the Soviet Union and which keep the Soviets from responding to the U.S. requests to establish a firm beginning date for the negotiations. Part of the controversial issues within the Soviet Union, I am sure, are similar to the ones debated in the U.S.; some of them may well have to do with the special problems which the Soviets are facing in regard to China, that is, how to design a possible treaty which reduces the level of armaments in the bilateral race between the Soviet Union and the USA while leaving the Soviet Union freedom of action against China. Maybe the Soviet military planners are quoting Lenin who said:

"Everyone will agree that an army which does not train itself to wield all arms, all means and methods of warfare that the enemy possesses, or may possess, is behaving in an unwise or even in a criminal manner."

This sounds disturbingly similar to the philosophy of some of the U.S. military spokesmen; if such views prevail in either the USA or the Soviet Union, we will see the Arms Race continue unabated by the results of SALT. Whatever the real conflicts are on both sides of the Iron Curtain, it is clear they involve questions which both societies have to resolve internally before meaningful negotiations can result.

I hope I have demonstrated to you that the nature of the questions underlying SALT is very profound; although many technical factors entering the decisions each nation faces are basically political. We must not identify narrow military planning with the "National Interest"; we should not confuse superiority in arms with "Security." SALT offers a new opportunity to redirect our national priorities from an unproductive and dangerous technological contest to the solution of urgent problems at home. At stake is the survival of civilization on this earth. There is very little time.

THE MEDIA

Mr. DOLE. Mr. President, it appears that former Vice President Humphrey has a short memory when he criticizes Vice President AGNEW for his statements concerning the news media.

A story by William Chapman in today's Washington Post states:

Humphrey's charges stressed that he considers Agnew's remarks and others' comments part of a premeditated and concentrated administration plan.

In another portion of the story, Humphrey accused the Nixon administration of mounting a "calculated attack" on the right of dissent and on the news media.

Just to keep the record straight, I ask permission to have printed at this point in the RECORD excerpts from an article published in the Birmingham News of Tuesday, June 25, 1968, and an article from the New York Times of June 25, 1968.

It is not unusual for the former Vice President to be on both sides of an issue, but in this particular case his statement concerning the news media, particularly network television, makes Vice President AGNEW's statements mild in comparison.

Former Vice President Humphrey charged that TV in particular has been used to spread the message of rioting and looting. Senators will note in the New York Times article that the Vice President is quoted as saying that it was essential that television in particular, "and radio and press secondarily," accept responsibility in riot situations.

In another quotation, Humphrey said:

If the media are going to broadcast the emotional appeals of the Stokely Carmichael's and the other agitators, it is like throwing gasoline on the flames.

This certainly indicates the then Vice President's displeasure with media coverage. At any rate, I believe the articles referred to will be of interest. I ask unanimous consent that they be printed in the RECORD.

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

[From the Birmingham (Ala.) News, June 25, 1968]

HUMPHREY SAYS TV "HAS SPREAD THE MESSAGE OF RIOTING AND LOOTING"

NEW YORK.—Vice President Hubert H. Humphrey says television, "in particular," has "served as a catalyst to promote even more trouble" during riots.

In an article in the current issue of Look magazine, Humphrey is quoted as saying: "I am convinced that just as the media can tell the facts to the people, they can also exaggerate and inflame the situation.

"I am not a wise enough man to make a judgment as to how the media should respond to this situation. But I do know that TV in particular has spread the message of rioting and looting, has displayed the carrying out of televisions, home appliances, groceries, etc., and has literally served as a catalyst to promote even more trouble."

Discussing other phases of dealing with riots, the vice president and Democratic presidental hopeful, says "there must be rapid introduction of sufficient manpower." He adds, however, "The emphasis must be on men rather than guns."

Humphrey also urges police to "use minimum force, but make arrests rapidly . . . arrests rather than shooting." He says police should be trained in riot control and there must be "preplanning for the integration of state, local and federal forces" to enable them to work together efficiently.

[From the New York Times, June 25, 1968]

HUMPHREY CALLS TELEVISION A CATALYST OF RIOTS

(By Val Adams)

Vice President Humphrey charged yesterday that television "has spread the message of rioting and looting" and "has literally served as a catalyst to promote even more trouble."

His comment was contained in a profile of Mr. Humphrey published in the July 9 issue of Look magazine which goes on sale today. The article included his views on how to control civil disorders and the responsibility of television, radio and the press in reporting such events.

The Vice President's criticism that TV added fuel to civil disorders was much more unfavorable than the recent report by the President's National Advisory Commission on Civil Disorders, which analyzed the riots of last summer. That report, noting instances of sensationalism, inaccuracy and distortion by newspapers, radio and television, concluded that the media "on the whole tried to give a balanced, factual account of the 1967 disorders."

Asked to comment on Mr. Humphrey's charge, the National Broadcasting Company said it was essential to cover the news even if it were "unpleasant and unattractive." The American Broadcasting Company said it sought to televise balanced, objective reports that would not "inflame any situation."

The Columbia Broadcasting System declined direct comment but referred to an earlier statement of policy that it must report any "significant trends in our society."

Where the President's National Advisory Commission on Civil Disorders had said that "our criticisms, important as they are, do not lead us to conclude that the media are a cause of riots," the Vice President singled out television for criticism:

"I do know," Mr. Humphrey said in the Look article, "that TV in particular has spread the message of rioting and looting, has displayed the carrying out of televisions, home appliances, groceries, etc., and has

literally served as a catalyst to promote even more trouble. The basic question is how do you report the news and at the same time not add fuel to the fire."

The Vice President said it was essential that television in particular, "and radio and press secondarily," accept responsibility in riot situations.

"If the media are going to broadcast the emotional appeals of the Stokely Carmichaels and the other agitators," he said, "it is like throwing gasoline on the flames. I have discovered even in my campaign that Negro youth particularly likes to get on television. Half of the jumping, pushing and shoving that goes on in a campaign is a desire on the part of the youngster in the ghetto to have some publicity, to see his picture on television."

ADDRESS BY THE SECRETARY GENERAL U THANT TO THE NAVY LEAGUE

Mr. MUSKIE. Mr. President, on October 28, Secretary General U Thant addressed the Navy League in New York City.

In his speech, the Secretary General addressed himself to criticism often lofted at the United Nations—that as an international body it is generally ineffective in resolving world problems. It is true that often in our concern with a crisis of the moment, we fail to view the broader spectrum of contributions the United Nations has made through its unique role as an international body in an age of often bitter nationalism. With this in mind, I submit the Secretary General's remarks as a perceptive analysis of the constructive influence the United Nations has exerted in the past and must continue to effect in the future, if nations of the world are to eradicate the enormous social and environmental problems which affect all of mankind.

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

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

ADDRESS BY SECRETARY GENERAL U THANT TO NAVY LEAGUE

I am happy to participate in this fine gathering by which the Navy League has chosen to honour the United Nations tonight. I hope you will bear with me if I take this opportunity to look back to some of the fundamentals of the Charter and to examine with you their relevance to the demands and challenges which we must face today.

It has been said fairly regularly for the past twenty years or so that the United Nations is declining. Annually, at this time of the year, many people at the General Assembly tell each other that the life has gone out of the United Nations, that things aren't what they used to be and so on, ignoring the fact that people, both within and outside the United Nations, have said this every year since about 1948 when the United Nations was two years old. I would be the first to admit that the state of the United Nations, which reflects the state of the world, leaves a great deal to be desired, as it always has done. But having said that, it would be wise to search for the real reasons for this shortcoming rather than to escape from the problem by the easy course of blaming the world organization as if it were some independent all-powerful body. The trouble, of course, is not fundamentally with the concept of the United Nations but with the state of the world in relation to that concept. If the world and the world organization are to do better, they must tackle the problem at its roots. We all must ask ourselves why sovereign nations find it so hard to co-exist and co-operate sensibly except under the imminent threat of disaster or extinction, and what changes of attitude might begin to liberate us from this highly dangerous dilemma.

For the continuing frustration of the world organization *is* highly dangerous, and time is not on humanity's side. It is not only the threat of war which must deeply concern all responsible people, but also some of the other major problems of our age which can only be tackled and solved by real international co-operation and action, and whose solution is indispensable to secure an enduring peace.

There are now few serious and responsible people who do not agree with the objectives of the Charter—international peace and security, justice, equal rights and self-determination of peoples, economic and social progress, the elimination of racism in all its forms and human rights. The problem is to reconcile these objectives with national policies and with the concept of national sovereignty. It is also true that some of the means provided by the Charter to secure these ends have not worked out in the manner that was envisaged by the founding fathers. Of these, perhaps the most significant are the arrangements in Chapter VII of the Charter for the use by the Security Council of military force, including naval and air units, to maintain or restore international peace and security—provisions which, in their time, were considered to be among the most radical innovations of the Charter. These provisions have never been used. This is the result of two unforeseen events, the change in the nature of war caused by the development of atomic weapons, and the cold war, which have somewhat belied the notion that the Security Council, with the great powers in total agreement, would keep the peace of the world, if necessary by force.

But even supposing it had proved possible for the great powers to agree to constitute United Nations forces under the Security Council, would such an arrangement really have been of much assistance in the context of the last twenty-four years? The Chapter VII arrangement had been designed with Manchuria and the Nazi and Fascist aggressions of the 1930s especially in mind, for situations where aggressors could be easily identified and where the "good guys" of the international world would have no moral doubts about collectively fighting the "bad guys". But the situation that has prevailed since World War II defied such simplifications. It is worth remembering that United Nations enforcement measures were actually suggested as early as 1948 when war broke out in the Middle East. But this suggestion quickly lapsed when it was found impossible to answer even the simplest questions about such a United Nations force. Which way, by what criteria and at whom would it shoot, and who would give the command to shoot? On what ground would the force take its stand? What countries, indeed, would be prepared to lend their soldiers to such a force in such a situation?

And so one of the greatest innovations in the Charter has up till now remained a virtually dead letter. The idea of collective security which these arrangements were supposed to provide has broken down and has to some extent been replaced by regional defence pacts outside the United Nations.

Meanwhile the United Nations has faced some of the novel challenges of the last twenty-four years by improvising the quite unforeseen mechanism which has come to be called peace-keeping. It has pioneered the use of military personnel and units in a non-violent role, acting as peace-keepers rather than soldiers, and relying for their success on the voluntary cooperation of the parties to a conflict, on the moral authority of the United Nations and on their own skill as pacifiers, negotiators and guardians of the peace. Peace-keeping on a voluntary basis has been undertaken in the Middle East, Kashmir, Lebanon, the Congo, Cyprus, and the Dominican Republic, for example, with considerable success in situations where an enforcement operation would have been out of the question. Although United Nations peace-keeping is still the subject of some international controversy, it has, I believe, provided in the political sphere one of the most encouraging examples of what internationalism, acting in the light of Charter principles and aims, can at its best achieve.

The United Nations Security Council itself provides an interesting example of a gradual return to Charter fundamentals after long years of frustration and paralysis. The Council, which has under the Charter primary responsibility for the maintenance of international peace and security, was originally intended to act on behalf of all the Members of the United Nations and, with the unanimity of the great powers, to deal with threats to world peace in an Olympian manner which would far transcend considerations of purely national interest. We know all too well how in the years of the cold war this dream was largely shattered, but it is encouraging to note that in the past few years the Security Council has taken on a new life by beginning to return to something like the original Charter concept. Where the Security Council used to specialize in acrimonious public disagreement, its members now strive laboriously for consensus and make a particular effort to avoid public displays of complete disagreement and deadlock. It now tends to pass important resolutions unanimously and has in the past two years succeeded in agreeing on resolutions upon some uniquely difficult subjects, such as the Middle East and Southern Rhodesia. The next essential step is to improve the effectiveness of and respect for the Council's decisions, but at least a first step in the right direction has been made—a step in the direction of international responsibility. There is a pressing need, however, to achieve for the Security Council and its decisions the sort of authority and influence envisaged for them in the Charter. There is a disturbing tendency toward willful disregard and defiance of even the unanimous and repeated decisions of the Council, a tendency which erodes its authority.

The Council itself, and especially its permanent members, can best combat this tendency by following up, with all the various means at their disposal, the decisions of the Council, and by trying, through vigilance and persistence, to ensure that its decisions take real effect within a reasonable limit of time. If the world becomes accustomed to the decisions of the highest United Nations organ for peace and security going by default or being ignored, we shall have taken a very dangerous step backwards toward anarchy. The fabric of international peace will be seriously weakened, and bad situations will grow worse. I think especially of the Middle East, a problem for which the Council in November 1967 unanimously agreed on a resolution which was a major step toward a solution. Despite this considerable achievement, and after two years of effort, a peaceful solution seems as far away as ever, and an almost daily outbreak of violent events makes it ever more possible that we may be witnessing in the Middle East something like the early stages of a new Hundred Years War. There has never been a situation in which all of the Security Council's prestige, resources and persistence, and the support of other Member States as well, were so vitally needed to reverse a disastrous trend.

We are still far from the spirit, or the realization, of the internationalism which the

horrors of World War II inspired the authors of the Charter to strive for—and even to expect. Too often I have the feeling at the United Nations that Members are more preoccupied with making nationalism safe or saving themselves from the predictable results of their own policies than with pressing on to that international order and degree of mutual confidence which alone can begin to remove the threat of war, bring disarmament, promote a more just and equitable world and allow us to save ourselves from some of the social and economic disasters which threaten us ever more ominously as we approach the last quarter of the 20th century. National sovereignty and patriotism are fine concepts and have a vital place in the world. But already in other major fields of human activity they have taken their place in a larger order of loyalties and objectives with excellent results—I think, for instance, of the fields of science, of art, of communications, of commerce and, by no means least, of the world of youth.

It has become almost obligatory nowadays for public speakers to mention youth. I do so this evening not out of any sense of fashionable compulsion, but because I believe that the United Nations and the young people of the world have a lot to learn from each other and that we may all be missing a great opportunity through a failure, due to misunderstanding or ignorance, to identify the basic interests we have in common. It is often said that young people now show little interest in the work of the United Nations. In so far as this may be true, I think there is a good reason for it. Intelligent young people since time immemorial have tended to be critical of, or even to be against, the *status quo* as embodied in what has come to be known as the "Establishment". Sovereign Governments are certainly "Establishments", and the fact that 126 Governments constitute the United Nations makes the United Nations a super-Establishment, and therefore of limited concern to the progressive young. It is not surprising that a generation which takes the atom bomb, the computer, space exploration and supersonic earth travel for granted should not be unduly impressed by the concept of national sovereignty as the controlling influence in world politics. Many of the most intelligent young people all over the world are less and less interested in nationalism and increasingly regard themselves as an international entity with common interests, ideals and goals, which are not always sympathetic or understandable to their elders in the "Establishment".

But disillusion with the United Nations should not be a logical consequence of this state of mind—in fact, quite the contrary. Public disillusion with the United Nations is often based on ignorance of politics and history in general and of the history of the United Nations in particular. In fact, the tendency in some young progressive circles to write off the world organization as just another instrument of the "Establishment" echoes the similar, and equally badly informed, sentiments which we have heard over the last twenty years from a diminishing chorus of isolationists and supernationalists—a coincidence which would not, I believe, be welcome to either party. Let us bear in mind that although the United Nations is an organization of sovereign Governments, the collective will of the organization, inspired by the Charter, has worked solidly, and often effectively, for change in many vitally important areas of human activity. I think, for example, of the process of decolonization, which has liberated nearly a billion people in less than a quarter of a century—a development on a scale which was inconceivable in 1945 and in which the United Nations has played a central role. I think of the concept of international assistance for economic development, which has in twenty short years become an accepted fact, so that the obligation of the rich nations to assist the poor ones is now widely regarded as a normal feature of life and a new moral precept in the international community. I think of the Universal Declaration of Human Rights, the effort to make it increasingly applicable and the endless struggle against racism and discrimination in all their different forms which has been and is being waged in the United Nations. In all of these developments we must recognize that progress is slow and that certain major obstacles have so far remained. But the spirit and the aims are there, as well as enough practical results to point the way. It is this kind of activity that makes the United Nations greater than the sum of its parts, the 126 sovereign member nations. The United Nations has set, and will, I am sure, continue to set, high standards and to urge nations, whose individual policies on such matters may often be weak or indecisive, to cooperate for their achievement. Quite apart from the peace-keeping and peacemaking achievements of the organization, this is by no means an inconsiderable or insignificant record.

I hope, therefore, that people, whatever age group they may belong to will sometimes take the time, and make the effort, to go back to the fundamentals of the Charter, and to find out how they have been developed and put into effect over the first twenty-four years of the United Nations; and to ask themselves what can be done now to make a better and more fruitful world on the basis of these fundamental principles. Older people may well find unexpected progress in many areas which have been forgotten, and the young may realize that many of the things they seek and to which they attach importance have all along been very much at the heart of the United Nations effort.

Of all human activities, the relations between States seem to have been left stranded in the old pattern of rigid nationalism, while in most other important fields of activity men have stepped forward into a more contemporary and more international setting. Nothing could do more to increase the effectiveness of the United Nations than a modification of the concept of national sovereignty in harmony with the intellectual and technological realities of our time, and here I believe that artists, scientists, business men, those who deal with communications of all kinds, and the young people can help us in a decisive way. I have confidence that the new internationalism of the young and a reassertion of the spirit of internationalism which inspired the Charter will help us to make this crucial step forward before it is too late.

IMPROVEMENT OF CHILDREN'S TELEVISION PROGRAMS

Mr. CURTIS. Mr. President, I mentioned in a Senate speech some months ago that a very fine group of citizens in western Nebraska had undertaken a campaign to improve the content of children's programs on television.

I said the work of this group illustrated what Parent Power can do when properly organized and guided, and I issued a warning to the moving picture industry.

In my remarks, which appeared in the RECORD on April 29, I said:

The Scotts Bluff Juvenile Advisory Committee is broadening its scope to include evaluations and, where warranted, protest movements against the production and distribution of movies that are smutty, obscene or violence-inciting.

There has come to my attention an article published in the Scottsbluff, Nebr. Star-Herald of October 5 which tells what this committee of citizens has learned in its initial examination of the movie problem.

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

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

GOING TO A MOVIE NOT THAT SIMPLE ANYMORE—MANY PROMISE PLENTY OF SEX AND VIOLENCE

(By Carol Lomicky)

The phrase "let's go to the movies" has come to be a little more complicated than just hauling the whole family to the nearest movie house for a good, enjoyable "flicker."

With a greater majority of movies promising scenes packed with plenty of sex, violence and "adult" entertainment, foreboding "codes" and rating systems have emerged. These codes are Hollywood's answer to categorizing each movie, complete with rules and suggestions for making the selection of film entertainment as easy as pushing a vending machine button.

While some are screaming that the "code" is an insult to intelligence and a form of censorship, others are crying even louder: Rating system or not, the quality of films is falling way below the guidelines of "just plain decency."

Through the Star-Herald Letterbox and Action Pronto Columns, it is apparent that people in the area (and nationally) are no longer content to sit back and simply refrain from taking in a motion picture. They want to get organized and do something about the situation.

One of these organizations is a sub-committee of the Scotts Bluff County Juvenile Advisory Committee, an organization geared to preventing crimes of youth and rehabilitating juveniles in trouble. This sub-committee first started as a group with the responsibility of bringing educational films to the community for the youth.

After a large number of citizens began complaining of the quality of television cartoons for children, this small group pointed an angry finger at local TV stations, program sponsors, national broadcasters and networks. Having achieved some success in "cleaning up" the Saturday morning cartoons, the group centered its attention on "indecent" movies in its "scrubbing-up" project.

Although the group is small and still in its infancy, it is organized. Its television campaign mushroomed from a local drive for letters to sponsors and correspondence to and from Sen. Carl Curtis from which reports to Congress were made to become part of a national campaign. Working with other groups, such as the American Council for Better Broadcasting and Christians United for Responsible Entertainment, and protesting to the presidents of television networks and the National Association of Broadcasters, which is responsible for the television code, national boycotts were implemented and the goal was reached. The fall season cartoon shows are of a much better grade, according to James Landrum, president of the Advisory Committee. The plan of attack for upgrading movies will be much the same.

"If adults want to see this kind of movie, fine; but let's not make them so available to our children." Landrum says. He adds that the committee is not necessarily in favor of government regulations but "if this is the only route we can take, then that's how we'll do it."

So far, the group has done extensive research on the history of movie restrictions and codes, contacted parents, clubs and organizations, written letters to Congress and

the movie industry. "We're working through state legislation so that, if necessary, we can bring about a law that would give us a city ordinance," Landrum reports.

He says the best method stems from the theory that if enough apathy is shown toward these movies, they will pull them off the screen. Parents and citizens are urged to boycott the films in question.

This group is also looking into some sort of substitute recreation. "When you really think about it, going to the movies on Friday and Saturday nights is about the only entertainment this community provides for its youth," Landrum states.

The committee is also considering bringing in popular recent movies if a sponsor can be found. Landrum, the minister of the Church at Bryant, says these movies are not first run but are up-to-date and selections can be made.

Landrum explains that parents should be educated to know what this code is all about and the committee is also attempting to get the movie industry to establish a better code and enforce it.

Landrum, who has worked as a national chairman on radio and television coverage for Churches of Christ and Christian Churches for four years, say the first picture production code was adopted in 1930 by the Motion Picture Association of America.

It stated in part, "no picture shall be produced that will lower the moral standards of those who see it."

Landrum says the failure of this code was due to a series of federal and state court decisions, beginning in 1952, restricting state and city censorship boards in their power.

In 1966 another code for producers went into effect setting standards by which films should be judged. The regulations are:

1. The basic dignity and value of human life shall be respected and upheld. Restraint shall be exercised in portraying the taking of life. (In contrast, the 1930 code contained four paragraphs dealing specifically with the treatment of murder. For example, brutal killings are not to be shown in detail.)

2. Evil, sin, crime and wrongdoing shall not be justified. (The old code contained ten lengthy paragraphs dealing with the treatment of crime ranging from suicide to mercy killing and drug addiction.)

3. Special restraint shall be exercised in portraying criminal or antisocial activities in which minors participate or are involved.

4. Detailed and protracted acts of brutality, cruelty, physical violence, torture and abuse shall not be presented.

5. Indecent or undue exposure of the human body shall not be presented. (The old regulations specified that complete nudity, in fact or in silhouette, is never permitted, nor shall there by any licentious notice by characters in the film of suggested nudity.)

6. Illicit sex relationships shall not be justified. Intimate sex scenes violating common standards of decency shall not be portrayed. Restraint and care shall be exercised in presentations dealing with sex aberrations.

7. Obscene speech, gestures, or movements shall not be presented. Undue profanity should not be permitted.

8. Religion shall not be demeaned.

9. Words or symbols contemptuous of racial, religious or national groups shall not be used to incite hatred.

10. Excessive cruelty to animals shall not be portrayed and animals shall not be treated inhumanely.

Obviously, this set of standards has a lot of loopholes and it allows the code authorities a good deal of interpretations, according to Landrum. "They get around this thing by saying the scenes are art," he says.

In 1968, the first rating system of Hollywood films was adopted. This code classified films under the following four categories:

1. "G" Suggested for general audiences.

2. "M" Suggested for mature audiences. Children may attend but parental discretion is advised.

3. "R" Restricted, persons under the age of 16 not admitted unless accompanied by a parent or adult guardian. Youth over 16 may attend.

4. "X" Persons under 16 not admitted under any circumstances. Persons over 16 are admitted in most cases with identification.

Landrum offered this comment about the new rating system: "If producers abided by the 10 movie standards adopted in 1966, there wouldn't be a need for the new classifications!"

As a matter of Congressional record, Sen. Curtis warns the movie industry, "The Scotts Bluff Juvenile Advisory Committee is broadening its scope to include evaluations and, where warranted, protest movements against the production and distribution of movies that are smutty, obscene or violence-inciting."

In response to this statement, the Nebraska senator received a letter from Jack Valenti, president of the Motion Picture Association of America, which stated:

"Your insertion in the Congressional Record about the Scotts Bluff enterprise to encourage better films for children finds a favorable response with me.

"The pornography, or out and out smut film, the use of sadistic and gratuitous violence in any form of mass entertainment is unexcusable. Within the framework of legal restrictions today, the motion picture industry aims to restrict the showing of certain movies from viewing by children, and to rate as accurately as we can, all movies so that parents can know which ones are suitable for their children."

The local committee, however, does not agree with Valenti. They maintain a parent cannot know by the present rating the content of a movie. Even the advertising that goes along with movies is a distorted measure, they say.

They suggest that parents choose such guidelines as the Parents Magazine, the Green Sheet, which is available at most libraries, the Protestant Motion Picture Council, the Catholic Legion of Decency and the rating carried by the Christian Science Monitor.

Landrum is emphatic in the belief that the community and country are in "sad shape when we allow the showing of movies like "The Fox"—portraying two lesbians kissing on a bed and showing one completely nude in the bathtub—and 'Succubus'—a female demon who has sexual relations with sleeping men and wooden dolls."

He says it's no wonder psychiatrists and counselors are snowed under with family problems. "What will it be like when teenagers, who are presently being taught through movies that homosexuality, lesbianism and sodomy are normal relationships, enter into marriage?"

Valenti once said, "You haven't seen anything yet. In movies for the first time there is an exploration of human aberrations. Homosexuality, lesbianism and even sodomy will be more evident on the screen."

Valenti implied it will not stop until the public demands its halt.

Landrum, as spokesman for the committee, told Valenti via letter that many of the movie houses are not enforcing their industry code and are allowing children to see "adult only movies."

He continued, "The American people are getting to the point where they are fed up with both television and the movie industry showing morbid and suggestive movies and we think they are ready to do something about it nationally. Filth-for-profit has taken over good family entertainment and we think it's about time Congress, the news media and concerned parents and citizens clean up this mess."

HOW NOT TO REACT TO THE PEACE MARCH

Mr. HARTKE. Mr. President, the massive peace demonstrations of last week evoked a number of responses throughout the Nation, but none more striking or more unsettling than those of the television networks and the administration.

Only days before they were subjected to what many of us thought a witheringly unfair assault on their integrity by the Vice President of the United States, the television networks made a policy decision that would cause their stanchest defenders to wonder how much integrity they really had. I refer to their decision to provide no live coverage of the greatest political demonstration in American history. Since they could never have reached that decision on the basis of the newsworthiness of the event, we can only assume that they reached it on political and prudential grounds—that is, they chose not to risk giving offense to the present administration.

The Washington Post Columnist Nicholas von Hoffman addressed himself perceptively and sardonically to this flight from responsibility on the part of the networks in his column of November 17. I ask unanimous consent that it be printed at this point in the RECORD.

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

TELEVISION BLACKOUT

(By Nicholas von Hoffman)

The television networks can broadcast live and in color from the moon but not from the base of the Washington monument. NBC had one, mind you, one live camera to photograph the largest political meeting in the history of the United States. It was used three times for a total of five minutes, and that was all the live coverage there was on American television; the other networks had none.

The vast rally was made to order for television. It's the kind of story that makes us old pad and pencil journalists wish we could get into electronics, but on Saturday it was the TV correspondents who were coming up to us and saying, "My God, you don't know how lucky you are to work for an outfit that will cover the news. We collapsed on this story."

Think what it would have cost if the networks had gone out to buy the talent that was performing on stage across the field from the great marble spike, Arlo Guthrie, Dick Gregory, Leonard Bernstein, Richie Havens, Pete Seeger, Earl Scruggs, Peter, Paul and Mary; Mitch Miller, John Denver, Tom Paxton, John Hartford and the cast of "Hair" singing the super hit song from the show. If that isn't a spectacular, then what is? Companies like Plymouth and Westinghouse pay hundreds of thousands of dollars to put entertainment of that quality on the tube, and here it was for free.

But that wasn't all. There was a supporting cast of hundreds of thousands costumed in everything from the saffron robes of buddhist monks to cowboy outfits. There was street theater, impromptu traveling bands of music makers, giant puppets, a thousand different kinds of visual jokes, signs and slogans. Just the kind of stuff that drives a writer to make movies or try for a job in television.

On the more sober side, there was the political meaning of this event, which was either missed or mutilated. If, five years ago, somebody had told you that between a quarter and a half million people would turn up

at the White House carrying hundreds of red flags you would have had him committed to the boobyhatch. But it happened; there were countless red flags of revolution and black flags of anarchy there on Saturday. On the flag poles planted in a circle around the base of the Washington Monument where the American flag usually flies, there was a Vietcong flag, peace banners with the upside down Y, Yippie pennants and emblems from organizations too new or too obscure to be easily identifiable.

It would have been performing a service television is supposed to perform to show these symbols and how they were used. It would have been useful to let the television audience see and make its own judgment of how many people in that throng were signifying their politics by making the V-sign and how many were using the clenched fist and shouting, "Right on! Right on!" Because of the television blackout—and that's what it was for practical purposes—the public will have to accent reporters' estimates of these highly indicative acts. We reporters try to be fair but every human being's perception is colored by his beliefs and sympathies, so that each person will make and pass on to the public a different assessment when the public could have made its own.

Now let's look at what the networks' schedules show them putting on the air during the hours the President of the United States was hiding in his house behind barricades of buses and battalions of soldiers lest maddened waves of peace-crazed young Americans see him in the flesh and ask, "Why?" NBC was offering, among other items, "Banana Splits Adventure Hour," "The Flintstones" and "The All-American College Show." About the time this unbelievable march kicked off down Pennsylvania Avenue, Metromedia was airing "The Spirit of Notre Dame," a 1931 movie starring Andy Devine and Lew Ayres, for its Washington audience. Lord, wouldn't it be terrible to miss that one to look at a half a million pinko faggots who ought to go back to Russia?

Later in the day, Metromedia showed the following musts: reruns of "Daktari," "I Love Lucy," "Gidget" and "I Spy." The American Broadcasting Company had a football game on, while CBS checked in with some real heavy stuff: "The Perils of Penelope Pitstop," "Scooby-Do, Where Are You?" "Superman" and "The Red Skelton Show."

However, never let it be said that CBS, with its staff of highly paid, veteran newsmen is not alert to the exigencies of the times. No, no, CBS was on the spot with an evening special telecast, an hour and a half long, and do you know what it was? No, you don't know what it was because you weren't watching. You were too worked up and excited about the March, so you missed it. You missed, "Miss Teenage America With Dick Clark."

A lot of people are going to blame this disaster on Slugger Agnew. Slugger's all right. Don't pick on him, because he's one of the few elected officials we've got who shows himself for what he is. If he feels that his boss isn't getting enough adulation from those Alpo Dog Food salesmen who read the Associated Press wirecopy on the air, Slugger muscles himself some airtime to threaten the network executives.

He needn't have bothered. It appears from asking around that the decision to black out this enormous rally in favor of "The Archie Comedy Hour" and "Wacky Races" (CBS, the both of 'em) was made before Slugger opened America's biggest mouth. And that's the pity of it. They don't need to be threatened with censorship. They'll castrate themselves and call it "sound news judgment."

They are genuinely upset at what Slugger did to them, because he did it out in the open. They've lost face and been humiliated, and so they're running around to the newspapers saying, "We're journalists, too, we should have the same first amendment-free speech rights as the printing press."

You can't maintain a right without using it and in the case of free speech that means saying things a lot of people don't like. You don't need free speech to put on propaganda plugs for government front organizations like the Boy Scouts and the Red Cross. You need the protection of the first admendment to do things that will get you angry phone calls and letters, things like covering the rally Saturday.

As it is now, we might as well let Slugger have the networks. That way there won't be any confusion about their being independent news agencies; everybody will know that they will have become, in a more genteel way, the American equivalent of Radio Moscow. We'll all buy ourselves shortwave sets and listen to the Canadian Broadcasting Company.

Mr. HARTKE. Mr. President, the other response that merits our attention and concern was that of the administration, which evidently has decided to treat the peace rally as something very small and very nasty. In fact, of course, it was massive beyond belief, and extraordinarily and movingly peaceful. The vicious actions of a handful of extremists Friday night and Saturday evening only dramatized the magnificent restraint and dignity of the half million marchers who came to Washington in peace.

How perversely unfair the administration reaction was to the demonstration has been brilliantly analyzed in the lead editorial in this morning's Washington Post. I commend the editorial to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

No

The effort by this administration to characterize the weekend demonstration as (a) small, (b) violent, and (c) treacherous will not succeed because it is demonstrably untrue. If citizens had had the opportunity to witness the weekend on television, they would know it to be untrue; as it is, they will have to ask those who were there—either kids or cops, no matter. For sheer balderdash it would be difficult to exceed Herbert G. Klein's estimate: "Had it not been for the highly effective work of the Washington police, of the National Guard . . . for the reserve forces of the Defense Department and the complete cooperation of all elements of the government . . . and the work of the Justice Department . . . the damage to Washington (Saturday night and the night before) would have been far greater than . . . the . . . riots after the death of Martin Luther King."

That statement is inaccurate on every count save the first—enormously effective and professional performance of the Washington police department. Not necessarily in order of importance, thanks should be tendered to (a) the marchers, (b) the volunteer marshals, (c) the police and Chief Wilson, (d) the Mobe leaders, (e) Mayor Washington, and (f) the scores of organizations, churches and others, and individuals who went out of their way to exhibit what the mayor called "neighborliness."

What this administration, and the Attorney General in particular, does not seem capable of grasping is the simple truth that if the demonstrators had wanted serious violence they had the numbers to create it. Does anyone seriously believe that Washington's undermanned police force could contain 5,000 or 50,000 or 150,000 demonstrators bent on violence? The answer is No, and the demonstrators didn't want trouble. The fringe groups—Weatherman, crazes—did want trouble, and got it. To the Attorney General, this is evidence that the Mobe lost control and broke its nonviolent pledges. Is it reasonable to hold the Mobe leaders (and, by implication, all those thousands who marched) responsible for the actions of 50 or 200 or 500 people? No, it is not. The Mobe does not control Weatherman—and that is not an apology, it is a fact. There is evidence now that Weatherman demanded $20,000 from the Mobe as the price for peace; the Mobe refused, and the wild ones marched on the Saigon embassy. What there is now is a split between the antiwar moderates and the extremists; it is a serious split, but if John Mitchell tries hard enough he can probably heal it. He is one of the few men in the country who can.

"I do not believe that—over-all—the gathering here can be characterized as peaceful," was the way the Attorney General put it. He places in evidence the fact that at the "major confrontation" at Dupont Circle "20 persons were arrested." If the arrest of 20 people then, less than 300 people overall out of a crowd of a quarter of a million, constitutes a "major confrontation" engineered by the leaders of that crowd—then, what we may have here is a failure of communication.

These men—Mitchell, Klein and others who have had a hand in making policy in this matter—are not dumb or weak but small, men who somehow naturally see themselves as beleaguered adversaries. It seems clear from their statements, and from the accounts of participants at the command post in the Municipal Center over the weekend, that the Nixon administration was less interested in trying to keep the march peaceful than in trying to make it seem less large and more violent than it really was, and in trying to scare the daylights out of that putative Silent Majority at the same time.

So yesterday, as is the fashion with this administration, we had the qualifying statement from the White House press secretary, Ron Ziegler. Yes, it was a pretty large crowd; yes, it was, when you think about it, fairly peaceful. More moderate, more generous, more truthful than the other statements—but there is no reason to think that what Ziegler says is what the President thinks. On Saturday and Sunday, the President by his own account was preoccupied with the football games. It was a fine afternoon for watching football, he is quoted as saying on Saturday, and for sheer piquancy, we have not heard the likes of that since Marie Antoinette.

WATER POLLUTION CONTROL

Mr. McINTYRE. Mr. President, both Houses of Congress have recently addressed themselves to the need for Federal aid to local and State governments for the construction of water treatment plants. However, I hope that we do not delude ourselves into believing that we have fulfilled our responsibilities in the area of water pollution control.

As an article written by Senator GAYLORD A. NELSON, of Wisconsin, points out, the problem of water pollution is far more encompassing than that of municipalities' sewage. Because the article was written almost 3 years ago, some of the figures mentioned may no longer apply, but the article is still relevant because it presents a cogent analysis of the variety of sources of water pollution and a corresponding variety of suggestions to deal effectively with those causes.

So that Senators will have the oppor-

tunity to read this important article, 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:

THE NATIONAL POLLUTION SCANDAL

(By Senator GAYLORD A. NELSON)

The natural environment of America—the woods and waters and wildlife, the clear air and blue sky, the fertile soil and the scenic landscape—is threatened with destruction. Our growing population and expanding industries, the explosion of scientific knowledge, the vast increase in income levels, leisure time, and mobility—all of these powerful trends are exerting such pressure on our natural resources that many of them could be effectively ruined over the next ten or fifteen years.

Our overcrowded parks are becoming slums. Our birds and wildlife are being driven away or killed outright. Scenic rural areas are blighted by junkyards and billboards, and neon blight soils the outskirts of most cities. In our orgy of expansion, we are bulldozing away the natural landscape and building a cold new world of concrete and aluminum. Strip miners' shovels are tearing away whole mountains and spreading ugly wastes for miles around. America the affluent is well on the way to destroying America the beautiful.

Of all these developments, the most tragic and the most costly is the rapidly mounting pollution of our lakes and streams.

Perhaps the pain is more intense for a Senator from a state like Wisconsin, bordered on three sides by the Great Lakes and the Mississippi, blessed with 8,000 inland lakes and hundreds of rivers and trout streams. Actually, our state seems rather fortunate at the moment. A yachtsman on Lake Superior can raise a bucket of water still crystal-clear and cold enough to drink with delight. Canoeists on the St. Croix or Wolf Rivers still shoot through frothing rapids of sparkling water, and catch fish in the deep, swirling pools.

But the bell is tolling for Wisconsin just as for all the nation. A recent survey of twelve major river basins in southeastern Wisconsin found not a single one fit even for the partial body contact involved in fishing or wading. A competent governmental agency concluded that 754 miles of rivers in this region had been turned into open sewers. Beaches along Lake Michigan, a vast blue sea with seemingly limitless quantities of fresh water, are being closed to swimmers. A sordid ocean of pollution is pouring into the Mississippi from the Minneapolis-St. Paul urban complex. The first serious signs of pollution are soiling Lake Superior, and our small inland lakes are, one by one, becoming murky and smelly and choked with algae.

Elsewhere, all across the nation, the same tragedy is being enacted, although in many areas the curtain already has come down. The waters are already ruined.

Every major river system in America is seriously polluted, from the Androscoggin in Maine to the Columbia in the far Northwest. The rivers once celebrated in poetry and song—the Monongahela, the Cumberland, the Ohio, the Hudson, the Delaware, the Rio Grande—have been blackened with sewage, chemicals, oil, and trash. They are sewers of filth and disease.

The Monongahela, which drains the mining and industrial areas of West Virginia and Pennsylvania, empties the equivalent of 200,000 tons of sulfuric acid each year into the Ohio River—which in turn is the water supply for millions of people who use and reuse Ohio River water many times over.

National attention has been centered on once beautiful Lake Erie, the great lake which is the recreational front yard of Buffalo, Cleveland, Toledo and Detroit, and which supplies water for ten million Americans.

A Public Health Service survey of Lake Erie made the shocking discovery that, in the 2,600 square mile heart of the lake, there was no dissolved oxygen at all in the water. The lake in this vast area could support no desirable aquatic life, only lowly creatures such as bloodworms, sludgeworms, sowbugs, and bloodsuckers.

Along with the germs and industrial acids which pour into Lake Erie are millions of pounds of phosphates, a major ingredient in detergents. Each pound of phosphate will propagate 700 pounds of algae. Beneath the waters of this great like, largely hidden from sight, a hideous, cancer-like growth of algae is forming. As algae blooms and dies, it becomes a pollutant itself. It robs the lake of still more oxygen—and it releases the phosphate to grow another crop of algae.

Lake Erie is a product of its tributaries. A Public Health Service study of these American sewers is horrifying to read.

The Maumee River flows from Fort Wayne, Indiana, through Defiance and Napoleon, Ohio, and on to Toledo, where it joins the lake. Even as far upstream as Fort Wayne, the river has insufficient oxygen to support anything but trash fish and lower organisms, and as it flows toward Lake Erie conditions get steadily worse. The count of coliform bacteria runs as high as 24,000 times the allowable maximum under Federal drinking water standards. The concentration of carbolic acid, a byproduct of steelmaking, runs up to 137 times the allowable maximum. A packing company dumps 136 pounds of oil per day into the Maumee River. A plating company dumps thirty-eight pounds of cyanide per day. Defiance, Ohio, closes its sewage plant entirely for one to two months each year, and all its raw sewage goes directly into the Maumee.

Below Defiance, a foundry dumps cinders and ashes into the river. The Maumee is joined by the Auglaize River, which is even more polluted than the Maumee, and is especially rich in ammonia compounds.

At Napoleon, Ohio, the city draws its drinking water from the sordid Maumee, and a soup company draws off ten million gallons a day for soup processing. (The firm assures me that its modern water treatment plant, complete with carbon filters, can "polish the water to a high quality.")

Below Napoleon, things get really bad. Forty per cent of samples taken by the Public Health Service showed presence of salmonella, an intestinal bacteria that can cause severe illness. As the Maumee flows into Lake Erie at Toledo, it gets its final dose of pollution—the effluent from the Toledo sewage plant and what the Public Health Service describes as "oil, scum, metallic deposits, and toxic materials."

Another Lake Erie tributary—the Cuyahoga—which flows into the lake at Cleveland, is described by the Public Health Service as "debris-filled, oil-slicked, and dirty-looking throughout." It is loaded with coliform bacteria and salmonella. It is so polluted with oil that it frequently catches fire. Structures known as "fire breaks" have been built out into the river to fight these blazes. In the Cleveland harbor, the Public Health Service could find virtually no conventional aquatic life. However, the sludgeworms which thrive on organic matter were well represented—400,000 per square meter on the harbor bottom.

That is the story of Lake Erie, and although it is so shocking and disgusting as to deserve urgent national attention, it is not unique. Southern Lake Michigan, ringed with oil refineries, steel mills, and municipal sewage outfalls, may be even worse. Scientists estimate that it would take 100 years to replace the polluted water of southern Lake Michigan, and some consider the pollution in this area irreversible.

We have our own Wisconsin pollution scandal in Green Bay, a magnificent recreational body of water in northeastern Wisconsin, widely known as a yachtsman's paradise and site of a multimillion dollar resort industry. This "Cape Cod of Wisconsin" is threatened with ruin by a tide of pollution which is moving up the bay at the rate of more than one mile per year. The pollution comes from rivers such as the Fox, the Peshtigo, the Oconto, and the Menominee, which drain large areas of Wisconsin and northern Michigan.

The experience in Lake Erie, Lake Michigan, and Green Bay has convinced many experts of this chilling fact: It is a definite possibility that the Great Lakes—the greatest single source of fresh water in the world—could be effectively destroyed by pollution in the years ahead. If this were to happen, it would be the greatest natural resource disaster in modern history.

That is the outline of this new American tragedy. The obvious question now is, what can be done about it?

First, I think we must learn what a complex and widespread problem we face in water pollution. Like crime, like death on the highway, pollution is a social problem which extends throughout our society. There is no single villain, and there is no simple answer. It must be attacked for what it is—a sinister byproduct of the prosperous, urbanized, industrial world in which we live.

We must take care not to ride off in pursuit of just one villain—such as city sewage, or industrial waste, or detergents, or toilet wastes from boats; this is a battle which must be fought with skill and courage on many different fronts. Nor should we be fooled by the strategy of many polluters, who argue, in effect: "The pollution which we cause is minor compared to the big, nation-wide problem. Why not leave us alone and go after the big offenders?" Even some of the lesser offenders in the pollution crisis could ruin us in time.

The primary sources of pollution are these:

Municipal sewage: Despite heroic efforts and heavy investments by many cities, our municipal sewage treatment plants are woefully inadequate. Some cities have no treatment at all; others remove only part of the pollutants found in sewage. As a result, the effluent discharged by our cities today (treated and untreated) is equivalent to the *untreated* sewage from a nation of seventy-five million people.

Industrial pollution is roughly twice as big a problem as municipal sewage. Despite tremendous investments in research and treatment plant construction by some industries, the overall record is terrible. Some industries feel they cannot remain competitive if they spend heavily for treatment plants. Communities and states are reluctant to push them too far. As a result, industrial wastes (treated and untreated) now discharged into our waters are presently equal to the *untreated* sewage of a nation of 165 million people.

Septic tanks: Vast sections of the nation have no sewer collection or treatment system at all. In such areas, underground septic tanks, often poorly made and undersized, are expected to distribute wastes into the soil. They overflow into natural watercourses, they leak bacteria and detergents into underground wells, and they are destroying lakes by filling them with nutrients that foster heavy growths of algae.

Ships and marine terminals: In selected areas, the discharge of toilet wastes, oil, garbage, and rubbish from ships and shoreline installations is a major problem. For some reason, this form of pollution is widely tolerated and enforcement of laws forbidding it is virtually nonexistent.

Pesticides: The terrifying prospect of spreading poison all over the globe confronts

us. We now use more than 700 million pounds a year of synthetic pesticides and agricultureal chemicals of 45,000 varieties. This volume is expected to increase tenfold in the next twenty years. Many of these poisons persist forever in the environment, and their concentration builds up geometically as they progress though the food chain (water, seaweed, fish, birds, mammals). DDT residue has been discovered in penguins in Antarctica, in reindeer in Alaska, in seals, and in fish caught in remote areas of the Pacific Ocean. One part of DDT in one billion parts of water will kill blue crabs in eight days.

Silt: One of the most serious pollutants all over the world is the dirt which washes into our waters from off the land. This somewhat natural problem is disastrously aggravated by contemporary trends—widespread clearing of land for subdivisions and shopping centers; construction of highways and parking lots (which cause rapid runoff) and the intensive development of lake shores and riverbanks. Controlling surface runoff and the siltation which it causes is complicated by our patchwork of political boundaries and the lack of coordinated government planning.

Detergents, fertilizers, and other chemicals: Some of these commonly used substances pass through even good waste treatment systems and become persistent pollutants. Such pollution can be eliminated only by changing the composition of such substances, regulating their use, or devising new removal techniques.

Obviously, any nation-wide problem made up of so many elements is extremely difficult to attack. Yet I believe that the rapidly accelerating destruction of our natural resources is our number one domestic problem, and the greatest of all our resource problems is water pollution. If we are to meet this pollution threat, if we are to save the waters of America and preserve this most indispensable part of our natural environment, we must make the war on pollution a high priority matter at every level of government—local, state and Federal—and we must insist that private industry do likewise.

Baffling and complicated as the pollution problem is, it is not insoluble. There is no reason in the world why a great and prosperous nation, with the money and know-how to shoot man to the moon, cannot prevent its lakes and rivers from being destroyed and its life-giving water supplies endangered.

Just as there is no single cause of pollution, so there is no single solution to the problem.

Consider the question of what to do about municipal sewage and industrial wastes. Why do we tolerate a situation where these two sources alone pour into our waters each year the equivalent of the completely untreated sewage of a nation of 240 million persons?

In the case of municipal sewage, it is largely a matter of lack of money, aggravated in some cases by a shocking lack of public concern. There are now more than 1300 communities which have sewer systems but discharge their wastes into the waters without any treatment at all. These communities have a population of more than eleven million people. How such a condition could exist in the year 1966—when it is generally illegal to throw a gum wrapper out of a car window—is inconceivable.

We have another 1300 communities—with almost seventeen million population—which treat their wastes but in a completely inadequate manner. In most cases, these are communities which use what is known as "primary" treatment. They screen their sewage and let the solids settle out, but they do not remove dissolved solids, salts, chemicals, bacteria, and special problems such as detergents. Every community should have what is known as "secondary" treatment, under which sewage—after primary treatment—is held in in holding tanks, brought into contact with air and biologically active sludge, so that bacteria have a chance to consume the pollutants.

The Conference of State Sanitary Engineers estimates that it would cost $1.8 billion to provide adequate sewage collection and treatment for these communities which now have no treatment or completely inadequate treatment.

But even this would still leave us with a massive municipal pollution problem. Even good secondary treatment removes only eighty per cent to ninety per cent of the pollutants. Chicago, for instance, with a good secondary treatment plant, discharges treated effluent which is equivalent to the untreated, raw sewage of one million people. It dumps 1,800 tons of solids per day into the Illinois waterway. At the rate the pollution load is increasing it is estimated that even if all communities have secondary treatment plants by 1980, the total amount of pollutants reaching watercourses would still be the same as today. Obviously, we need a massive program to build highly effective city sewage treatment plants.

It is also obvious that local property taxes cannot support such a gigantic investment, and that if we wait for communities to do this on their own, it will never be done. Most state budgets also are severely strained, so much of this burden is going to have to be borne by the Federal government—if we want the job done early enough to be effective.

The Senate Air and Water Pollution subcommittee estimates that it will cost $20 billion to provide secondary treatment in plants serving eighty per cent of the population and more advanced treatment in plants serving the other twenty per cent. We have had a Federal program to assist communities in building such treatment plants for the past ten years, but it has been inadequate. It has recently been greatly improved, but it is still inadequate. In the past it has provided grants of up to thirty per cent within the limits of available funds. The most recent act—the Clean Waters Restoration Act of 1966—authorizes a total of about $3.6 billion over the next five years ($150 million in 1967, $405 million in 1968, $700 million in 1969, $1 billion in 1970, and $1.25 billion in 1971). A community can get a grant for up to fifty per cent of the cost of a project, provided the state pays twenty-five per cent and provided water quality standards have been established.

New York needs an estimated $1.7 billion for new sewage plants. The new law would give it a total of only $307 million. Ohio needs $1 billion and would get $180 million. Wisconsin needs $286 million and would get $75 million.

If we are serious about the Federal government paying fifty per cent of the cost of eliminating municipal pollution, then Washington must provide $10 billion—not $3.6 billion—and even then we will be expecting our hard pressed states and communities to come up with another $10 billion.

Personally, I think it is unrealistic to expect the states and localities to assume a burden of this size. And I do not think the nation can sit by and wait while its communities struggle to build up the financial resources and the political courage needed to do the job. I think we should get sewage treatment plants built the way we are getting interstate highways built—by offering ninety per cent Federal financing. I have introduced legislation which would establish such a program.

The municipal sewage problem is complicated by another problem—combined storm and sanitary sewers. By combining storm water and human wastes in one sewer system, many cities build up such a tremendous load during rainstorms that their sewage treatment plants cannot handle it. They have had to install automatic devices which divert the combined sewer load directly into lakes or streams whenever it get above a certain level. In this manner, sixty-five billion gallons of raw, untreated sewage goes into our lakes and rivers each year.

Most cities are separating storm and sanitary sewers in new subdivisions, but the task of separating the sewers in the older areas is a staggering one. Complete separation would cost an estimated $30 billion. It would cost $160 per resident in Washington, D.C., $215 in Milwaukee, $280 in Concord, New Hampshire. It would cost Wisconsin an estimated $186 million, Indiana $496 million, Michigan $970 million, New York and Illinois about $1.12 billion each. These are only general estimates of the direct costs and they do not take into account the disruption of traffic and the local economy caused by ripping up miles of underground sewers.

In the hope of avoiding such costs, the Federal government has underwritten several research projects to see if this problem cannot be met in some other way—through temporary underground storage of sewer overflows, for instance, or by building smaller sanitary sewer pipes inside existing storm sewers.

The staggering problem of *industrial* pollution is virtually untouched today by our Federal anti-pollution programs, even though industry contributes twice as much pollution to our waters as do municipalities. If we do not step up our industrial waste treatment plant construction, the pollution effect of industrial wastes alone by 1970 will be equal to the untreated, raw *sewage* from our entire population.

Industries are widely critized for dumping wastes into our waters, and this criticism is often justified. They are pressured by local, state, and Federal officials. But some industries are able to avoid a serious crackdown against them by threatening to move. Most industries argue—sometimes effectively—that they cannot be expected to make massive investments in treatment plants if their competitors—often in different parts of the country—are not forced to do so.

I have come to the conclusion that the threat of enforcement alone is not going to solve our industrial pollution problem. We must provide direct financial assistance to see to it that the plants are built. I have introduced legislation to provide both loans and grants of up to fifty per cent to industries whose size and economic circumstances prevent them from assuming the full burden of providing their own facilities. I think such assistance should be carefully limited and should be for a short period, but I do not think we can avoid it. We are going to pay the cost of industrial pollution in one way or another—in the cost of the manufactured product, in taxes, or in ruined water resources.

But massive construction programs alone are not going to solve our municipal and industrial pollution problems. We need a tremendous expansion of Federally supported research to find completely new answers. Our whole waste disposal system, from the household toilet to the municipal sewage treatment plant, is a holdover from another era. The system should be studied and redesigned, using the latest scientific techniques and fitted into a coordinated, nation-wide system of waste disposal. Research grants should be made to private industry and universities to develop new methods and devices to refine, use, neutralize, or destroy pollutants. We should compute what our present waste disposal systems are costing us—including the loss in natural resources destroyed—and what alternative systems would cost.

Compared with municipal and industrial pollution, the other pollution problems I have mentioned are statistically small. For that reason, they are often ignored. But we cannot safely do that. Even if we managed to contain the flood of municipal and industrial

pollution, the other sources could do fatal damage to our environment.

Septic tanks must be controlled at the state and local level, and in many areas I think we must forbid new installations and work to replace existing ones with sewer systems. For instance, once an inland lake is ringed with cottages with septic tanks, it is doomed. Septic tanks must drain somewhere and in most lakeshore settings the natural drainage flow is into the lake. At the very least, this drainage will fertilize the lake, cause the rapid growth of algae, and turn the lake into a murky, foul smelling mess.

Ship pollution is certainly serious enough to justify Federal action, even though such suggestions cause howls of protest from those who insist it "isn't practical." Why is it practical to install retention facilities on buses, house trailers, and aircraft but not on boats and ships? Obviously, we are willing to allow wastes to be dumped into our water supplies which we would never tolerate being dumped onto the land. We need Federal laws to require suitable facilities on all vessels using our navigable waters, and we need a better enforcement system to crack down on such disgraceful practices as dumping oil and pumping out oily ballast tanks on the Great Lakes and in our rivers.

The siltation problem can be controlled only through strict zoning and land use controls. We have got to prevent intensive development of our shorelines if we are to save our waters. Once a large portion of the natural vegetative cover is destroyed, the water resource is in danger. I believe that the Federal government should provide financial assistance to those willing to carry out soil conservation practices along our lakes and streams on a scale large enough to be meaningful.

Pesticides, detergents, and exotic new chemicals will plague us for years to come. New treatment systems may offer some hope for removing these substances, but I think they must be controlled directly. Those which cannot be removed safely in normal treatment processes, and those which have chemical structures which cause them to persit in our environment and to threaten fish, wildlife, and human health, should be banned or their use strictly regulated.

In speeches in some twenty-three states in the past four years, I have called for an emergency, crash program to fight water pollution. I have offered my estimate of the cost of conquering water pollution as $50 to $100 billion over the next decade. It now appears I may have been conservative. The Public Health Service now estimates that it will cost some $20 billion to clean up the Great Lakes alone, and the total national cost is now estimated at $100 billion.

But everywhere I have gone I have found the public willing to pay this cost to save their waters. In fact, I think the public is far ahead of local, state, and Federal officials in facing up to this crisis. I think that citizens in most communities would support a sharp crackdown on local polluters of every variety. I think they want their states to establish high water quality standards, and then enforce them. I think they can be shown the need for bold regional action to deal with those vast interstate pollution problems (such as on the Mississippi and the Great Lakes) which obviously are too big for any community or any state to handle.

And I think that the citizens of America now recognize that the destruction of the major river networks of the nation, the threatened destruction of the Great Lakes, and the slow ruination of our treasured inland lakes and trout streams is a calamity of such gigantic proportions as to deserve the urgent attention of all citizens and prompt action by the national government.

WANTED: A UNIFIED STRATEGY FOR ENVIRONMENTAL PROTECTION

Mr. MUSKIE. Mr. President, Edwin A. Locke, Jr., president of the American Paper Institute, recently called upon President Nixon and Congress to establish an agency with strong executive powers to carry out a unified strategy to protect the environment.

Mr. Locke has solid qualifications to make his recommendations. He has served his country well, having been called by three Presidents—Franklin D. Roosevelt, Harry S. Truman, and John F. Kennedy—to perform special duties. He was the featured speaker at a luncheon during the annual meetings of the American Forest Institute held in Washington on October 27 and 28.

Because I believe his speech is of interest to the Senate, I ask unanimous consent that it be printed in the RECORD.

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

WANTED: A UNIFIED STRATEGY FOR ENVIRONMENTAL PROTECTION

(By Edwin A. Locke, Jr., president, American Paper Institute)

When I tell you that it's a pleasure to be with you today I mean it, but in all honesty I was not sure for a while that I was going to be able to say that. The fact is that when your president asked me some two weeks ago to talk about the environmental problem I was rather at a loss. Certainly I have long been interested in what some people call the problem of "the effluent society", but it seemed to me at first that the subject had been so thoroughly analyzed forwards and backwards by so many writers and speakers that there was really nothing fresh or worthwhile left to say. I had a mental picture of myself standing up here and repeating things you have all heard before, to our common misery.

But now I am grateful to Buzz Hodges for stimulating me to come to grips with this problem. I felt impelled to try to see the environmental dangers confronting the nation as a whole, as well as those aspects of it that relate to the forest-based industries. As a result my outlook has gradually changed. I have come to some tentative conclusions about the nature of the effort needed to improve environmental quality and I would like to share those conclusions with you today.

Let me say at once that there has not been time to discuss the purport of these remarks in any formal way with others in the industry. But on the basis of recent talks about the environmental problem with many paper company executives, I think there would be considerable support for my views among them. And let me say further that there is every reason for people in our industries to speak out on the broad national aspects of the environmental effort, when we see some step that might soundly be taken. We have I think proved our earnest intention to promote the environmental cause. We have long since realized that aside from the dictates of social responsibility, our long-range economic interests are inextricably linked to the quality of the environment.

I believe that anyone who objectively examines our efforts to cope with the environmental threats that have gathered so much momentum in recent years must realize that we are taking determined strides to conserve the nation's resources and protect its air and water. It is worth while reminding ourselves how much has already been done. Let me take a minute or two for that.

Critics who have not yet caught up with the facts sometimes assume that we are lukewarm about conservation, but what are the facts? Since 1950 the pulp and paper companies alone have put at least a billion dollars into reforestation, fire prevention and forest research. This effort is now showing substantial results. Take research alone. Recent advances in tree genetics and techniques of fertilization have opened up the prospect of producting and speeding the growth of superior trees that in the next generation will greatly enlarge our forest resources.

Meanwhile we are by no means standing still. Important developments in forest management, the improvement of harvesting methods, successful research in tree chemistry and improved techniques of pulping are already enabling the industry to make use of increasing amounts of wood substances previously regarded as waste. Equally important, the industry in recent years has found ways to produce light-weight papers for purposes that formerly required heavier stock, thus saving large amounts of wood fiber. We are also beginning to move vigorously in the collection of waste paper which is recycled and used again. Putting all these factors together, one of the leading scientific authorities of the industry recently told me that within the lifetime of most of us an acre of typical timberland will go a great deal farther to satisfy consumer demand than at present. He actually said six or seven times farther, but I think we would all gladly settle for half of that.

The industry's progress in fighting pollution of water and air has been equally impressive. Our liquid waste discharge per ton of production has been cut to considerably less than half as compared with 10 years ago, and great quantities of water are being conserved as our mills progressively install recently developed processes that permit the recycling of industrial water. As for air improvement, at the present time virtually all the kraft paper mills of the country have now installed major devices to control particulate emissions. More than 90% of all such emissions have been eliminated, and industry research is concentrating hard on ways of coping with other aspects of the air pollution problem. In some of our research projects, the government has given us valuable cooperation.

We have, I believe, earned our credentials as convinced supporters of the national effort to protect the environment. For that matter, I think the public would be surprised to learn how far industry as a whole has come in its determination to improve the environmental picture. Recently I have been working with more than a score of major industry associations assisted by the staff of a major institution in the field of economic research and analysis. By the end of this year, we hope to have completed the outline of a program to which all industries could subscribe, as a basis for even greater efforts to assure future environmental quality.

Now in saying what I have said about the positive gains already made, I am not for a moment losing sight of the magnitude of the Nation's environmental problem as a whole. It is perfectly clear that however much industry has accomplished, and however much government has achieved, it is still not enough—not by a long sight—certainly not enough to permit complacency.

I try to be conservative in my use of language, and I draw back from using words like "emergency," but I think we must seriously listen to ecologists who tell us that if we do not promptly, as a nation, take adequate preventive measures, we will have an environmental emergency in the next decade. The essence of their warning is simple and blunt. Increasing amounts of deleterious substances entering the air threaten to impair the Na-

tion's health and productivity, perhaps on an epidemic scale. A water emergency may be even more imminent. It is now familiar that a number of our rivers and lakes are so badly polluted that they will no longer support much aquatic life and are a biological threat to human populations on their shores; but what may not be so well known is that by the middle 1970's, if the current trend of demand continues, the need for water in our expanding population may well exceed the total potential supply from present sources. Whether by that time desalinization of ocean water will be far enough advanced to make up the shortage is still uncertain.

I think we must all ask ourselves why is it, since industry is doing so much, and government is striving so hard to prevent further deterioration of the environment—why is it that there has not been more progress overall?

A good part of the answer is that the effort to protect the environment is badly fragmented on both the local and national levels. Let me take the local situation first. The tendency has been to attack the problem piece-meal, as situations become critical in one respect or another. There has been comparatively little overall environmental planning in local communities. Few have been able to figure out how to deal with the complexities of pollution from sewage and garbage, from automobile exhausts, from domestic heating, and from industrial smoke and effluents, together with the problems of waste disposal; and few could find the money to do the job even if they knew how. As a result there is often a good deal of procrastinating and an inclination to blame the other fellow for worsening conditions, but too little constructive action.

People need to realize that pollution is not an evil visited upon their communities by this or that segment of society. It is the common problem of all, the inevitable accompaniment of the process of social growth and development. Wherever people produce and consume there are bound to be residues that are extremely difficult to dispose of, and which if they accumulate too rapidly **can poison the air, water and** soil on which man depends for life. These are simply products of the social metabolism. The problem is to keep the residues at tolerable levels—a difficult but by no means impossible task. But unless and until the environment is dealt with as a whole, there will not be enough forward momentum, in my opinion, to reverse present negative trends.

Now I am a great believer in local initiative. I know that the well-springs of our success as a nation lie in the spontaneous response of many thousands of separate communities to local conditions and challenges. But it is all too easy for the energies of a community to be frustrated and dissipated unless they are synchronized with the primary goals of the nation as a whole. If we are going to be effective in checking environmental deterioration at the local level—if we are going to pass on to our children an environment that offers promise for a good life, I believe we will have to make a much more unified effort than we have seen to date—an effort that will combine all the now scattered energies devoted to this problem into a single force to the benefit of the entire country.

I imagine that all of us here know that President Nixon and the Congress have recently begun to move toward a national approach to environmental protection. The President has already established an Environmental Quality Council with himself as Chairman, and with a membership made up of appropriate Cabinet members and White House advisers, with the aim of arriving at sound national policies. Bills with much the same purpose are currently being considered by the Congress. One of them, sponsored by Senator Jackson, proposes to set up a council consisting of full time professionals in this field to advise the President. Another bill, introduced by Senator Muskie, aims to establish an Office of Environmental Quality in the Executive Office of the President, as an intelligence center and advisory body.

These are useful steps as far as they go, but in my opinion they do not go nearly far enough to meet the requirements of our national situation. If we are going to deal successfully with the mounting dangers to the environment, the government needs not only sound information, advice and policies, but an operating organization that can move fast to do what needs to be done. At present executive authority in this field is divided among so many government departments and agencies that the complete list runs to several typed pages.

We have in the not far distant past seen *ad hoc* agencies of this kind called into being by the President and the Congress to meet emergency situations, and with good results. One of them was the War Production Board of the early 1940's, where I was able to see close up how much could be accomplished by an agency with broad powers to tap the energies of the nation's complicated economy, and direct them to a specific end. The other was the Reconstruction Finance Corporation of the 1930's, which had the task of helping to revive a declining economy, together with the power to raise the needed capital. Both of these organizations were staffed primarily by businessmen. While I would not presume to try to define the right kind of government agency for the present need, it strikes me that the nature and accomplishments of the WPB and RFC might be profitably studied and the lessons applied in the current environmental situation.

My feeling is that the sooner the President and the Congress create an "Environmental Protection Board" with strong executive, rather than merely advisory powers, the better off the country will be a few years from now. I can see no more hopeful way to carry out the necessary work. A top level agency reporting to the President and acting under his authority would be in a position to analyze the environmental needs of every part of the country, and set up regional models and priorities to enable local authorities to see what has to be done, in what sequence, how soon, and at what cost. Such an agency could coordinate scientific research on the environment throughout the country, with a view to arriving at sound criteria and standards, and the use of the most efficient equipment and processes. The Board could assist states, cities and towns in systematically initiating essential projects in the most economical way. Of great importance also would be the intensive education of the public in their responsibilities to the environment—not only adults, but especially the young who will have to carry on the effort to protect the environment in the years ahead.

My remarks here have concentrated on the aspects of environmental deterioration that demand prior attention from the forest-based industries, notably air and water pollution and conservation, but in all probability a Federal program of action to be fully effective might finally have to deal with other major aspects of the ecological balance, as they derive from such major conditions as urban blight and soil pollution.

Plainly, the cost of environmental protection is going to run to many billions of dollars over the next decade—and this is a time when the government is already faced with many urgent and competing demands on the budget. The new agency, however, by centralizing operations which are now appallingly fragmented, could undoubtedly achieve important economies. Certainly, it would offer for the first time a fully coordinated attack on the problem—and one that is essential if we are going to overcome the threats of a water famine, epidemics of respiratory diseases and shortages of raw materials. I think the American public has the good sense to recognize the imperative need and would support the government in a unification of executive powers over the environment.

Bold and vigorous action by the Federal government along these lines is also likely to have a tonic effect on the nation's morale. The depressing psychological climate created by a deteriorating environment cannot be easily measured, but I suspect that it is an insidious negative force now working below the level of consciousness to weaken the spirit of the people. The reassurance that would be given by an all-out drive to improve the environment might do more to unify, encourage and energize our nation than any other development that I can foresee.

In fact, if the government should move soon to create and implement a unified environmental strategy, the benefits might be felt internationally, as well as within our borders. The United Nations has called a conference to formulate world policy on the environmental problem in 1972. If by that time we in the United States are moving strongly to protect our own environment, many another nation may find our example worth following. This is one of the few issues on which international solidarity might be achieved in our time. By displaying vision, by leading the way, this country may open up new vistas of hope to all men threatened by environmental deterioration, and may enrich the lives of future generations, not only on this continent, but throughout the world.

RECOGNITION OF HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, the first paragraph in the preamble of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948, states:

> Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

I feel that in this preceding paragraph, "recognition" is a vital word, one that we should all pay close attention to.

The United States has historically affirmed "the inherent dignity and of the equal and inalienable rights of all members of the human family." Furthermore, our Declaration of Independence and Constitution explicitly extols these basic principles. This is as it should be.

However, whereas the United States has incorporated these most basic principles into its own laws, it has not done so on the international level. In other words, the United States has not officially "recognized" a number of these human rights. Specifically, I am referring to the refusal of this body to ratify the Human Rights Conventions on Political Rights for Women, on Forced Labor, and on Genocide.

The time is now for the United States to stand up and be counted as one of the many nations to recognize "the equal and inalienable rights of all members of the human family." Simply to affirm these rights through political rhetoric is no longer enough. We must move to close the gap between rhetoric and reality, we must move to ratify these Human Rights Conventions.

I am firmly convinced that if we take this step toward ratification, that if we

take this step of "recognition," then we will have advanced the day when there will be "justice and peace in the world" for all.

THE MORGANTOWN, W. VA., YOUTH CENTER

Mr. BYRD of West Virginia. Mr. President, in its Current Affairs section on November 16, the Sunday Gazette-Mail of Charleston, W. Va., published an informative article on a project in which I am deeply interested—the Robert F. Kennedy Youth Center.

Some years ago, I was instrumental in getting the National Training School for Boys moved from its century-old facilities in Washington, D.C., to a 322-acre site at Morgantown, W. Va. The facilities which had been renamed the Robert F. Kennedy Youth Center, was opened in January of this year and currently trains 178 youthful offenders. Eventually it will have adequate facilities for 300.

Mr. President, I take pride in playing a part in the transfer and in securing the necessary funds, as a member of the Appropriations Committee to provide the Federal institution with the most modern facilities and equipment to carry out its rehabilitation program. I also take great pride in the successes being reported by the center.

The article, written by Sandra Grant, points out that one boy released earlier this month has made arrangements to enter college. Describing the center as more of a community than an institution, the writer also notes:

> The work program is designed to give each inmate basic skills and crafts in several trades or crafts—skills that will get him a job when he is released.

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

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

GUNS, FENCES, FEAR—HERE THERE IS NONE

(By Sandra Grant)

MORGANTOWN.—The penologist in the U.S. Department of Justice wanted it to be a prison.

They wanted the buildings to look like prison buildings. They wanted two high fences of barbed wire around the property, with armed guards and police dogs patrolling between the fences.

The sociologists wanted it to be a school and a treatment center.

The sociologists won.

The Robert F. Kennedy Youth Center, about a mile from Morgantown, is a collection of light-filled, spacious buildings separated from the outside world only by a perimeter road. Few of the guards wear uniforms or guns. The inmates are called students, and they are allowed to wear long hair, sideburns and mustaches. The walls in a couple of the buildings are plastered with anti-war signs. And the Robert F. Kennedy Youth Center is the only prison in the federal system that has a pet cat.

"I know that a lot of people call this country-clubbing," says Roy Gerard, who did most of the planning for the center he now directs. "A lot of people think prisons don't deserve the comforts and attention we provide. But we're trying to run a rehabilitation institution, not just a place where people are confined and punished for a designated length of time. Isn't it better to release people who have some work skills and can function successfully in society rather than people who have gained nothing from being in an institution and are likely to get into trouble again?"

Kennedy opened in January. It now has 178 inmates, ranging in age from 13 to 20. The population will gradually build to about 300 and will be kept at that level.

"Our population is selected for us," says Gerard. "We take boys from the eastern half of the United States and we receive the youngest, least sophisticated offenders. The boys we get have usually been in trouble for two or three years. More than half have had previous commitments to correctional institutions. Most of them have committed crimes against property, such as driving stolen cars across state lines. We get very few who have committed violent crimes, because those are usually state offenses. We have some boys who have been convicted of charges involving drugs, such as illegal possession of marijuana. We get a few who have committed military-related crimes, such as going AWOL or refusing to be inducted."

Many of the boys at Kennedy now were transferred there from other institutions when the center opened in January. It was a move they appreciated. "I was at the National Training School in Washington before I came here," one boy said recently. "I couldn't even compare the two. I've gained insight into my problems here and I've learned to care about other people." This boy went home a week ago. He has already made arrangements to re-enter college.

Boys arrive at Kennedy in arm chains, handcuffs and, sometimes, leg irons. They are placed in the reception cottage, the only building which is always locked. For two weeks they are tested, observed and interviewed. They are classified into four behavior groups: inadequate-immature, neurotic-disturbed, subcultural and psychopathic. At the end of the first two weeks, they are moved to the four cottages where the different behavior groups are housed.

"An important part of our program is differential treatment and staff matching," says Gerard. "Their criminal behavior is related to their emotional problems. If they're going to be rehabilitated, they need treatment tailored to their needs. They can't be put together and treated the same."

The inadequate-immature inmates need enriching, educational experiences that will help them grow up emotionally. These are usually youngsters who have been led into delinquency by more sophisticated offenders, Gerard points out.

The boys classified as subcultural need to have their attention focused on society as whole. They have gang habits that must be broken.

The psycopathic inmates, Gerard says, are helped most by varied, constant activity and a firm set of rules that leaves no doubt in their minds about what is expected of them.

"In each cottage," the director says, "we place the correctional officers whose beliefs about and approach to their work match the needs of the boys. Many people who are attracted to correctional work are police types. We need them to work with the psychopathic offenders who respond best to the drill-sergeant approach. The other boys need officers who are more interested in getting close to the inmates and working on their emotional problems."

Gerard, who was superintendent of the National Training School for two and a half years before he was assigned to work on plans for Kennedy, developed the classification and differential treatment program with the help of Dr. Herbert C. Quay, chairman of Temple University's Division of Educational Psychology, and Dr. Robert Levenson, chief of psychological services for the Bureau of Prisons.

"I was given a major role in the planning almost a year before the center was completed and opened," Gerard says. "Many of the things we're doing here have a strong theoretical base. We tested these treatment techniques in experiments at the National Training School and we proved that they work."

Gerard and a battery of consultants also planned an innovative work program and an institution-wide economic system.

The work program is designed to give each inmate basic skills in several trades or crafts—skills that will get him a job when he's released. Each boy begins as a trainee. He must wear an inmate's uniform and sleep in a cubicle in a dormitory. Every week he gets a salary in the form of points. The number of points he receives depends on how well he does his work, how well he does in the center's school and how well he gets along with his fellow inmates. He must pay for everything he receives, from his sleeping space to his between-meal snacks.

A trainee works his way up to apprentice and begins to earn a higher salary. He is able at this point to pay for a private room with a cot, a metal cabinet and a chair. He may wear his own clothes during evenings and on weekends.

The third and last work level is the honor class. An inmate in the honors group has larger room with a private sink, a toilet, and more storage space. He may wear his own clothes at any time and is eligible for weekend home visits.

The boys who cooperate in this program are doing all they can be expected to do, Gerard says. They shouldn't be badgered constantly about the length of their hair, their feelings about the Vietnam war or the style of clothing they prefer.

"It's much easier for them to relax and devote themselves to what we want them to be doing if they don't have to think about a lot of things that have nothing to do with our program," Gerard says. "We could spend most of our time making sure the boys have short haircuts and don't smoke cigarettes. But we'd be wasting our time if we did. They're going to smoke anyway, and they'd get the cigarettes somehow. There's no point in trying to prevent it. And hair is an individual thing. I don't know of any study that relates the length of a person's hair to delinquency. We have rules, but lenient ones. The hair can be no longer than the collar. The mustache can be no wider than the mouth. No beards are allowed. Sideburns must be no longer than the bottom of the ear. The Negro boys can wear Afros if they want to—some of them do."

Gerard had some trouble convincing the center's barber that it was all right to just trim instead of cut, but that problem was licked long ago.

Gerard has been fighting little battles like these for the boys since the place opened. One of his memorable attacks on the twists and tangles of bureaucratic red tape and punishment-oriented treatment came after a cat took up residence on the center's grounds. As cats will, this one decided he had found a home and he settled down to stay. But pets are strictly forbidden in federal institutions.

The boys wanted to keep the cat. Gerard couldn't see any harm in the animal's presence. To the contrary, the cat seemed to have united the boys in a pride of owership.

Gerard had to go to Washington officials with a good sales talk on the cat. But he finally got permission for the animal to stay and it is there now, symbol of an unprecedented victory over rules and regulations.

These little battles are little indeed after the wrangling that took place before the center was even built. Plans for the facility were initiated while Robert F. Kennedy was attorney general—almost eight years ago. The architectural contract was awarded to C. E. Silling and Associates, a Charleston firm.

Although Gerard emphasizes the favorable way plans finally worked out, Silling recalls,

"If it had been built the way the penologists originally wanted it, the Kennedy Youth Center would look and be like a prison today. They wanted the two barbed wire fences with the dogs patrolling between them, for instance. The sociologists and we, the architects, got rid of one of the fences. Then we managed to get rid of the second one. Then we got rid of the dogs. Now there's just a road around the grounds, and the boys understand that the minute they put a foot on that road, they're off limits. We hope, and we believe, that the architecture has something to do with the atmosphere of the center. We're very proud of it. We regard it as one of our most successful projects."

With the center not yet a year old, Gerard still has many plans that he hasn't had time to put into operation. A Morgantown drama group used the center's auditorium to present a play this summer and inmates took part in the production. Gerard wants more activities of this sort going on more often. He's pleased by the success of a Jaycee chapter that was started in one of the cottages and he wants to get other boys involved in scouting and similar "outside" groups. He wants to work out a legal procedure that will allow more events such as the West Virginia University swim meet held in the center's gymnasium recently.

"This is the first federal correctional institution that's been a real part of the community," Gerard says. "We've still got red tape to get around, because there's liability involved when any citizen uses this kind of federal government facility. We're getting the community more and more interested and involved in what we're doing here, though. The people of Morgantown are learning that they don't have to be afraid of the boys at the Kennedy Center, and the boys are beginning to feel that they're living in a community, not in an institution that has no relation to what's outside of it."

CHEMICAL AND BIOLOGICAL WEAPONS

Mr. FULBRIGHT. Mr. President, the subject of chemical and biological weapons is one of utmost concern and great complexity. They are not pleasant subjects to think about in the first place and until very recently they have been further shielded from our consciousness by an excessive shroud of secrecy. Having now been brought into the open, the theoretical and technical aspects of the subject matter complicate the task of sound analysis and judgment. Nevertheless, a great deal of excellent thought is now being given to this subject, work which should be of great value to Members of this body in the future.

Recently, several Members of the House sponsored a study of the strategic and tactical implications of chemical and biological weapons. Their report was presented on November 3, and I have received a copy of it from Representative JOHN DELLENBACK.

I commend this effort and bring it to the attention of the Senate, for it goes directly to the most difficult and most abstract elements of the CBW issue. Even those of us who most deeply abhor the thought that chemical and biological agents might actually be employed must, nevertheless, arrive at our own answer to the central question posed in this excellent study: "Do chemical and biological weapons add a positive measure to our overall national security?"

I urge Senators to study the report, and I ask unanimous consent that a statement by its sponsors and its introduction be printed in the RECORD.

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

CBW AND NATIONAL SECURITY, NOVEMBER 3, 1969

This is a study of the strategic and tactical implications of chemical and biological weapons. While an analysis of this length cannot be exhaustive, the sponsors of this study group paper believe that it contains perspectives and recommendations worthy of consideration by this Congress and the Administration.

The sponsors of this study group paper are Congressmen:

John Dellenback of Oregon.
Charles A. Mosher of Ohio.
Howard W. Robison of New York.
Fred Schwengel of Iowa.

Additionally, the following Members of Congress have joined the study group in encouraging, through the release of this paper, a re-examination of the strategic and tactical purposes served by chemical and biological weapons:

Marvin L. Esch of Michigan.
Peter H. B. Frelinghuysen of New Jersey.
Gilbert Gude of Maryland.
Frank Horton of New York.
Paul McCloskey of California.
Joseph M. McDade of Pennsylvania.
F. Bradford Morse of Massachusetts.
Ogden R. Reid of New York.
Philip E. Ruppe of Michigan.
Herman T. Schneebeli of Pennsylvania.
Robert T. Stafford of Vermont.
Charles W. Whalen, Jr. of Ohio.

INTRODUCTION

The recent concern about safety procedures in the handling of chemical and biological weapons has caused us to re-examine the purposes for which we have these weapons. Our effort has necessarily involved analysis of the advantages and disadvantages of CBW in each of the situations our country faces or might face. Accordingly, we have considered chemicals and biologics as deterrents to all-out war and as tactical weapons in limited wars. It stands to reason that the judgment of the Congress concerning the future of these weapons must be based on this kind of analysis.

We need to determine whether these weapons are valuable additions to our already impressive arsenal of conventional and nuclear weapons. It is not justifiable to continue developing, producing and testing chemical and biological weapons simply because we can develop safe testing and storage procedures for them. Also, we cannot logically accept the rationale that we need chemical and biological weapons simply because some other country is engaged in CBW production. Similarly, it is not enough to say that they enhance "flexibility": one must analyze their specific advantages. Only weapons which add a positive measure to our overall national security deserve support.

As a result of our inquiry, we question whether chemical and biological weapons add significantly to our security. The risks we run by using and maintaining secret stockpiles seem to outweigh the dubious advantages offered by these weapons.

On this page and the next page, we will present a few of our concerns, highlighting rationales which are elaborated in the main body of the paper. Here we will also offer some recommendations.

As deterrents to all-out war, chemical weapons are neither more cost-effective nor certain than our nuclear deterrent. Biological weapons are doubly uncertain as mass killers. On the one hand, their effectiveness can be blunted by extreme weather conditions or unpredictable biological reactions. On the other hand, a successful attack by us could initiate an epidemic that might spread to infect our own population. When a weapon is potentially dangerous to both the attacker and the attacked, retaliatory threats lack sufficient credibility.

Although many have accepted the notion that CB weaponry is humane, we are dubious. Many of these weapons are naturally inhumane, while others which could theoretically be used to reduce war deaths have actually been used to increase them. Contrary to the assumption that weapons which have been secretly developed and tested for years will perform effectively in the field, many of them have not significantly improved our military position and many more cause severe ecological damage which may make them less acceptable than conventional weapons.

We suspect that virtually all CBW is highly escalatory in limited war. When we fight limited conflicts to avoid all-out war, chemical and biological weapons may push us toward total war. When we are willing to escalate, chemicals and biologics are very likely at least as escalatory as tactical nuclear devices.

Finally, we find that in the field of CBW there appear to be unique opportunities to disarm voluntarily or on a negotiated basis. There is genuine international interest in reaching a negotiated settlement on CBW, yet it is doubtful that the elimination of our chemical and biological stockpiles would result in significant military loss.

We are cognizant of the dangers associated either with using these weapons or secretly continuing to produce and stockpile them. There are already indications that our use of chemicals causes serious and permanent damage. Yet, even this damage is small when compared to the unpredictable misery that a full-scale biological attack might initiate or the total war that a chemical attack might provoke during a limited conflict. By possessing these weapons we increase the likelihood of use. In addition, we risk an international incident when an unexplained epidemic provokes charges of a secret biological attack. Finally, these uncertain weapons have a destabilizing effect on relations between adversaries because they make rational calculations difficult.

Because the logic of this paper suggests that the disadvantages of CBW outweigh their marginal advantages and because it takes into account both the evils and the alleged benefits of CB weaponry,

We recommend careful consideration of the following actions:

(1) Eliminating all stockpiles of chemical and biological weapons, including any low-evel chemicals for military use. This does not incude riot control agents used for crowd control in the U.S.

(2) Publicizing the results of future research in the field of CBW.

(3) Encouraging international agreement on the prohibition of chemical and biological production and usage.

(4) Ratification by the U.S. of the 1925 Geneva Protocol.

(5) Declaring that the United States will not use such weapons but will respond to their use by adversaries with appropriate conventional or nuclear force.

WHO DARES TO SPEAK OUT?—AGNEW DOES

Mr. MUNDT. Mr. President, in reading the editorial pages of the widely acclaimed Commercial Appeal, of Memphis, Tenn., the other day, I came across an interesting column written by its columnist Alice Widener. I ask unanimous consent that it be printed in the RECORD. It is yet another indication of the rising reputation of Vice President

AGNEW, which grows more apparent every day.

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

WHO DARES TO SPEAK OUT?—AGNEW DOES

(By Alice Widener)

NEW YORK.—President Nixon's pride in Vice President Spiro Agnew is understandable and justified. No doubt about it, Vice President Agnew is an unusual man and political figure, one with a mind of his own and courage to speak it in his own graphic words. This is refreshing in these times when professional speech writers or "ghost writers" are the gray eminences behind the thrones occupied by many mediocre public officials.

Of course, Mr. Agnew's colorful, forthright remarks are distasteful to the sloganeers of the Eastern Establishment, who go on and on in print and over the air, writing and mouthing the faddist phrases "generation gap" and "life style" and "doing our thing" (my thing, his thing, her thing, your thing, its thing, their thing).

In the opinion of several stars in the Eastern firmament, Agnew is committing an unpardonable sin by writing his own speeches. Just imagine! He has the temerity to speak to Americans in words not put into his mouth by Arthur Schlesinger Jr., or Ted Sorenson, or Richard Goodwin, or Marcus Raskin, or Arthur Waskow or Jack Newfield, or any other writer for the Massachusetts Dynasty.

Think of it! Mr. Agnew has the gall to address Americans without first having sent emissaries to pundit Walter Lippman to find out what is right, just, reasonable, equitable, philosophical and "mature." Still worse, Spiro T. Agnew doesn't clear his speeches in advance with the editorial board of The New York Times, or let it float a "trial balloon" on the front page to find out whether he can afford politically to present a proposal or suggestion to his fellow citizens.

"It is time to stop dignifying the immature actions of arrogant, reckless, inexperienced elements within our society," declared the Vice President in Harrisburg, Pa. "The reason is compelling. It is simply that their tantrums are insidiously destroying the fabric of American life."

Eh, what's that? Does Agnew dare to say that Rennie Davis of the Chicago Eight on trial for conspiracy to riot is not humble, prudent, experienced and cool-headed? Why in Grant Park, Chicago, last August, Rennie called for the spreading of mutiny "to every Army base, every high school and every community in the country." Isn't that truly progressive, humane and peaceful?

It seems President Nixon thinks Vice President Agnew is voicing views held by the majority of Americans. Evidently, the President is correct.

Surely, a majority of Americans support Vice President Agnew's aphorism: "People cannot live in a state of perpetual electric shock." But of course these wise words must be too simplistic and utterly worthless intellectually since neither J. Kenneth Galbraith nor Dr. Benjamin Spock said them.

Nevertheless, Agnew said it and Nixon praised it. But perhaps they don't really count, being merely the duly elected President and Vice President of the United States, not appointed spokesmen for the "in" group at the Compound in Hyannis Port.

TRADE ACT OF 1969—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91-194)

The PRESIDENT pro tempore. The Chair lays before the Senate, as in legislative session, a message from the President of the United States on freer world trade. Without objection, the message will be printed in the RECORD, without being read, and will be appropriately referred.

As in legislative session, the following message from the President of the United States, with the accompanying papers, was referred to the Committee on Finance:

To the Congress of the United States:

For the past 35 years, the United States has steadfastly pursued a policy of freer world trade. As a nation, we have recognized that competition cannot stop at the ocean's edge. We have determined that American trade policies must advance the national interest—which means they must respond to the whole of our interests, and not be a device to favor the narrow interest.

This Administration has reviewed that policy and we find that its continuation is in our national interest. At the same time, however, it is clear that the trade problems of the 1970s will differ significantly from those of the past. New developments in the rapidly evolving world economy will require new responses and new initiatives.

As we look at the changing patterns of world trade, three factors stand out that require us to continue modernizing our own trade policies:

First, world economic interdependence has become a fact. Reductions in tariffs and in transportation costs have internationalized the world economy just as satellites and global television have internationalized the world communications network. The growth of multinational corporations provides a dramatic example of this development.

Second, we must recognize that a number of foreign countries now compete fully with the United States in world markets.

We have always welcomed such competition. It promotes the economic development of the entire world to the mutual benefit of all, including our own consumers. It provides an additional stimulus to our own industry, agriculture and labor force. At the same time, however, it requires us to insist on fair competition among all countries.

Third, the traditional surplus in the U.S. balance of trade has disappeared. This is largely due to our own internal inflation and is one more reason why we must bring that inflation under control.

The disappearance of the surplus has suggested to some that we should abandon our traditional approach toward freer trade. I reject this argument not only because I believe in the principle of freer trade, but also for a very simple and pragmatic reason: any reduction in our imports produced by U.S. restrictions not accepted by our trading partners would invite foreign reaction against our own exports—all quite legally. Reduced imports would thus be offset by reduced exports, and both sides would lose. In the longer term, such a policy of trade restriction would add to domestic inflation and jeopardize our competitiveness in world markets at the very time when tougher competition throughout the world requires us to improve our competitive capabilities in every way possible.

In fact, the need to restore our trade surplus heightens the need for further movement toward freer trade. It requires us to persuade other nations to lower barriers which deny us fair access to their markets. An environment of freer trade will permit the widest possible scope for the genius of American industry and agriculture to respond to the competitive challenge of the 1970s.

Fourth, the less developed countries need improved access to the markets of the industrialized countries if their economic development is to proceed satisfactorily. Public aid will never be sufficient to meet their needs, nor should it be. I recently announced that, as one step toward improving their market access, the United States would press in world trade forums for a liberal system of tariffs preferences for all developing countries. International discussions are now in progress on the matter and I will not deal with it in the trade bill I am submitting today. At the appropriate time, I will submit legislation to the Congress to seek authorization for the United States to extend preferences and to take any other steps toward improving the market access of the less developed countries which might appear desirable and which would require legislation.

THE TRADE ACT OF 1969

The trade bill which I am submitting today addresses these new problems of the 1970s. It is modest in scope, but significant in its impact. It continues the general drive toward freer world trade. It also explicitly recognizes that, while seeking to advance world interests, U.S. trade policies must also respect legitimate U.S. interests, and that to be fair to our trading partners does not require us to be unfair to our own people. Specifically:

—It restores the authority needed by the President to make limited tariff reductions.

—It takes concrete steps toward the increasingly urgent goal of lowering non-tariff barriers to trade.

—It recognizes the very real plight of particular industries, companies and workers faced with import competition, and provides for readier relief in these special cases.

—It strengthens GATT—the General Agreement on Tariffs and Trade—by regularizing the funding of United States participation.

While asking enactment of these proposals now, the trade program I will outline in this message also includes setting preparations under way for the more ambitious initiatives that will later be needed for the long-term future.

TARIFF REDUCTION

I recommend that the President be given authority to make modest reductions in U.S. tariffs.

The President has been without such authority for over two years. This authority is not designed to be used for major tariff negotiations, but rather to make possible minor adjustments that individual circumstances from time to time require—as, for example, when it becomes necessary to raise the duty on an article as the result of an "escape

clause" action or when a statutory change is made in tariff classification. Our trading partners are then entitled to reasonable compensation, just as we would be entitled to receive it from them in reverse circumstances. Lack of this authority exposes our exports to foreign retaliation. Therefore, the Bill would provide to the President, through June 30, 1973, the authority to reduce tariffs by limited amounts.

NON-TARIFF BARRIERS

The time has come for a serious and sustained effort to reduce non-tariff barriers to trade. These non-tariff barriers have become increasingly important with the decline in tariff protection and the growing interdependence of the world economy. Their elimination is vital to our efforts to increase U.S. exports.

As a first step in this direction, I propose today that the United States eliminate the American Selling Price system of customs valuation.

Although this system applies only to a very few American products—mainly benzenoid chemicals—it is viewed by our principal trading partners as a major symbol of American protectionism. Its removal will bring reciprocal reductions in foreign tariffs on U.S. chemical exports, and a reduction in important foreign non-tariff barriers—including European road taxes, which discriminate against our larger automobiles, and the preferential treatment on tobacco extended by the United Kingdom to the countries of the Commonwealth. Beyond this, its removal will unlock the door to new negotiations on the entire range of non-tariff barriers. Because of the symbolic importance our trading partners attach to it, the American Selling Price system has itself become a major barrier to the removal of other barriers.

Essentially, the American Selling Price system is a device by which the value of imports for tariff purposes is set by the price of competitive American products instead of the actual price of the foreign product, which is the basis of tariff valuation for all other imports. The extraordinary protection it provides to these few products has outlived its original purposes. The special advantage it gives particular producers can no longer justify its heavy cost in terms of the obstacles it places in the way of opening foreign markets to American exports.

Reducing or eliminating other non-tariff barriers to world trade will require a great deal of detailed negotiating and hard bargaining.

Unlike tariffs, approaches to the reduction of non-tariff barriers are often difficult to embody in prior delegation of authority. Many—both here and abroad—have their roots in purely domestic concerns that are only indirectly related to foreign trade, and many arise from domestic laws.

Many would require specific legislative actions to accomplish their removal—but the nature of this action would not finally be clear until negotiation had shown what was possible.

This presents a special opportunity for Congress to be helpful in achieving international agreements in this vital area.

I would welcome a clear statement of Congressional intent with regard to non-tariff barriers to assist in our efforts to obtain reciprocal lowering of such barriers.

It is not my intention to use such a declaration as a "blank check." On the contrary, I pledge to maintain close consultation with the Congress during the course of any such negotiations, to keep the Congress fully informed on problems and progress, and to submit for Congressional consideration any agreements which would require new legislation. The purpose of seeking such an advance declaration is not to bypass Congress, but to strengthen our negotiating position.

In fact, it is precisely because ours is a system in which the Executive cannot commit the Legislative Branch that a general declaration of legislative intent would be important to those with whom we must negotiate.

At the same time, I urge private interests to work closely with the government in seeking the removal of these barriers. Close cooperation by the private sector is essential, because many non-tariff barriers are subtle, complex and difficult to appraise.

AID FOR AFFECTED INDUSTRIES

Freer trade brings benefits to the entire community, but it can also cause hardship for parts of the community. The price of a trade policy from which we all receive benefits must not fall unfairly on the few—whether on particular industries, on individual firms or on groups of workers. As we have long recognized, there should be prompt and effective means of helping those faced with adversity because of increased imports.

The Trade Act of 1969 provides significant improvements in the means by which U.S. industry, firms, and workers can receive assistance from their government to meet injury truly caused by imports.

This relief falls into two broad categories: 1) the escape clause, which is industry-wide; and 2) adjustment assistance, which provides specific aid to particular firms or groups of workers.

These improvements are needed because the assistance programs provided in the Trade Expansion Act of 1962 have simply not worked.

ESCAPE CLAUSE

The escape clause provisions of the 1962 Act have proved so stringent, so rigid, and so technical that in not a single case has the Tariff Commission been able to justify a recommendation for relief. This must be remedied. We must be able to provide, on a case-by-case basis, careful and expedited consideration of petitions for relief, and such relief must be available on a fair and reasonable basis.

I recommend a liberalization of the escape clause to provide, for industries adversely affected by import competition, a test that will be simple and clear: relief should be available whenever increased imports are the primary cause of actual or potential serious injury. The increase in imports should not—as it now is—have to be related to a prior tariff reduction.

While making these escape clause adjustments more readily obtainable, however, we must ensure that they remain what they are intended to be: temporary relief measures, not permanent features of the tariff landscape. An industry provided with temporary escape-clause relief must assume responsibility for improving its competitive position. The bill provides for regular reports on these efforts, to be taken into account in determining whether relief should be continued.

ADJUSTMENT ASSISTANCE

With regard to adjustment assistance for individual firms and groups of workers, the provisions of the Trade Expansion Act of 1962 again have not worked adequately.

The Act provides for loans, technical assistance and tax relief for firms, and readjustment allowances, relocation and training for workers. This direct aid to those individually injured should be more readily available than tariff relief for entire industries. It can be more closely targeted; it matches the relief to the damage; and it has no harmful side effects on overall trade policy.

I recommend that firms and workers be considered eligible for adjustment assistance when increased imports are found to be a substantial cause of actual or potential serious injury.

Again, the increase in imports would not have to be related to a prior tariff reduction. The "substantial cause" criterion for adjustment assistance would be less stringent than the "primary cause" criterion for tariff relief.

I also recommend two further changes in the existing adjustment provisions:

—That the Tariff Commission continue to gather and supply the needed factual information, but that determinations of eligibility to apply for assistance be made by the President.

—That adjustment assistance be made available to separate units of multi-plant companies and to groups of workers in them, when the injury is substantial to the unit but not to the entire parent firm.

With these modifications, plus improved administrative procedures, our program of assistance to import-injured firms and workers can and will be made to work. Taken together, they will remedy what has too long been a serious shortcoming in our trade programs.

These changes in our escape clause and adjustment assistance programs will provide an adequate basis for government help in cases where such help is justified in the overall national interest. They will thus help us move away from protectionist proposals, which would reverse the trend toward interdependence, and toward a constructive attack on the existing trade barriers of others.

The textile import problem, of course, is a special circumstance that requires special measures. We are not trying to persuade other countries to limit their textile shipments to the United States. In doing so, however, we are trying to work out with our trading partners a reasonable solution which will allow both domestic and foreign producers to share equitably in the development of the U.S. market.

Such measures should not be misconstrued, nor should they be allowed to

turn us away from the basic direction of our progress toward freer exchange.

FAIR TREATMENT OF U.S. EXPORTS

By nature and by definition, trade is a two-way street. We must make every effort to ensure that American products are allowed to compete in world markets on equitable terms. These efforts will be more successful if we have the means to take effective action when confronted with illegal or unjust restrictions on American exports.

Section 252 of the Trade Expansion Act of 1962 authorizes the President to impose duties or other import restrictions on the products of any nation that places unjustifiable restrictions on U.S. agricultural products. *I recommend that this authority be expanded in two ways:*

—By extending the existing authority to cover unfair actions against all U.S. products, rather than only against U.S. agricultural products.

—By providing new authority to take appropriate action against nations that practice what amounts to subsidized competition in third-country markets, when that subsidized competition unfairly affects U.S. exports.

Any weapon is most effective if its presence makes its use unnecessary. With these new weapons in our negotiating arsenal, we should be better able to negotiate relief from the unfair restrictions to which American exports still are subject.

STRENGTHENING GATT

Ever since its beginning in 1947, U.S. participation in GATT—the General Agreement on Tariffs and Trade—has been financed through general contingency funds rather than through a specific appropriation.

GATT has proved its worth. It is the international organization we depend on for the enforcement of our trading rights, and toward which we look as a forum for the important new negotiations on nontariff barriers which must now be undertaken.

I recommend specific authorization for the funding of our participation in GATT, thus both demonstrating our support and regularizing our procedures.

FOR THE LONG-TERM FUTURE

The trade bill I have submitted today is a necessary beginning. It corrects deficiencies in present policies; it enables us to begin the 1970s with a program geared to the start of that decade.

As we look further into the Seventies, it is clear that we must reexamine the entire range of our policies and objectives.

We must take into account the far-reaching changes which have occurred in investment abroad and in patterns of world trade. I have already outlined some of the problems which we will face in the 1970s. Many more will develop—and also new opportunities will emerge.

Intense international competition, new and growing markets, changes in cost levels, technological developments in both agriculture and industry, and large-scale exports of capital are having profound and continuing effects on international production and trade patterns. We can no longer afford to think of our trade policies in the old, simple terms of liberalism vs. protectionism. Rather, we must learn to treat investment, production, employment and trade as interrelated and interdependent.

We need a deeper understanding of the ways in which the major sectors of our economy are actually affected by international trade.

We have arrived at a point at which a careful review should also be made of our tariff structure itself—including such traditional aspects as its reliance upon specific duties, the relationships among tariff rates on various products, and adapting our system to conform more closely with that of the rest of the world.

To help prepare for these many future needs, I will appoint a Commission on World Trade to examine the entire range of our trade and related policies, to analyze the problems we are likely to face in the 1970s, and to prepare recommendations on what we should do about them. It will be empowered to call upon the Tariff Commission and the agencies of the Executive Branch for advice, support and assistance, but its recommendations will be its own.

By expanding world markets, our trade policies have speeded the pace of our own economic progress and aided the development of others. As we look to the future, we must seek a continued expansion of world trade, even as we also seek the dismantling of those other barriers—political, social and ideological—that have stood in the way of a freer exchange of people and ideas, as well as of goods and technology.

Our goal is an open world. Trade is one of the doors to that open world. Its continued expansion requires that others move with us, and that we achieve reciprocity in fact as well as in spirit.

Armed with the recommendations and analyses of the new Commission on World Trade, we will work toward broad new policies for the 1970s that will encourage that reciprocity, and that will lead us, in growing and shared prosperity, toward a world both open and just.

RICHARD NIXON.

THE WHITE HOUSE, *November 18, 1969.*

CONCLUSION OF MORNING BUSINESS AS IN LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, is there further morning business as in legislative session.

The PRESIDENT pro tempore. Is there further morning business as in legislative session? If not, morning business is closed.

SUPREME COURT OF THE UNITED STATES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, in executive session, the Senate proceed to the consideration of the pending nomination.

The PRESIDENT pro tempore. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Is there objection?

There being no objection, the Senate resumed the consideration of the nomination.

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

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

The bill clerk proceeded to call the roll.

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

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

The Chair recognizes the distinguished Senator from South Carolina (Mr. HOLLINGS).

Mr. HOLLINGS. Mr. President, on last Thursday, the news media reported that the debate on confirmation of Judge Haynsworth had finally begun. This brings into sharp focus the current debate over the accuracy of the news media. For, in fact, the debate was over when it supposedly began last Thursday. Opposition to the confirmation was launched long before the appointment. Long before the Judiciary Committee could hold its hearings and make its findings, the opposition filled the air with sufficient confusion and doubt as to cause a near majority of this Senate to proclaim against Judge Haynsworth. All save a dozen Senators had taken a position before last Thursday. Rather than debate, what occurs now is an articulation of positions taken.

Spencer Rich in the Sunday Washington Post, quoting Senator MILLER of Iowa stated:

> What is all important, however, is that judges who have lifetime appointments and do not have to answer to the public at election time demonstrate that their high office and the public they serve come first, and that private considerations come second. Validly or not, Haynsworth's opponents have succeeded in convincing many senators and much of the public that Haynsworth does not meet this standard, and if his nomination is beaten, that will be the reason.

Mr. President, this may be the excuse, but not the reason. If the judge had put his private interests first in 1963, he never would have sold his stock. With the stock, on which they claim he made a half million dollars in putting his private interests first, he would have made an additional million dollars in the last 7 years. But he did more than the judicial conference had asked him to do. If he had put his private interests first, he would have been keeping the records of Carolina Vend-A-Matic, in South Carolina, rather than not keeping the records, as was the fact, and which causes him now to be charged with a violation or a crime by the Senator from Indiana in his bill of particulars.

So Judge Haynsworth was not putting his private interests first. Indeed, if he had put his private interests first, he would have been handling his own stock, rather than, as the records show, having it handled by one of his close friends, Arthur McCall, of Greenville, whom he brought into the fraternity at Furman University. McCall, for all intents and purposes, invested and sold, and bought

and sold, and reviewed the judge's stock at the end of each year. This was also true in the Brunswick situation where he had $20,000 left from the sale of some stock. Making an accounting at the end of the year, Judge Haynsworth was advised to purchase the Brunswick stock.

So he did not put his private interest first. If he had put his private interest first, I guess he would have had a good portfolio of stock.

I remember well that the heat of this particular debate really began in August and it got heated up by the second week in September. The New York Daily News had a stock broker, or an investment counselor, analyze Judge Haynsworth's stock portfolio, which had nothing to do with the confirmation of a judge, but this is how far the opposition reached. The investment counselor went over it in detail and said that with that much money invested, rather than having 35 types he should better have 15 types of stock, and rather than holding on to that "lousy" textile stock—which the Senator from New Hampshire and the distinguished Senator from Rhode Island are constantly talking about—because it is a poor investment, no wise investor would have held that textile investment.

So rather than putting his private interest first he had put his public interest first in the administration of justice, and he was leading the way—it was called dynamic by the Senator from Maryland—and he was appearing and acting as a consultant for the American Bar Association on the ethics panel in leading the way and participating in a full-fledged judicial administration.

The truth is that the standards of judicial ethics are not obscure. Violations of law and ethics for which the judge has been charged constitute dishonesty. No Senator questions Judge Haynsworth's honesty. None has asked Judge Haynsworth's resignation as chief judge of the Fourth Circuit Court of Appeals. Yet since shadows have been cast, they, in turn, shadow the philosophical and political reasons employed by the Senators in a finding of "insensitivity." And the die is cast.

So that the public would better understand this "debate," the strategy of the opposition should be revealed. Judge Haynsworth was appointed on August 18; but prior to the appointment, the AFL–CIO had already gone to work, with investigators fanning out into South Carolina soliciting rumors and talking with South Carolina leaders of the ADA, NAACP, and AFL–CIO.

Back in Washington, they immediately began spreading their poison. On August 15, Tom Harris, general counsel for the AFL–CIO, called the White House and Justice Department stating the opposition of the AFL–CIO to the Haynsworth appointment, and George Meany confirmed this in a telegram to the President that same day. By August 24, and this is prior to even receiving the nomination in the Senate because we were in recess and had not received the appointment, such headlines appeared in the Washington Post as "Haynsworth Had $450,000 Stock Linked to Suit," and by August 26, "Haynsworth Was in Clear Violation of Canons and Ethics for 10 Years." On the day the Senators returned from the Labor Day break on September 4, the Senate on that day received the appointment and that same day each Senator received a 59-page brief from the AFL–CIO in opposition to Haynsworth. Walter Reuther of the United Auto Workers, Alexander E. Barkan of COPE, Lee W. Minton of the Glass Bottle Blowers Association, William Pollock of TWUA all joined the assault. They met with a responsive press. The eminent group of writers covering the Supreme Court and judicial affairs in Washington had been burned by the Fortas affair. They pooh-poohed and minimized all about Fortas until Bill Lambert of Life magazine, one of their own profession, brought the facts to the surface. These writers were not going to be burned again. Overreaction was the result. They came with a case and a conviction made in their minds and they only asked certain questions of me and other Senators and only listened to answers they wanted to receive and disregarded anything that disagreed with their own preconceptions. By the time Judge Haynsworth was presented to the Judiciary Committee, I commented in the introduction that rather than an appointee, I had the feeling I was presenting an indicted defendant. The witnesses in support of the judge were not given a chance. Mr. Meany demanded to be heard before the witnesses for Judge Haynsworth had completed their testimony. Witnesses that traveled long distances were told to file written statements. Prof. Charles Alan Wright, University of Texas Law School, and G. W. Foster, Jr., associate dean of University of Wisconsin School of Law, came to Washington and were told to file statements. Mr. Coming B. Gibbs, an attorney who wanted to show consideration and understanding of the problems of the young, came and was told to file his statement. Prof. William Van Alystyne, of Duke University Law School, came and was told to file his statement.

In the middle of the hearing, Joseph Rauh, in the tactics of Bobby Seale, blurted out that the committee was preventing Roy Wilkins from being heard. Now the Judiciary Committee was on the defense. Each stockholding was examined in the light of "wheeler-dealer." The judge had presented his income tax returns, had reported on all income and holdings, and had answered in detail the requested information of Senators TYDINGS and HART. But he was accused of withholding information. The judge had answered in detail but he was accused immediately of withholding information. The Justice Department was accused of trying to sanitize the record. In the middle of it all, headlines blared that Judge Haynsworth was a friend of Bobby Baker. So suspect was news coverage that when the judge announced categorically that in order to end all questions he would place his stock in trust whether or not he was confirmed, the news headline read, "Haynsworth Deal Eyed." Furman Haynsworth, one of his forebears, was the founder of Furman University, so when it was learned that the judge had given a house to Furman University as the contribution of a loyal and proud alumni—and it was viewed in the news as "sinister."

Herblock's "Vend-a-Justice" cartoon published in the Washington Post had a lot of humor but it also has a devastating effect, because there are many people who do not read a newspaper thoroughly but do look at the pictures, and when there is a cartoon like the "Vend-a-Justice" cartoons, it has a particularly devastating and damaging effect. Herblock kept hammering with "Vend-a-Justice" cartoons. Another cartoon this weekend shows the judge rocking on the front porch of his southern plantation with his slave servant standing by as he reads the Wall Street Journal; the title, "How To Succeed in Business Without Really Trying," as though it were a crime to invest in the future of America.

Mr. President, how would half the Senate sustain itself financially if Senators did not go back into the cloakroom and grab the Wall Street Journal and make money "without really trying"?

But no, now, with Judge Haynsworth, that becomes offensive. "We have got to get rid of this wheeler-dealer."

Throughout, the "southern strategy" of President Nixon was rebuked. With headlines reading, "Haynsworth Selection Seen as Thurmond Payoff," one witness testified that the appointment was "one of the dirtiest and most sordid political games that has ever been played with judgeships as pawns and poker chips in the history of the Respublic."

It is contemplated that has all been agreed to in the home capital of the distinguished Presiding Officer now occupying the chair, Atlanta, Ga., long before the nomination. This is a criminal offense, if one promises public office in exchange for public support. "You have violated the statutory law of the United States of America." There it is. It is in the RECORD. It says that he promised THURMOND of South Carolina. He says "You can have the Supreme Court appointment. This has all been agreed to long before."

Amidst the foray, the Senator from Indiana, BIRCH BAYH, was leading the attack. The Senator's attack on Judge Haynsworth was calculated. With the Justice Fortas debacle and Bobby Baker shenanigans as a background, Senator BAYH quoted President Nixon as employing the test of "clean as a hound's tooth" in the appointment of judges. Then at the Judiciary Committee he came upon the judge as a cat with a canary, liberally sprinkling the record with words of "regret," "embarrassment," "I am sorry to have to ask you this," "We don't question your honesty"—then bam. He socked the judge with a nine-page bill of particulars dated October 8, 1969. There was no reference here to Justice Fortas or Bobby Baker but rather coldly calculated charges of crime, statutory violations, breaches of ethics, avariciousness, and lack of candor.

May I ask the distinguished occupant of the chair, the President pro tempore, would you please tell me, sir, considering the experience of a Presiding Officer, how one gets this nice talk about not questioning the honesty of a judge, how in

public experience and service, and particularly in the Senate, how can one smilingly say to everyone with supercourtesy and superdeference, charging that the fellow is a crook, and then saying, "Wait a minute—no, we are not questioning his honesty?"

Well, Mr. President, I do not know about this double talk. I cannot understand it.

The charge of employing his judicial position for personal gain in a vending business is not made lightly. So that the reader will understand, a full-page chart is drawn as dramatic proof of a business faltering until Mr. Haynsworth became judge and then volume soared, while the judge sat distributing favorable decisions to the company's customers. Mr. President, can you not just see the Senator trying to find an article, and then saying to his staff, "They might not get the picture," and so they get up this chart—so they get this out. This is followed with the innuendo that the judge lied to the Judiciary Committee about being an active officer, soliciting business. Five violations of section 28, U.S.C. 455 are charged. The violations of section 29 U.S.C. 301–308 with the stated sentence of 6 months' imprisonment or a fine of $1,000 or both is charged. So the Senator from Indiana comes now—everything is sweetness and light. The fellow cannot possibly recoup the truth at this hour. He should say it is true and then go ahead and indict him and send him to jail, or apologize publicly. One or the other is true. If this body of 100 men cannot find the truth, then we are in sad shape, indeed, in the United States of America.

Violations of canons 4, 13, 24, 25, 26, 29, 33, and 34 of the Judicial Canons of Ethics of the American Bar Association are charged with numerous violations of each. He said, "Don't worry about this one"—That is, canon 4, 12 times; canon 13, five times; canon 26, six times; canon 29, seven times. Thirty-seven violations of the Code of the Judicial Canons of Ethics. But, says Senator BAYH, the question is not whether the judge is dishonest but whether he has the right temperament.

Mr. President, the Senator does not question the fellow's honesty. But look at the bill of particulars. I do not know how you do it, but look at the special views stating that he does not question the judge's honesty but whether he has the right temperament.

I hope that the judge never gets the right temperament to understand the logic of that—neither do I.

With this understatement, Senator BAYH finalizes the onslaught with a picture of the Justice Department conspiring against the Senate Judiciary Committee to "sanitize the records" in order to keep the truth from the individual Senators. Thus inflamed, the reader of this bill has abandoned all thoughts of confirmation and wants to go out and wring the judge's neck. Senator BAYH, thereupon, refuses to debate the bill and from his pedestal of no discussion, he enunciates his regret at having to bring all of this up in the first place.

At this particular time, when the bill of particulars appeared and the Senator from Indiana was covered on television, I asked Senator BAYH for an opportunity to discuss it on television with him. He categorically refused. We were invited to go on the "Issues and Answers" show. We were invited to go on the Lawrence Spivak "Meet the Press" show. We were invited to go on the morning "Today" show, and numerous radio shows, but the Senator from Indiana said, "This is too serious a matter"—too serious a matter to discuss in the press and news. We should not get personal. We should reserve our comments for debate on the floor of the Senate.

Mr. President, that was a month ago, and the man is down the drain. He has gone. The debate is over with.

If he wanted fairness and the truth, he could be answered. I have the answers for him. But, they did not want that. They did not want anyone to answer anything. They do not want debate. They do not want the deliberative processes in the Senate.

Really what is wrong, says the Senator, is that the judge is insensitive. Thereupon, the Senator leads the lynching party with cries of, "Withdrawal, withdrawal."

I went around here for 5 days denying that the judge had withdrawn. I got no response at trying to get at the truth. All I got here was that he was trying to withdraw, "Is he going to withdraw?" "Have you talked to the judge? Did he sound good? Did he sound sad? Did he sound happy?"

Well, I said, "understandably, he did not sound so happy." Then, Senator HOLLINGS is quoted as saying, "Judge not happy." And so on down the line. They disagree about the truth on the bill of particulars. The lynching party was on.

While difficult to remember at this point, it is a fact that Judge Haynsworth came to his appointment with an impeccable record of integrity. Practically at the top of the judiciary as chief judge of the Fourth Judicial Circuit, the judge ranked immediately below the nine Supreme Court Justices. Described in the hearings as dynamic in his development of the administration of justice, the judge served as a consultant to the American Bar Association's Committee on Professional Ethics.

Obviously, when first appointed, Judge Haynsworth gave every appearance of propriety, so who created the appearance of impropriety—the judge or others? Did the judge violate the law and disregard the ethics? Did the judge's conduct warrant these impressions? Are they founded in truth?

Mr. President, since I have referred to Senator BAYH's bill of particulars, I ask unanimous consent to have printed in the RECORD at this point a copy of that bill of particulars.

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

SENATOR BIRCH BAYH'S BILL OF PARTICULARS AND SENATOR ERNEST F. HOLLINGS' DETAILED ANSWER WITH PAGE REFERENCES TO THE RECORD OF SENATE COMMITTEE ON JUDICIARY, NOVEMBER 18, 1969

In recent years our judicial system has come under increasing attack, not only by the citizenry at large, but by lawyers and members of the legislative branch of both national and state governments. As our ideas, opinions and judgments of law and its application have changed over the past 180 years, so have changed the expectations of the American public of our public officials. Particularly now, when public confidence in the integrity of the federal judiciary at the highest level has so recently been severely shaken, it is of the utmost importance that only men who are truly distinguished and truly above reproach sit on the bench of our highest court.

Since the nomination of Judge Clement F. Haynsworth to be Associate Justice of the Supreme Court, numerous facts that raise a serious question as to the propriety of his conduct while a member of the Federal Judiciary have come to my attention. An intensive investigation aimed at uncovering the truth has resulted in the following bill of particulars which has convinced me that Judge Haynsworth falls short of the demanding ethical standards required of an Associate Justice of the Supreme Court. I issue the bill of particulars with no malice toward Judge Haynsworth but with some considerable regret. The question is not whether Judge Haynsworth is dishonest but whether he has shown the temperment necessary to sit in the highest judicial council.

CAROLINA VEND-A-MATIC

Judge Haynsworth was an organizer and founder of Carolina Vend-A-Matic in 1950, with an original investment of $2,400.00.

(Charge 1) He was Vice President and a director of Carolina Vend-A-Matic until 1963. He stated that he orally resigned from the Vice Presidency in 1957, but the corporation records show he was listed as Vice President until 1963 and indeed regularly attended meetings of the Board of Directors and voted for slates of officers through the years. He was in fact paid director's fees in amounts as high as $2,600.00 per year, and the records show his wife, Dorothy M. Haynsworth, served as Secretary of the corporation for two years while he was on the Federal bench.

(Charge 2) Although the Judge claims he was an inactive officer, the minutes of the corporation indicate that such was not the case. Directors were active in locating new business and Judge Haynsworth took an active part in director's meetings, often making motions himself. While he was director of Carolina Vend-A-Matic, he took part in decisions to buy and sell land to himself and other directors and the profit sharing trust.

(Charge 3) Judge Haynsworth endorsed notes for the corporation in amounts as high as $501,987.00. Some of these notes were endorsed after he assumed the bench.

In 1963 more than three-fourths of CVAM's total business was with textile concerns.

(Charge 4) Thus any precedent setting decision affecting the textile industry would also affect CVAM through its customers.

For some years there had been an exodus of textile concerns from the North to the South in an effort to take advantage of lower wages as a result of strong regional pressures against collective bargaining in the South. The *Darlington Mfg. Co.* v. *NLRB* case was a landmark case in the textile industry because it enabled textile concerns to close plants attempting or organize. Thus, it gave them an important weapon.

The case of *Darlington Mfg. Co. v. NLRB* came before the Fourth Circuit Court of Judge Haynsworth in both 1961 and 1963, while CVAM had a vending contract with Deering Milliken Corp., Darlington's parent company, for $50,000 per year. (Charge 5) While the litigation was still pending, CVAM signed a new contract with Deering Milliken Corp., increasing their vending business with that company to $100,000 per year. The Darlington case was eventually decided in

favor of Darlington, with Judge Haynsworth casting the deciding vote and thus establishing an important legal precedent for the textile industry in a decision later substantially modified by the Supreme Court.

In 1957, after Judge Haynsworth assumed the bench, the gross sales of CVAM and its subsidiaries increased tremendously. Gross sales increased only slowly from $169,355 in 1951 to $296,413 in 1956. (Charge 6) But in 1957, the year Judge Haynsworth assumed the Federal bench, sales jumped to $435,110 and continued a precipitous climb, reaching $3,160,665 in 1963, the last full year in which Judge Haynsworth owned a major share of the company.

Gross annual sales of Carolina Vend-A-Matic Co., Inc.

1951–52	$169,355
1953	(1)
1954	171,774
1955	214,503
1956	296,413
1957	453,110
1958	491,166
1959	714,009
1960	941,370
1961	1,697,329
1962	2,552,240
1963	3,160,665

[1] Not available.

(Charge 7)—Between 1958 and 1963 Judge Haynsworth sat on at least six other cases involving customers of CVAM.

1. *Homelite v. Trywilk Realty Co., Inc.*, 272 F2d 688 (1959) Gross sales to Homelite by CVAM in 1959 totaled $15,957.22.

2. *Kent Mfg. Corp. v. Commissioner of Internal Revenue* 288 F2d 812 (1961). CVAM gross sales to Runneymeade, a subsidiary of Kent Mfg. Corp., in 1961 totaled $21,323.63.

3. *Textile Workers Union of America v. Cone Mills Corporation* 268 F2d 920 (1959). CVAM gross sales to Cone Mills and its subsidiaries Carlisle Mill and Union Bleachery in 1959 totaled $97,367.12.

4. *Leesona Corp. v. Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 315 F2d 895 (1963). CVAM gross sales to Deering Milliken plants in 1963 totaled $10,000,00.

5. *Leesona Corp. v. Cotwoll Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 308 F2d 895 (1962). CVAM gross sales to Deering Milliken 1962 totaled $50,000.00.

6. *Textile Workers Union of America v. Cone Mills* 290 F2d 921 (1961). CVAM gross sales to Cone Mills and its subsidiaries in 1961 totaled $174,314.92.

OTHER CASES INVOLVING CONFLICT OF INTEREST

(Charge 8) There are at least five cases in which Judge Haynsworth held a financial interest in one of the litigants substantial enough to require disqualification under 28 USC 455 and to constitute impropriety under the Canons of judicial ethics.

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

Farrow v. *Gray 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)

DEMONSTRATED LACK OF CANDOR

I. Denial of active participation in the business of CVAM.

In a letter to the Chairman of the Judiciary Committee dated September 6, 1969, Judge Haynsworth said:

(Paragraph 12) "The specific locations of vending machines were simply not a matter of interest to me and, as stated before, I was never involved in any way in securing new vending machine locations."

In testimony before the Judiciary Committee on September 16, 1969, the following exchange occurred:

CHAIRMAN. Did you have anything to do with the preparing of bids or soliciting business for Carolina Vend-A-Matic?

Judge HAYNSWORTH. Nothing whatsoever.

Senator TYDINGS. As a part of your work, or as a part of your association with Carolina Vend-A-Matic, did you formally or informally seek to obtain business for Carolina Vend-A-Matic?

Judge HAYNSWORTH. Never. I did not.

Fact. Judge Haynsworth was consistently and intimately involved with the operation of Carolina Vend-A-Matic from June 1957 until October 1963 and regularly accepted funds from CVAM during that period subsequent to a resolution by the Board of Directors which appears in the minute books of the corporation and states that:

"it was pointed out that the main sales and promotional work of CVAM had been done by its directors who are also the officers of the corporation and that any new locations were the result of many conversations, trips and various forms of entertainment of potential customers by one or more of the directors or officers over an extended period of time. A review was had of the various locations that had been acquired during the past several years and new locations that were being considered and practically without exception, these were the result of the Board of Directors."

(Charge 9) II. Denial of having sat on any cases in which he had a substantial financial relationship with one of the litigants.

In a letter to the Chairman of the Judiciary Committee, dated September 6, 1969, Judge Haynsworth said:

(Paragraph 13) "I have disqualified myself in all cases in which my former law firm or any of its members were counsel, cases in which certain relatives were counsel, and all cases in which I had a stock interest in a party or in one which would be directly affected by the outcome of the litigation."

(Charge 10) And in testimony before the Judiciary Committee on September 17, 1969, Judge Haynsworth said:

"And I suggest to you that I have not made or retained any investment in any concern which was likely to be involved with frequency in my court."

Fact: Judge Haynsworth sat on at least five cases in which he had a substantial stock interest in litigants before him:

Brunswick Corp. v. *Long* 392 F2d 348 (1967).

Farrow v. *Grace Lines Inc.* 381 F2d 380 (1967).

Merck v. *Olin Mathieson Chemical Corp.* 253 F2d 152 (1958).

Darter v. *Greenville Community Hotel Corp.* 301 F2d 70 (1962).

Donohue v. *Maryland Casulty Co.* 363 F2d 442 (1966).

(Charge 11) III. Denial of having retained positions as a director and officer in Carolina Vend-A-Matic and the Main Oak Corporation.

In testimony before the Subcommittee on Improvements in Judiciary Machinery on September 17, 1969, Judge Haynsworth said:

"Of course, when I went on the bench I resigned from all such business associations I had, directorships and things of that sort. The only one I retained is the trusteeship of this small foundation which I mentioned in my main statement, and I think that perhaps the best rule for a judge to go by now is stop doing even that."

Fact. Judge Haynsworth retained his position as director and officer of the Main Oak Corporation and CVAM when he went on the bench and until October, 1963.

He also had remained as a trustee of the Furman Charitable Trust from the time he went on the bench until today.

VIOLATION OF 29 USC 301–308

The Welfare and Pension Plan Disclosure Act provides that an administrator of a pension fund must file with the Secretary of Labor an initial description of the plan and annual reports thereafter. (Charge 12) Willful violation of the act can lead to six months imprisonment or a fine of $1,000 or both. Judge Haynsworth was a trustee of the CVAM profit sharing and retirement plan from 1961 until 1964 and qualified as an administrator with the Secretary of Labor. On September 17, 1969, the director of the Office of Labor-Management and Welfare-Pension Reports of the U.S. Department of Labor advised my office by letter, "Our records do not show that any reports have been received under the name of Carolina Vend A Matic Company, Inc., for a Profit Sharing and Retirement Plan."

VIOLATIONS OF THE CANONS OF ETHICS OF THE ABA

I. Canon 4 states:

"Avoidance of Impropriety. A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in his performance of judicial duties, but also in his everyday life, should be beyond reproach."

(Charge 13) Judge Haynsworth has violated 29 USC 301–308 by his failure to comply with the Welfare and Pension Plan Disclosure Act and has violated 28 USC 455 and the law of due process as interpreted by the U.S. Supreme Court in *Tumey* v. *Ohio* 273 US 510 (1927), *In Re Murchison* 349 US 133 (1955) and *Commonwealth Coatings Corp.* v. *Continental Casulty Co.* 393 US 145 (1968), no less than 12 times by sitting on cases involving customers of CVAM and in cases in which he held stock interest in a litigant as cited above.

II. Canon 13 states:

"Kinship or Influence. A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person."

(Charge 14) By sitting on cases involving customers of CVAM and ruling in their favor at least five times in five years Judge Haynsworth conducted himself in such a manner as to "justify the impression" that he may have been improperly influenced.

III. Canon 24 states:

"Inconsistent Obligations. A judge should not accept inconsistent duties nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."

(Charge 15) By acting as a director and Vice President of CVAM, Judge Haynsworth clearly accepted duties likely "to interfere or appear to interfere" with the proper administration of his official functions. Shortly after investigating bribery charges in the 4th Circuit Court of Appeals in 1963–64, Judge Simon Sobeloff, in an article for the *Federal Bar Journal* observed:

"One can readily see that if a judge serves as an officer or director of a commercial enterprise, not only is he disqualified in cases involving that enterprise, but his impartiality may also be consciously or unconsciously affected when persons having business relations with his company come before him."

IV. Canon 25 states:

"Business Promotions and Solicitations for Charity. A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his

name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relations which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties."

(Charge 16) Judge Haynsworth's financial interest and active participation in the affairs of CVAM constituted a clear breach of this standard. The remarkable rise in gross sales of CVAM after he assumed the Federal Bench justified the *suspicion* that the prestige of his office was used to promote his own interests as well as those of his fellow stockholders. In addition, his practice of taking part in cases involving customers of CVAM furnishes further grounds for the belief that his office was used to promote patronization of a business in which he had substantial interest.

V. Canon 26 states:

"Personal Investments and Relations. A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin."

(Charge 17) Judge Haynsworth breached this Canon on at least six occasions. His largest investment has been Georgia Pacific Corp., which was the subject of a consent decree by the S.E.C. in 1966. The decree was entered in the Second Circuit, but fraudulent stock transfers could have led to litigation in the Fourth Circuit. In the Brunswick case, Judge Haynsworth bought stock in Brunswick while a case involving that company was before his court. Other investments made by Judge Haynsworth can be considered investments which "are apt to be involved in litigation in the court" since in fact W. R. Grace Co., Greenville Community Hotel Corporation, Maryland Casualty Ins., and Monsanto Chemical Corp. did appear before his court.

VI. Canon 29 states:

"Self-Interest. 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 judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy."

(Charge 18) By deciding cases involving customers of CVAM on at least seven occasions, he exercised judicial discretion which could have affected the business of CVAM and hence Judge Haynsworth, a clear breach of this canon. In interpreting Canon 29, Opinion #170 of the Ethics Committee of the ABA clearly states that a judge shall exercise no act of judicial discretion in cases where he owns stock in a corporate litigant. In the Brunswick case, by participating in the decision and denying the motion for an extension of time, Judge Haynsworth clearly violated Canon 29 as interpreted by the ABA. Similarly, by sitting in the W. R. Grace Co., Maryland Casualty Ins. Co., Greenville Community Hotel Corp., and Olin Mathieson Chemical Corp. cases the Canon was breached.

VII. Canon 33 states:

"Social Relations. It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct."

(Charge 19) By sitting in cases involving important customers of CVAM Judge Haynsworth gave grounds for the *suspicion* that business relations influenced his conduct

VIII. Canon 34 states:

"A Summary of Judicial Obligation. In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

(Charge 20) Judge Haynsworth in view of the facts detailed above has obviously not conducted himself in such a manner that his conduct is above reproach "in every particular."

I would like to point out in closing that this bill of particulars is less complete and comprehensive than I would like due to the extreme difficulty we have experienced in gaining access to all of the material we have requested. It is unfortunate that the Justice Department has not only been less than candid with the Senate Judiciary Committee but appears to have embarked on a calculated effort to sanitize the records upon which individual members of the Senate must decide this important question. Some records are incomplete and because of countless delays we have had less time than we would like to assess the material that has recently become available. I consider this to be in the nature of a preliminary report which will be updated as we acquire more complete records and have the opportunity to study at greater length those we already have.

Mr. HOLLINGS. Mr. President, having put that in context and reprinted the bill of particulars under date of October 8, 1969, I shall now attempt to answer Senator BAYH'S bill of particulars with reference to each page of the actual record before the Senate Judiciary Committee that is appropriate, because I still have some questions that every Senator has read every page of this particular record or that every Senator read the record before he made up his mind on how he would vote on this nomination.

ANSWER TO SENATOR BAYH'S INDICTMENT OF JUDGE HAYNSWORTH—CAROLINA VEND-A-MATIC

Charge 1: The judge stated he orally resigned as vice president but the corporation records showed otherwise.

Truth: The judge told of his oral resignation and that he was carried as a vice president on the corporation records all in the same breath. He did not mislead the Judiciary Committee—page 91.

Charge 2: The judge claims he was an inactive officer when, in fact, he was active.

Truth: This charge of active participation and lack of candor on page 4 and 5, quotes questions out of context by both Chairman EASTLAND and Senator TYDINGS. The charge is made that the judge was soliciting business because he was "intimately involved," and this is supported by a quote from the minute books. A reading of the record shows that the judge answered every question with candor. The real point in interest was whether or not the judge solicited business. The quoted answer given Senator EASTLAND shows on page 42 the judge's denial that he prepared bids and solicited business. He stated his only interest was in financing. On page 60 he told Senator TYDINGS that he never contacted directly or indirectly Deering Milliken and never made telephone calls. He told of his director's fees and denied categorically that he never formally or informally sought to obtain business for Carolina Vend-A-Matic. This is undisputed.

They have had weeks and all kinds of minions and law clerks and everybody else in on this matter. If they could have gotten any inference from any citizen on that matter that was accurate, they would have brought it to the Senate committee and to the Senate itself. It is undisputed.

But an insidious inference is created by way the charge is set in the bill of particulars and by extracting an entry from the minutes 2 months after the judge took office in 1957. This entry was in justification of director's fees from a tax standpoint. To levy a charge of a lack of candor with a lack of candor is nothing less than vicious. This is an intentional deception and all the evidence shows that the judge had nothing to do with obtaining business.

Yet we still have Senators talking about "obtaining business." They have picked up the virus.

Charge 3: To add to the impression of a "wheeler-dealer," the judge is charged with signing notes as high as $501,987.

The inference is that there is a very big fraud here or that he is a big "wheeler-dealer."

Truth: The judge did sign several notes but no note exceeded $50,000 nor did the endorsed indebtedness of Carolina Vend-A-Matic exceed $55,550 at any one time.

But this is all coupled in one package; and, going into it in detail, they could, in all candor, have found this.

Charge 4: The judge cast the deciding vote in a precedent-setting decision in favor of the textile industry, the principal customer of CVAM.

Truth: The decision affected all industry—not just textiles—and there were three decisions rather than one.

The press is never going to report that.

In the first Darlington decision the judge ruled with the union. In the second Darlington decision the judge ruled with the company that it could close its business whenever it wanted to. This was the prevailing Supreme Court view at the time. On appeal the Supreme Court sustained this view, but set new law by stating if the the closing was a device to discourage union activity at other plants owned by the company involved, then the company could not close. The case was referred back for further testimony

on this point. The lower court found that it was a design to discourage activity at other plans and in the third Darlington decision Judge Haynsworth sustained the lower court which was affirmed by the Supreme Court.

If the President please, these were the same lawyers, the same group, and they are good lawyers. They had every opportunity to object. They could have objected, when the case was on appeal the first time. When they found, by an anonymous telephone call, that there was some question, they did not raise the point that the judge should step aside. The truth is, when they talk about Deering Milliken and a conspiracy, that there were other stockholders in this company, some 200, who did not own any other textile stock. Judge Haynsworth wrote a special opinion. He said those stockholders should not be penalized by a judgment calling for the back-payment of discharged employees. He said Deering Milliken should sustain the entire burden. That was a special opinion against Deering Milliken. It was not the judgment of the court. So, in fact and in law, the judge found against Deering Milliken.

Where are we going to find that in the press? We will never hear it.

Charge 5: While the case was pending, Deering Milliken doubled its business with the Judge's vending company.

Truth: In the spring of 1963 CVAM was invited to make a bid along with at least eight other companies. The proposal was submitted on June 27, 1963, and the contract was awarded on July 15. In June 1963, they were again invited to make a bid on another location, but were told that they lost in the competitive bidding in the early fall of 1963. Another bid was made in early fall 1963 on another contract and they were told on November 19, 1963, that they had lost that contract. The Darlington Mills case was decided on November 15, 1963. The inference here is that Deering Milliken was increasing its business with CVAM when the truth is it was actually losing business during this period.

Charge 6: CVAM enjoyed "remarkable rise in gross sales" because Clement Haynsworth became a judge.

Truth: On page 63 the Judge categorically denied the implication that he had anything to do with the industrial expansion, with soliciting industry for the South, or with the "precipitous climb" in sales. The judge stated, "I am a lawyer, not a salesman."

In January 1959 the State Development Board was reorganized. The Governor bought an airplane and started traveling weekly to New York and other cities soliciting industry for South Carolina. He traveled thousands and thousands of miles in that 4-year period from 1959 to 1963. He traveled to five countries in Latin America and seven countries in Europe. Just the other day, we announced a new industry, for which contact was made back in 1963, at Beaufort, S.C.—a $500 million industry—and I can tell of a pending or imminent announcement of a $700 million industry that is about to go in in the low country area of South Carolina, as a result of those same travels. You go, you solicit, and you grow. Between 1959 and 1963 over $1 billion in new industry located in South Carolina creating over 100,000 new jobs. In addition thereto, the impact of desegregation—and they do not want to talk about this, but this is a fact—the impact of desegregation upon the industry of South Carolina was met universally with desegregated eating facilities as provided by vending machines.

They had previously had an old "bum wagon," and went around the plant, and they would feed employees separately. Management was confronted with the problem of desegregation. With the vending machines, they would put all the machines in one room, the meals were hot, it was clean, it was serviceable—it has been the solution. Everyone gets what he wants, and they sit down as they want to, together. No one complains, and it has worked extremely well. Judge Haynsworth had nothing to do with the coming of the industry or the change to vending—and all vending companies in South Carolina experienced a "remarkable" rise in gross sales during the 4-year period of 1959–63. Judge Haynsworth disposed of his interest in 1964. The same precipitous climb continued for CVAM and all vending companies in South Carolina. It continued for that same company after the judge had sold all his stock. But they do not give the full picture. They do not give the truth, which is all the facts they know about.

Why did they not review what the principal competitor, in Greenville, S.C., The Atlas Vending Co.—Greenville's oldest and largest operator of vending machines—had to say. Its owner, Alex Kiriakides, Jr., wrote to Senator EASTLAND. I would like to include a letter of mine, which I received on September 5. I ask unanimous consent that the entire letter be printed in the RECORD at this point.

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

ATLAS VENDING CO., INC.,
Greenville, S.C., September 5, 1969.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, South Carolina,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HOLLINGS: There have been a lot of rumors in our newspapers lately concerning Judge Haynsworth, his business connections and ethics. Let me take this opportunity to speak in his behalf.

It seems to me his having an interest in a vending company should not be a deterring factor in his being appointed to the Supreme Court. As in the past, any person who owned stock in a vending company seemed to leave a bad taste in the mouths of the people. Speaking as an independent operator and in behalf of independent operators like Carolina Vend-A-Matic, we are a business like any other business, part of a free enterprise. A business whose ethics are up to or surpass any other business in this nation and we resent being classified as a "Bobby Baker Case." I cannot, however, speak for the ethics of the national vending companies.

I am probably the oldest vendor in this area and probably know more about the operation of my then competitor, Carolina Vend-A-Matic than any other person in this area in which they operated. I own and operate Atlas Vending Company, Inc. here in Greenville, South Carolina and have been doing so for over thirty years. Carolina Vend-A-Matic was a competitor of ours and during the time this company was Carolina Vend-A-Matic the stockholders and the management did nothing unethical in obtaining new business or in holding old business. As you know, they are now known as A.R.A. Service and Judge Haynsworth is not a stockholder in the present company. I had the greatest regard for Carolina Vend-A-Matic, its employees, and its management for the ethical manner in which they conducted business. If all the other companies or competitors could come together around a conference table I am sure they would feel that the good points of Carolina, in the way in which they conducted business, would certainly overcome and outweigh any competitive "jealousy." All of the vendors in this area, which at that time were several in number, had equal opportunity to obtain business. We got some of the business, others got some, and Carolina got some. Judge Haynsworth to my knowledge was never an officer of Carolina Vend-A-Matic and at no time used his position to gain new business. To the best of my knowledge the Presidents of Carolina Vend-A-Matic were Francis Marion and Gene Bryant.

The persons who were the stockholders of Carolina are well known to me. They are men of great means who are honorable and respectable business men who would never stoop to gaining wealth by using their position or their influence in unethical measures.

The reason that Carolina and myself and others have grown and gained in the vending industry is due largely and for the most part to the change in the times in the textile industry. The textile plants approached vending seeking more modern means to feed their people. They needed better quality food, with less time involved in feeding in order to gain through production. The textile plants are looking out for their people. The business is gained through competitive bidding. A textile firm will often have as many as five to twenty bids on which to base their decision. These bids are reviewed by employee committees, personnel, and management in order to come to a decision in the best interest of all concerned. This leaves little room for personal or political gain.

My reason for writing this letter is that I can no longer sit still and see the charges being made by the news media and the attempts by them and others to dig into the past and use facts in such a way as to throw reflection on Judge Haynsworth with no knowledge of the person whom they are talking against or the great injustice which they are doing to our nation. It seems that personal and political gain is clouding the minds of some and closing their eyes to the truth. Now is not the time for self, we must put our nation first and our nation needs a good Supreme Court.

We have been visited recently by a Charlotte reporter who asked questions regarding Judge Haynsworth's past vending affiliations. One of his questions dealt with whether or not Carolina Vend-A-Matic had the vending for the Deering-Milliken Plant in Darlington, South Carolina. My reply to him was that at that time neither I nor Carolina could go beyond our own county because of our volume of business and that it was some years later that we were able to spread into other areas within our state.

The dignity and reputation of a man like Judge Haynsworth must and will be spoken with truth. The people of this nation should be proud to have a man of his character in the Supreme Court. I, personally and wholeheartedly, support President Nixon's choice of this man; but, Senator, it will be a grave injustice if his record is not wiped clean before his appointment and it must be done by people who know him and who have been in contact with him. People from other states and in other capacities should not be judging a man for their own benefits.

My only aim in writing this letter is to see that the reputation of this man does not fall into the hands of a few and to do my part to see that he becomes a part of the Supreme

Court of the United States. I would be willing for and would urge you to use this letter, any or all of it, at your discretion before the Judiciary Committee or in any other way it might be beneficial to Judge Haynsworth's appointment and this nation. I will also be available, at my own expense, to come to Washington and appear before the committee on this matter. We need Judge Haynsworth in the Supreme Court and we need the slate wiped clean. Please use this letter to that end.

Sincerely,

ALEX KIRIAKIDES, Jr.

Mr. HOLLINGS. I refer specifically to paragraph 3, and read a couple of sentences there:

I am probably the oldest vendor in this area, and probably know more about the operation of my then competitor, Carolina Vend-A-Matic, than any other person in this area in which they operated. I own and operate Atlas Vending Company, Inc., here in Greenville, S.C., and have been doing so for over 30 years . . .

Carolina Vend-A-Matic, the stockholders and the management, did nothing unethical in obtaining this business, or in holding the business.

Well, where did they get the charge? They do not have a person connected with the vending business, and there have been many of them there. They have been competing. Where is the testimony? Where is the record?

They say, "Oh, the inference is there." Is there a fair inference, when all the companies were growing, when all the companies experienced this precipitous climb in sales?

Quoting further, Mr. President, from the letter from Alex Kiriakides, Jr., he does not say "because I have got me a judge over on the fourth circuit, and he started getting business for me"; instead, he says:

The reason Carolina and myself and others have grown and gained in the vending industry is primarily and for the most part due to a change in times in the textile industry. The textile industry changed to vending machines as a more modern way to feed the people.

That is a nice way of saying they needed to desegregate their eating facilities. The letter continues:

A textile firm will often have as many as five to twenty bids on which to base their decision. These bids are reviewed by employee committees, personnel, and management, in order to come to a decision in the best interests of all concerned. This leaves little room for personal or political gain.

Mr. President, I reiterate, Judge Haynsworth had nothing to do with the coming of the industry or the change to vending. All vending companies in South Carolina experienced the remarkable rise in gross sales during the 4-year period from 1959 to 1963, and all companies, Mr. President, have experienced a similar rise since 1963 to the present date, 1969—ergo, the increase of a million dollars in the Carolina Vend-A-Matic stock that Judge Haynsworth sold. If he had held it, he would have made a million dollars more. These are the facts in the case, and the truth.

The same chart can be drawn for the 4 years after Judge Haynsworth left CVAM as for the 4-year period 1959–63. And the same chart can be drawn for all vending companies in South Carolina for the last 10 years. If the insinuation intended by this charge is true, Judge Haynsworth should be tried as a criminal. If not, then the insinuation itself constitutes a violation of canon 1 of the Professional Ethics of the American Bar Association.

Charge 7: Between 1958–63 Judge Haynsworth sat on six cases involving customers of CVAM, inferring, of course, that the judge had a substantial interest as provided under 28 U.S.C. 455, which section required his disqualification.

Truth: In none of the six was the judge a stockholder in a party litigant and in none of the six did he have a substantial interest as outlined under the statute. In each of the six, under the finding of the American Bar Association, Judge Walsh's testimony—pages 151, 153, and 160—and under the decision of Prof. John Frank—pages 115, 117, and 128—the leading authority on judicial disqualification, Judge Haynsworth would have had a duty to sit in each of these cases. CVAM made no sales for Kent Manufacturing Co. listed in case No. 2 on page 4 of Senator BAYH's bill of particulars. The charge is false.

Charge 8: Judge Haynsworth had a financial interest in the party litigant of five listed cases thereby violating the statute and also the canons.

Truth: Case 1: In the Brunswick case the judge heard the appeal on November 10, 1967, joined in the unanimous decision to affirm on that same day and 6 weeks later his broker bought 1,000 shares of Brunswick stock. The printed opinion was not rendered until February 2, 1968. The judge admits this mistake and says it was wrong; however, there is no inference or suggestion that the subsequent purchase of stock had any bearing on the judge's decision in the case. No one contends that. Judge Harrison Winter who rendered the decision testified accordingly. The American Bar investigated this and reaffirmed its highest recommendation of Judge Haynsworth to be an Associate Justice of the U.S. Supreme Court.

Mr. President, I respectfully submit that this was a lapse of memory, and not a lapse of ethics.

They have been talking and talking, and never got the facts on Carolina Vend-A-Matic, and did not want to put in all the picture; but they have been talking about the Brunswick case. What about that case? What did the lawyer think who handled the Brunswick case, the Honorable Edward D. Buckley, a member of the firm of Bailey and Buckley? I talked with him about it, and as a result, he wrote a letter to me.

Now, can he not assume that as counsel for one of the parties, he would really have wanted to know all the facts about it? Especially, as counsel for the losing party in the Brunswick case. The letter read as follows:

DEAR FRITZ: Enjoyed talking with you today. As counsel for the losing party in the "Brunswick Case" I welcome the opportunity to comment on Judge Haynsworth's propriety. It will interest you to know that yours is the only inquiry I have received from anyone in the Senate.

Let me preface my remarks by saying I have conferred with my client and he has told me I was free to express my opinion of Judge Haynsworth's handling of this case.

In my judgment, Judge Haynsworth's stock ownership had nothing to do with any ruling he was called upon to make.

Let me repeat: "Nothing to do with any ruling he was called upon to make." And we have literally thousands of headlines and letters and much debate. However, the person involved says that it had nothing to do with it.

I continue to read from the letter:

Although I did not agree with the decision in this case, the entire panel of three judges ruled against my position. I do not think a thousand shares of Brunswick stock is a large enough interest to be of any consequence, nor do I feel there was any conflict of interest on Judge Haynsworth's part.

I have never heard the least word of criticism of Judge Haynsworth for his conduct on the bench in the twelve years he has sat on the 4th Circuit.

Where is that group that were talking about appearances? I wish they in the Chamber. They were hollering about lack of sensitivity and lack of judgment and not giving the appearance of being right.

This is a letter from the lawyer for Brunswick. That is what he says. They create all kinds of appearances themselves and then blame the judge for it.

I continue to read the letter:

I appeared in the Brunswick case with complete confidence my client would receive a fair and just hearing. I believe we received such all the way, and I would not have the slightest qualm to appear before Judge Haynsworth on any other matter.

I hope that this letter may place the "Brunswick Case" in its proper perspective. I trust that this case will no longer cloud the issues.

With kind personal regards, I am,

Sincerely,

EDWARD D. BUCKLEY.

Here it is with all the appearances involved. But we have to measure this in the court. What about confidence in the good commonsense and judgment of the U.S. Senate as a deliberative body finding the truth and really responding to the truth?

Cases Nos. 2, 3, 4, and 5 on that charge No. 8 in the bill of particulars.

In the remaining four cases, the charge is absolutely false. The judge did not own any stock in the party litigants. In the Grace Lines case, the judge owned 300 shares out of 18,252,335 outstanding shares in W. R. Grace & Co. Grace Line, Inc. was one of 53 subsidiaries of W. R. Grace & Co. The case involved a $50 verdict for an injured workman, which verdict was affirmed unanimously in a per curiam opinion. Under the statute, he had a duty to sit.

I have been reading the comments made by some Senators to the effect that this was a case of a poor little defendant with a $50 verdict looking at the tipping of the scales of justice. They ask how he could escape the feeling that he was affected by this minimum stock holding by Judge Haynsworth. They ask how he could escape feeling that he had not had his day in court.

He had a lawyer. That $50 verdict was a $15.12 verdict rendered by 12 of his own peers. They did not think very much of

that $30,000 claim for the sprained wrist.

The trial judge said, "If you are going to give anything, give something a little nearer to what is fair."

The jury went back, the jury of his 12 peers in this case, and rendered a verdict of $50.

I make the statement as a plaintiff's lawyer. There was a $50 verdict handed down in a $30,000 claim. We have that kind of case sometimes. They present any kind of claim with no substance to back it up. The jury found that there was no substance. The judge found in the per curiam opinion that there was no error in the law to disturb the jury verdict.

The Merck-Olin Mathieson case is false out of hand. The judge never had any stock in either party.

Talk about charging a man and then after having ruined him, coming around here and saying that the judge was not charged at all. They just put down a whole lot of charges.

In the Greenville Community Hotel case, the judge 4 years previously had owned one share of stock worth $21, which he had disposed of 4 years before the case was heard. He did not have it at the time. The stock had been gone for 4 years.

In the Donohue case, the judge owned 200 shares of preferred stock out of 3.2 million outstanding shares, and 67 shares of common stock out of 4.5 million shares outstanding American General Insurance Co., a corporation in which Maryland Casualty was one of the numerous subsidiaries. He joined in a unanimous three-sentence per curiam opinion.

Herein, the judge is charged with five violations of the statute and five violations of numerous canons, when the record before the Judiciary Committee shows that the judge had a duty to sit in each of these cases.

Mr. President, charge 9 is that the judge lacked candor in denying that he sat on any case in which he had a substantial financial interest.

The truth is that the denial is sustained by the record. The judge is not embarrassed now—pages 91 and 92—that he sat then. Under the same circumstances today, he believes it is his duty to sit and he would sit—page 99.

When the judge was testifying, they said, "I don't want to ask this. It may be embarrassing. But what about so-and-so?" The judge made it clear in the record, that he was not "embarrassed." "Ask the question, and I will give you the truth."

Under the same circumstances today, the judge says he believes it is his duty to sit and that he would sit.

There is no question of temperament or sensitivity. The judge is either right or wrong. Either he violated the statute that Congress, and particularly the Senate, enacted into law or he did not. But there are so many charges here, how can one discern or distinguish them?

Charge 10, the judge lacked candor in stating that he had not made or retained any investment with a concern likely to be involved in his court.

The truth is that the record sustains the judge's position. These five cases have been discussed. And there is no evidence that any of his stockholdings were apt to be involved. And, with the exception of Brunswick, none were involved as parties before him. And the Brunswick Co. was not involved as a party before him at the time the case was heard and decided.

Charge No. 11, the judge denied retaining positions as a director and/or officer of Carolina Vend-A-Matic and Main Oak Corp.

The truth is that on page 42, the judge referred to public corporations and the accuracy of a statement rendered at another hearing before Senator TYDINGS in June 1969. He clarified this at Senator TYDING'S request and stated on page 66 that he was a director and officer of the two companies.

Charge 12 is that there was a violation of section 29 U.S.C. 301–308 by the judge's failing to file information about a pension fund with the Secretary of Labor.

Mr. President, this charge includes the ominous 6 months' imprisonment and a fine of $1,000 as if we have a criminal rather than a chief judge under consideration.

I want to make this clear. This is the printed bill of particulars of the Senator from Indiana. Let us not take it lightly. There is a mention of 6 months' imprisonment in jail. We either have a crook or a judge, one or the other.

The truth is that all information required under the Welfare and Pension Plan Disclosure Act was rendered in writing to each of the employees and beneficiaries of the plan. In order to constitute a violation, the employee filed a claim with the Department of Labor.

We both went to the Department of Labor on this matter. The staff of the Senator from Indiana went. My staff went. And I went.

In order to constitute a violation, the employee filed a claim with the Department of Labor. No employee ever did, and the spirit and letter of the law was carried out. All the information was filed.

Judge Haynsworth, if it interests anyone, was the trustee and not the manager. The manager failed to file the paper, but the employees were fully informed and protected. Moreover, a check with the Labor Department shows that this particular section was never enforced and obviously no one considers anyone in violation in the administration of the CVAM retirement plan. To list this seemingly as having caught the judge in a crime is, in itself, a demonstration of lack of candor.

It is intimated one time that the judge was "running" the business, and "wheeling and dealing." And when he does not do this, he is a criminal because he violated this statute, when actually a manager ran this particular pension plan and the manager failed to file the paper; but the employees were fully informed and protected.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. DOLE. I have been concerned about this one charge. It is a very serious charge, and the Senator from South Carolina makes it clear that we are talking about either a criminal or a judge.

I am wondering whether the Senator from South Carolina knows if any action has been taken by any of the accusers or those who have raised this question. Have they asked the Justice Department to proceed? Have they signed a complaint? Are they saying, in effect, that the judge is a criminal and should be prosecuted?

Mr. HOLLINGS. No.

Mr. DOLE. They make the charge very clearly in the bill of particulars.

Mr. HOLLINGS. What actually is occurring is that they are trying to fill the air with charges and crimes. When I wanted to answer, they continued to charge. They just kept on charging. That is the strategy: Do not stop, do not answer, do not discuss, keep on charging; "we have him on the run." Then they come up, after he is ruined, and say, "We don't question his honesty." How do you do that? I do not know, but that is what they do.

Mr. DOLE. It shows a certain amount of insensitivity, if nothing else, when a man is charged one day with violating a criminal statute and the next day to say he is an honest man; and with the cooperation of certain media, they have put the judge in a bad light. If they are serious about the charge, they should be required to go forward with it and not just raise a smokescreen, as the Senator from Tennessee said yesterday—engage in smoke shoveling.

Mr. HOLLINGS. It gets down to the Newsweek article of yesterday, which said the trouble with supporters of Judge Haynsworth is that they have not gone into why he ought to be a judge and what his attributes are, and if he is outstanding, why do they not say so? How can we? I had news conference after news conference, and they would not write it. They said they talked to HOLLINGS, and HOLLINGS said the judge looked sick when he saw him this morning. That is all they included of my trying to tell of his fine record.

This is the whole creation. There are so many charges, and one tries to bring out the truth and meet the charge.

On the desk of each Senator is a copy of my prepared remarks. I do not fault the distinguished Senator from Indiana for asking any questions. We have a responsibility, as individual Senators and as a body, to have the minutest, detailed investigation of Judge Haynsworth or any other Associate Justice of the Supreme Court of the United States, because once confirmed, he is there for life. So I do not fault that at all. But, in fairness, I do not really believe that the opposition believes that Judge Haynsworth is a criminal; yet, they continue to charge him with a crime.

Mr. DOLE. The question has been raised. I have not seen anybody rise to lay it to rest other than those supporting him. As a freshman Member of this body, it is important that we resolve the question of whether or not there was a violation of title 29, United States Code. If there was not, they should say so, and this charge should be withdrawn, because it may be affecting the opinions and judgments of some Senators. It is serious, and I am glad that the Senator has raised the question.

Mr. HOLLINGS. I agree with the Senator that the way in which this has been brought about, and after we have tried to clear it up, in itself is a demonstration of a lack of candor.

Charge 13: The violation of canon 4 by the judge's conduct creating impropriety or the appearance of impropriety.

The truth is, Mr. President, that until the judge came to the Senate hearings, there was no appearance of impropriety; and the attempt to create such an appearance in the face of the testimony of Judge Walsh of the American Bar Association, Prof. John Frank, Prof. William Foster, and the controlling decisions is unfair and unfounded. It was pointed out that the statute was merely a restatement of the canon.

There was a long discussion in the Judiciary Committee of what is canon and what is law. All the authorities who appeared—Professor Frank, Judge Walsh, and all others—said that, really, the statute itself encompassed every requirement of the canons of ethics. Of the 12 times that the judge is charged with violating canon 4, all are cases in which the judge had a duty to sit, under the statute and in conformance with the ruling of the U.S. Supreme Court.

Charge 14: The violation of canon 13 by justifying the impression that the judge may have been improperly influenced.

The truth is that in each of these cases the judge had a duty to sit. In the Carolina Vend-A-Matic case, the impression was found not to be justified by Judge Simon Scheloff and affirmed by Attorney General Robert Kennedy. The impression is continually rendered to Senators that the investigation of Judge Sobeloff never considered propriety or disqualification but only considered the criminal charge of bribery.

If you want to see some of the friends of our distinguished late colleague, the Senator from New York, become annoyed, let us start bringing up this matter right now, and they come out of the desks fighting, as to what Attorney General Robert Kennedy meant when he wrote his letter in which he sustained the finding of Judge Sobeloff.

I do not yield friendship with Robert Kennedy to any. I knew him longer than most Members of this body, and I had the greatest respect and admiration for Robert Kennedy. I met him when he was a labor investigator.

He was cited as one of the outstanding young men of America for his erudition in investigating labor abuses in America. Robert Kennedy, as Attorney General, made his record with the Teamsters and in organized labor and was very sensitive to this point I cannot conceive of Senator Kennedy—I do not know; none of us really knows, because Senator Kennedy is not here to tell us—in a labor matter, in which a Federal judge is charged with hanky-panky and a crime in building up his business, treating it lightly, like a paper across his desk. I cannot conceive of that. I think Attorney General Robert Kennedy treated this matter and this charge very seriously. And what does the record show? They tried to divide it: this is a crime, and that is injustice, and over here is propriety. And the contention is that Attorney General Kennedy never had propriety in his mind. With that I disagree as strongly as I know how. No one had a keener sense of propriety than Senator Robert Kennedy.

So let us go to the record, to which the opponents do not want to refer. Thanks to the distinguished chairman of the Judiciary Committee and the membership of that committee, let us go to the record and see whether we just talked of a crime, or whether it also included the matter of propriety.

In the original letter from the attorney for the Textile Workers Union of America, which appears on pages 6–7 of the record, the question is raised as to whether or not Judge Haynsworth should have disqualified himself from participating in the decision. I quote from the original letter:

> Whether or not a criminal violation has occurred, we certainly believe that if the Deering-Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision. . . .

So, Mr. President, the question of disqualification came up in the original instance, in the original letter, in which they say it was not even considered. But there it is.

Now let us refer to page 11 and see what occurred. I refer to the bottom of page 11, in the letter to Judge Sobeloff by Mr. Updike: "when there should issue from the court a vindication of Judge Haynsworth and a flat rejection of the union's suggestion that he should be disqualified."

Again, the question of disqualification in the original correspondence.

Later, on page 13 of the record, in another letter to Judge Sobeloff, from Patricia Eames, Assistant General Counsel of TWVA:

> With that basic fact established, it becomes clear that my collateral concerns, as expressed to you in the last paragraph on the second page of my letter to you of December 17, became inappropriate.

So it was not just a crime under consideration, but collateral concerns, as well. It was not just a crime but a question of disqualification, as well.

Mr. President, no one has documented this information fully in the RECORD. I dislike taking this extensive time, but it has to be answered somewhere in the permanent RECORD of this body.

On page 15, at the top of the page, in a letter from Judge Sobeloff to the assistant general counsel of the Textile Workers Union of America it is stated:

> He also remained on the board of Carolina Vend-A-Matic, which is not publicly owned, for he thought that the considerations which led him to resign from the boards of the other corporations were inapplicable to it and the small, passive corporation.
>
> Some months ago it became known that judges in other sections of the country were serving on the boards of large, active, publicly owned corporations. They had not done what Judge Haynsworth had done in the first instance. Their service on the boards of such corporations led to criticism, with the result that last fall the Judicial Conference of the United States adopted a resolution that—
>
> "No justice or judge of the United States shall serve in the capacity of an officer, director or employee of a corporation organized for profit."
>
> Incidentally, we are assured that Judge Haynsworth has had no active participation in the affairs of Carolina Vend-A-Matic, has never sought business for it or discussed procurement of locations for it with the officials or employees of any other company.
>
> Sincerely,
>
> SIMON E. SOBELOFF.

They even went into the solicitation question.

The letter continues:

> However unwarranted the allegation, since the propriety of the conduct of a member of this court has been in question—

Not just crime but propriety, as well; and they get as irritated as they can be and go right through the roof and say this was a matter before Attorney General Kennedy.

Again, the letter by Judge Sobeloff to the Attorney General, at the bottom of page 15, relates to the alleged conduct, the assertions, and insinuations about Judge Haynsworth.

Finally, on page 19 the Attorney General himself states:

> FEBRUARY 28, 1964.
>
> Hon. SIMON E. SOBELOFF,
> *U.S. Court of Appeals for the Fourth Circuit, Baltimore, Md.*
>
> DEAR MR. CHIEF JUDGE: This will acknowledge receipt of your letter dated February 18, 1964, enclosing the file that reflects your investigation of certain assertions and insinuations about Judge Clement F. Haynsworth, Jr.
>
> Your thorough and complete investigation reflects that the charges were without foundation. I share your expression of complete confidence in Judge Haynsworth.
>
> Sincerely,
>
> ROBERT F. KENNEDY,
> *Attorney General.*

When that letter was shown to Members there were some who became highly incensed that the inference was made that Attorney General Kennedy considered anything other than crime; that he considered insinuations, that he considered assertions, propriety, conduct, disqualification—which was unfair to the memory of that great man.

Let us look at the inner-office memorandum on page 17 from Gelchen to John Duffener:

> John, as I began at the beginning and read this I thought "shades of Bobby Baker" with the vending machine aspects.
>
> Having read it all I agree this matter has been fully and satisfactorily * * * by Judge Sobeloff.

Mr. President, that is exactly a literal reading. I guess it would be "agreed to" or whatever it might have been, but there it is. No one knows. We cannot know but it gives no basis and foundation to be highly irritated when the best evidence is knowing the character of Robert Kennedy; his sensitivity on labor matters, and having appear before him a charge that a judge in a labor case used his position to feather his own nest—that Robert Kennedy did not consider propriety.

Charge 15: Violation of canon 24 because the Judge's duties were interfered with by acting as a director and vice president of CVAM.

Truth: This is completely unfounded. They never interfered and even the union which knew of the office that Judge Haynsworth held in CVAM did not ask the Judge to disqualify. In 1963, 1964, and 1965 the parties that complain now never complained.

They went on with the judge. They did not ask about appearances. Who believes that? These labor lawyers and the chief counsel of the Textile Workers Union of America, as keen as they are, did not think of it.

In 1963, while the Darlington case was on appeal, the TWUA knew of the judge's affiliation with CVAM and did not ask him to disqualify. In 1964, when the new hearing was held and appeal had, no request was made for disqualification. The article by Judge Simon Sobeloff is an intentional deception with the intent to give the impression that Judge Sobeloff would have found Judge Haynsworth in violation of this particular canon of ethics. The contrary is true, regardless of insinuations. Judge Sobeloff investigated the charge as is outlined above and discharged not only the charge but the assertions and insinuations—and expressed complete confidence in Judge Haynsworth. The article of Judge Sobeloff was written in July 1964 subsequent to his finding of complete confidence on February 18, 1964. A reading of this complete article shows approval of the conduct of Judge Haynsworth, citing with approval the holding of an insubstantial stock holding by a judge in a party litigant. Again, it must be emphasized that Darlington Manufacturing Co. had no machines of CVAM and was not doing business with CVAM.

If there could be any doubt, after all of this was charged and headlined, and testified to, what happened but a telegram from Judge Sobeloff and Judge Sobeloff himself said:

I have every confidence in you, Judge Haynsworth, as to ethics, as to law, . . .

And Judge Sobeloff's telegram is a matter of record by the Committee on the Judiciary. So there is no innuendo here to contend with, but rather the actual fact.

Charge 16: The violation of canon 25 that the judge used his office to promote the vending business.

Truth: Once again, the suspicion or appearance is nothing more than an impression received from some of the facts. Once all of the facts have been developed, then appearance and suspicions are dispelled and one speaks of the fact. No suspicions developed before Judge Haynsworth's nomination to the Supreme Court other than the anonymous call case where the union joined in the position that the judge should not be disqualified and the record before the Judiciary Committee gives exactly the opposite appearance than the suspicion charged. The investigation of Judge Haynsworth in the minutest detail shows no violation of this ethic.

Charge 17: Violation of canon 26 by investing in enterprises apt to be involved in litigation.

Truth: Georgia Pacific, just like Carolina Vend-A-Matic never has been involved in a case before Judge Haynsworth. The citation of the consent decree by the SEC would mean no investment of stock whatsoever in the first 500 of American corporations listed with Fortune magazine. They are constantly involved in some proceedings. In other words, you could not own stock in General Motors because you are bound to find a case filed against General Motors somewhere each year. In the Brunswick case it was an investment after the fact and a mistake; and, in the Grace, Greenville Hotel and Maryland Casualty cases, the judge was not a stockholder of the party litigant and Monsanto has never appeared before Judge Haynsworth.

Charge 18: Violation of canon 29 by exercising an act of judicial discretion while owning stock in the party litigant.

Truth: Again, back to the mistake of the Brunswick case, no judicial discretion was exercised after the stock was purchased. The decision had been made 6 weeks before. The ABA has investigated this and the other cases, citing and reaffirming its highest endorsement of Judge Haynsworth's appointment.

Charge 18: Violation of canon 33 by sitting in cases involving customers of CVAM.

Truth: Once again the Darlington case and the other customer cases of CVAM were thoroughly investigated with the finding before the Judiciary Committee that the judge had a duty to sit and the ABA—the promulgator of the canons—absolved—Judge Haynsworth of any suspicion.

Charge 20: Violation of canon 34 about the general conduct of Judge Haynsworth not being above reproach in any particular.

Truth: On charge 20, I think from source of the charge and I think from the facts, that literally the judge has been third-degreed, from income tax returns to every stock holding, to every stock purchase and sales slip, plus the minute books, every decision reviewed with field investigations of citizens in the South Carolina area, plus labor leaders, members of the ABA, the NAACP, AFL–CIO and, finally, most thoroughly on a sound review by the special committee of the American Bar Association which reaffirmed its highest endorsement.

Mr. President, if you please, when it comes to the Brunswick case, they complain, but what does the lawyer for Brunswick say on the losing side, "Never, any time, did I ever question Judge Haynsworth. In the 12 years, never has there been an appearance of impropriety." That is what the lawyer for Brunswick said. There is no reason to disqualify. Did not agree with the judge's finding. No appearance of impropriety or reason for disqualification. Yet, they seem to find it and talk about the "appearance" when the lawyer for Brunswick himself says there is none there. They find nothing unethical. The ones who handled the case, the American Bar Association, who wrote the canons, who continue to know and understand the import of the canons and who have continued to study the matter, have all given Judge Haynsworth their highest recommendation.

But, no, there are those who wish to continue their innuendo, the inference, the "appearance," and then blame the judge for it.

What is the truth and the effect of this assault? The truth is best contained in the conclusion of an opponent, Senator JOSEPH TYDINGS of Maryland, who said, when he first heard the nomination, that he was ready to approve him, would work with him, and would testify in his behalf; but the situation now is that the Senator from Maryland (Mr. TYDINGS), in his special findings, says:

I do not believe that any one of the decisions of actions of Judge Haynsworth to which I have alluded is of a gravity which requires the denial of the seat to which he aspires.

But the effect is devastating, as is also stated by Senator TYDINGS when he found, viewed in the aggregate:

One clearly discerns a pattern of repeated judgments, which, unfortunately, create the impression that Judge Haynsworth is insensitive or oblivious to the subtle requirements of judicial ethics especially that cardinal rule which admonishes judges to avoid even the appearance of impropriety.

Mr. President, Lord help future appointees to the Supreme Court, because there will be "appearances." Let them come up here and from now on one of the 100 Senators will find some kind of appearance. They will get it, or they will create it, one way or the other, so that there is bound to be an appearance.

We have had a lot of charges. We have had a lot of investigations. We have had witnesses repeating most of the evidence. We have read the headlines. And after careful study, the Senator from Maryland says that the judge should be rejected.

But what is the effect? In the same Senator's report, the effect is devastating. These appearances, reasons Senator TYDINGS, have cast a shadow upon the Supreme Court. More importantly, I respectfully submit, a shadow has been cast upon the U.S. Senate as a deliberate body. The opposition, like the trapped octopus, has darkened the waters of reason with his black ink of poison and escaped, chortling while Senators run in circles shouting "withdrawal," "insensitivity," "lack of judgment," "shadows," and "lack of candor." By now the strategy of the opposition is complete. Charges of antilabor have blended into the background. Even the special reports of the Senators in opposition do not find Haynsworth antilabor.

Is that not amusing, almost, if one can get amused by this serious situation? All the charges of antilabor, all the hearings and all of the findings, none find him antilabor. Some individual Senators have been candid enough to get up and speak on the basis of saying, "That is exactly what I disagree with. I cannot agree with the judge's philosophy," but there are those also astute enough not even to mention that.

Now the Senator, like the politician in Cato's famous couplet makes his own little laws, and sits attentive to his own applause.

For the record, it must be stated that, true to its charge, the Senate has been deliberate in its process. No rule has been

violated and no rush has been experienced. Upon receipt of the appointment, the very system established—the rules, the committee system, and so forth—to insure that the Senate deliberate was adhered to. Referred to a hearing with due notice, witnesses were summoned and all kinds of testimony was received. No one faults the thoroughness with which Senator BAYH or any others investigated. Since a confirmation is for life, it is the duty of the Senate to examine every facet of an appointment. Due time was given to make further investigations after the hearings. Sufficient time was allowed to file majority and minority reports. But this deliberate process has been preempted by the doubletime of the news media.

When a Senator returned in September, on the very day the appointment was received, before reflection could be had, and hearings held, and evidence taken, he had already received headlines. Reporters jumped all over him and wanted to know his comment on the $1.5 million stock deal. I just returned to Washington and reporters were jumping around with notebooks. A Senator is supposed to be intelligent. He is not supposed to be dumb. So he looks at the reporters and says, "That is a very serious thing. I want to consider it." The Senator does not know what they are talking about, because he has not seen the Washington Post. That was the first time he was confronted with it. He is asked, "What about the $1.5 million stock deal? What about the AFL–CIO charge of conflict of interest and bribery? What about Bobby Baker? What about the Brunswick case? What about the Darlington case? What about the Grace case? Did you hear that the judge was corespondent in two divorce cases in Richmond and the records have been withdrawn from the courthouse?" Several reporters called me one evening and wanted a comment on that particular matter. "We have just learned that the judge has withdrawn. What's your comment?"

Senators like to be leaders; they like to be decisive. Faced with labor pressure, faced with press pressure, they were also faced with a lack of leadership in the Republican Party. Senator GRIFFIN, the Republican whip, asked the President—in fact, the leadership was in the other direction—to withdraw the nomination. Senator SMITH, chairman of the Republican conference, asked that the nomination be withdrawn; and Senator SCOTT, the Republican leader, stated he had not made up his mind. He refused to declare his support.

Is there anything more damaging than that? If so, I do not know what it is, when one's party has an appointment and the Senator says he is still studying it. If that does not give the message that there is something wrong or that it may be withdrawn or something is not quite right, I do not know how a message could be more effective.

Now if you are a Democrat under these circumstances, you want to credit yourself with foreseeing the imminent, so you prepare a statement of "insensitivity" or "lack of judgment" and you declare against; and, if you are a Republican, you get the message that the party's divided, and so for the good of the party, you oppose. This was happening all around me when I addressed myself to this subject on October 7. I explained then that Judge Haynsworth was the victim of sensitivity.

I want to emphasize that. He actually was the victim of sensitivity.

There is no law against the judge owning stock. In fact, the law does not prohibit the shareholding by a judge of a party litigant appearing before him. Only 3 weeks ago, in October, two Federal judges in the fifth circuit refused to disqualify themselves in a case where they held stock in a party litigant of $35,000 and $600,000 respectively.

Mr. President, can you imagine that? That is the fact and that is the law.

When Judge Haynsworth ascended to the bench in 1957, the law provided that you could be an officer or director in a public corporation as well as a stockholder. At that time, due to his sensitivity to the ethics, Judge Haynsworth resigned his directorship in publicly held corporations. When the Judicial Conference in 1963 requested that all judges do likewise, Judge Haynsworth, due to his sensitivity, went a step further. He sold all of his stock. No one would claim that the judge sold his stock in order to obtain an appointment to the U.S. Supreme Court. This was almost 7 years ago and any hope for promotion of Judge Haynsworth was remote. He did this as a leader in the administration of justice.

When Judge Sobeloff completed his investigation, Judge Haynsworth, due to his sensitivity, asked that it be made a public record; not simply have the judges judge the judge, but send it to the impartial Justice Department and the Attorney General and have them review it—due to his sensitivity.

Remember, Senator TYDINGS described his leadership in the administration of justice as dynamic. But Judge Haynsworth's troubles occurred when he attempted to correct one of the most frequent abuses of judicial procedure.

As the Presiding Officer knows, as a former distinguished attorney general of his State, a story about random selection of judges would have to take about one page as a news story. I agree that a city editor would scratch it out because it would take a page.

The hanky panky of appellate procedures, the adulteration of a fair appeal occurs when certain judges are assigned to certain cases. As a trial lawyer of 20 years admitted to practice before the circuit court of appeals, I can tell you that the principal concern in the fourth circuit prior to Judge Haynsworth taking over as Chief Judge, was that somehow certain judges seemed to receive certain types of cases. This is a matter of concern here in Washington in the District Court of Appeals at the present time, but no longer in the fourth circuit court of appeals.

It hit the press in June of this past year. Judges in the district court of appeals had been receiving certain types of cases each time, and lawyers had appeared and complained publicly about it.

Judge Haynsworth, sensitive to the basic precepts of justice, directed that hereafter the panel of judges be selected at random.

As an aside, 3 years ago I had occasion to be involved in an appeal before that court—and Judge Haynsworth was not on the panel—from a verdict of $265,000 awarded to an injured employee, a worker, whom I represented. I do not stand second to anyone on the matter of labor. I respect labor and I respect unions. I cannot help it if there are defalcations in the union movement because of the lack of leadership. I represented organized labor in my own hometown. I did not represent insurance companies. I represented injured workers and plaintiffs.

In taking that case up on appeal, I was told by the lawyers for the opposition, "We will get a panel that will never confirm that $265,000 verdict for an injured client." I may say facetiously that my choice was Judge Oren Lewis, of Virginia, who confirmed my $265,000 verdict. I would like to see him promoted, and I told him so. But the fact is that I was told time and again—and he was investigated as thoroughly as I know he could be—that it was Judge Haynsworth who instituted the policy of random selection of judges and adhered to it. Lawyers are not concerned about a judge's stock holding in a party litigant. The holding can be easily determined. The lawyer can let it go with a favorable judge, and call it into question with an unfavorable.

There is no mystery about that, if a lawyer is worth half his salt. If the judge has some stock, let him sit. That is what the average lawyer would say, if he told the truth. If the judge is unfavorable, and he has that stock, and his inclinations and persuasions are otherwise, call him in turn. The practice works. It is when the judge himself can jockey for position in certain types of cases, by claiming an interest, no matter how insubstantial; then there is nothing the trial attorney can do but sit by and watch it happen to him. There is absolutely nothing he can do. He cannot say anything. He does not have to, in fact; he just knows it; he feels it. If the lawyer tries to charge him with it, or rather infers it, it does become a charge, and he is liable to get in contempt. In any event, he is going to ruin the chances of his client. So he shuts up and listens.

The only way to correct this vice is to adhere to a random selection of panels of judges and not allow a judge to disqualify unless he has a substantial interest, because that is the way they jockey, and they had better not sit.

Judges know how far they can go. Back in chambers, they can maneuver. They know how to get in place. They know what is coming. The only way to correct that is to have a random selection. But a judge will not disqualify unless he has a substantial interest. That is the way the law reads, and that is the finding of the U.S. Supreme Court. That is the law of the land today. Unless a judge has a substantial interest, he has a duty to sit. The so-called being in violation of the canons of ethics for 10 years should rather have read: adhering to the law in conformance to the highest standards of ethics for the past 10 years. But when have we ever read that headline? Never.

Where did you ever see that headline? Nowhere. Never, Mr. President.

I offered a bill back in October to try to clarify this situation. It extends further than the efforts of the distinguished chairman of the House Judiciary Committee (Mr. EMANUEL CELLER) who at least tried to take the matter up with respect to being an officer in a corporation. He offered bills in the House Judiciary Committee, and they have failed. They have failed to pass the House of Representatives.

So I proposed this particular bill, S. 2994. No one wants to cosponsor it. No; they want to beat a judge on the head with the present law, because it vests in the judge a discretion. The law now uses the words "unless there is a substantial interest in." Otherwise, a judge has a duty to sit.

I said, "Let us clear that up." I rather agree with Professor Frank and Dean Foster of the University of Wisconsin School of Law, and the majority opinion among judges and among judicial circuits, that "any interest" is the only way to make sure, so they cannot ask questions. I believe that is the best answer.

So my bill reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 455 of title 28, United States Code, is amended by adding at the end of such section the following: "Ownership by a judge of stock in a corporation which is a party litigant or which owns any interest in a party litigant shall be deemed substantial for the purposes of this section; and a judge shall abstain from participation in any case involving a party litigant in which he has any investment whatever."

That would include realty holdings as well as stock holdings—any investment—and it would make it clear. But Congress does not want it clear. They like to beat the judge over the head with it, when he obeys the law. Is that in a manner consistent with a sense of fairplay?

Mr. President, who has ever heard of Prof. William van Alstyne, of Duke University?

Yesterday I was talking with a Senator. I have been trying to get votes. I said to him, "Oh, no, read what Van Alstyne said."

"Van Alstyne, the professor from Duke University."

"Never heard of him. What kind of funny thing is that?"

I said, "Look, that fellow served as counsel for the American Civil Liberties Union." The New York Times got him irritated and he wrote the New York Times a letter.

He came to testify, but by then, George Meany had to be heard, and he interrupted the whole thing and took it over, so Professor van Alstyne had to go back down to Duke University, and they told him to file his statement.

So, when does the press cover a filed statement? That is not news, so they do not cover it.

But what did he say about Judge Haynsworth? Let me read this—it is not long—because they want to have something positive and understandable as to why Judge Haynsworth was ever considered by President Nixon.

He says:

It is not surprising that a Supreme Court appointment from the South, by a President who campaigned with some degree of criticism of the Warren Court, should attract a measured amount of liberal skepticism. The degree of reaction to Clement Haynsworth's nomination, however, is in fact unworthy of some of the truly fine people who have too quickly given it currency. In those areas of statutory interpretation and constitutional adjudication where the issue is so unsettled that judicial discretion must necessarily play a major role, Judge Haynsworth's record cannot be seen as illiberal.

In Hawkins v. North Carolina Dental Society, Judge Haynsworth authored the court of appeals opinion which desegregated the North Carolina Dental Association—

Here is old anti-civil rights Haynsworth. I do not know where they got this; did he ever desegregate anything?

rejecting its claim that it was not subject to the equal protection clause of the 14th Amendment. He joined as well in North Carolina Teachers Association v. Asheboro City Board of Education, reversing a lower federal court which had upheld the displacement of Negro teachers who had lost their jobs to whites when schools were integrated. He also shared the court's decision in Newman v. Piggy Park Enterprises, applying the Civil Rights Act against a claim that insufficient food was sold for consumption on the premises to bring the business within the statute.

In the field of criminal justice, he authored an extraordinarily careful opinion in Rowe v. Peyton, extending the right of prisoners to have their convictions reviewed on habeas corpus—a new development later affirmed by the Supreme Court. He joined (sic) in Crawford v. Bounds to protect defendants in capital cases from being sentenced by death-prone juries from which all expressing any reservation to capital punishment had been excluded—a new development also subsequently affirmed by the Supreme Court in a related case.

Has anyone here heard of the Supreme Court following Judge Haynsworth? My distinguished colleague from Montana (Mr. METCALF) yesterday said that the trouble with the judge was that he was following 10-year-old civil rights law. There he is leading the Supreme Court; but where would my distinguished friend ever hear of this?

In Pearce v. North Carolina, he applied a constitutional principle newly developed at the federal level in his own circuit to protect defendants from harsher sentences following retrial—again in advance of the Supreme Court which affirmed the decision several months later.

Here is Judge Haynsworth again leading the Supreme Court, in the development of the law in the light of changing times.

Quoting further from Van Alstyne:

In respect to First Amendment rights, he joined in the first federal decision which struck down a state law restricting the right of university students to hear guest speakers on campus—a principle later expanded by a half-dozen other federal courts and indirectly approved by the Supreme Court in a related case just this year.

Thus says Professor Van Alstyne. Again every leader around here of a liberal bent, walking arm in arm with moratoriums and students says: "Get with it; get identified." Judge Haynsworth got with it a year ago.

But they say, when they rise to speak, "This thing is disturbing to me. This man has got blinders. He is ruling on civil rights, union, and student matters, as of 10 years ago."

What is the fact? What does the record show? Quoting further from Van Alstyne:

On occasion when his opinion has differed conservatively from that of more liberal jurists, it has not been without care or reason. Thus, his conclusion in Baines v. City of Danville that only an extraordinary kind of civil rights case could be removed from a state court to a federal court was accompanied by a painstaking analysis with which a majority of the Supreme Court subsequently agreed in Peacock v. City of Greenville. Similarly, his conclusion in Warden v. Hayden that an otherwise constitutional search is not unreasonable because its object is only to secure evidence of a crime was also subsequently shared by a majority of the Supreme Court.

I do not submit that these decisions warrant that Judge Haynsworth will be a 'liberal' justice. His record on the court of appeals does not—and in the nature of things could not—enable us to predict his votes in the substantially different role of associate supreme court justice. They do indicate, however, that he is an able and conscientious man who will approach his duties on the Supreme Court with a spirit of open-mindedness as well as an appreciation of the difficulties of the judicial process.

Who knows that man who has dedicated his book to Chief Justice Warren? This same man carried Thurgood Marshall's briefcase in the original school desegregation case of Sweat against Painter.

Remember Chief Justice Fred Vinson talking about the value of association. Who was Solicitor General and handled the appeals, and who wrote the briefs and who carried Thurgood Marshall's briefcase? He was co-counsel in the case of Miranda against Arizona, on the prevailing side. Last year the Judiciary Committee confirmed him as a Federal judge, but he never was appointed.

I was complimented that the press asked about that. This statement was released shortly before I took the floor. I am complimented that the press read the facts. That is a fact. They checked with the Judiciary Committee. In the closing days, President Johnson was to send up the appointment. The committee was notified. The appointment was discussed, and it was agreed that the gentleman would be confirmed. However, the appointment never came.

John Frank of Arizona, the leading authority on judicial disqualification, came out of conscience. He came out of conscience, because actually he testified that he thought that if we confirmed in the Judiciary Committee, one person it was Judge Arthur Goldberg. All of the witnesses said they were for Arthur Goldberg. Personally I have the highest regard for former Justice Goldberg and would not hesitate to vote for his confirmation. But Judge Frank came out of conscience. He stated to the Judiciary Committee that, under the Canons of Professional Ethics, the judge should not be unjustly charged. He came to defend Judge Haynsworth and this is what he said:

Obviously given my point of view and experience I would without doubt have pre-

ferred a different administration to be appointing a more liberal Justice. But my side lost an election, and the fact of the matter is that as a member of the bar we are called upon by canon 8 to rise to the defense of judges unjustly criticized, and it is my abiding conviction, sir, that the criticism directed to the disqualification or nondisqualification of Judge Haynsworth is a truly unjust criticism which cannot be fairly made.

Where have we heard of that amidst of this onslaught? I remember one night when they had the poor judge in the Mayflower Hotel. He has an impediment in his speech and a high sensitivity to the canons of ethics. He knows that it would be better not to say anything to the public. A judge should not engage in polemics or public debates.

He refused "Meet the Press" this week. They had him there. The reporter had him in the picture. They said, "We have a picture of the judge coming in, but he would not talk."

Did anyone think of the canons of ethics which require that a judge is not supposed to engage in this kind of conduct? That is why he did not do so.

Do you know who wrote the desegregation guidelines in 1965 for the Department of Health, Education, and Welfare—Associate Dean G. W. Foster, Jr., of the University of Wisconsin School of Law. And what did he say of Judge Haynsworth? He said:

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 and open-minded man with practical knack for seeking workable answers to hard questions. Here and there, to be sure, were cases I might have decided another way. I am not aware, though, of any opinion associated with Judge Haynsworth that could not be sustained by reasonable views of reasonable men.

To sum up: Judge Haynsworth is an intelligent, sensitive, reasoning man.

And I hope that the press will cover some of this. I continue to quote:

His record as a judge shows him to be a man capable of continuing growth and responsive to the needs for change where needs are persuasively shown to exist. And in my judgment, the question posed by his nomination is not whether you or I might have made a different nomination but whether Judge Haynsworth possesses the qualities required to become a fine Justice of the Supreme Court. My answer, based on Judge Haynsworth's record and the reputation I know him to have among the federal judges with whom he has worked, is that he will make a first-rate Associate Justice of the United States.

Mr. President, this gentleman came to Washington. But he was not reached. He was not examined. They had already disrupted the routine. And as a result, they told him to file his statement and they would hear him later.

When they summed up in Newsweek, they said:

Why don't the supporters of Haynsworth say something positive about the fellow and cut out this ying-yang about charging everybody with a smokescreen and saying this charge is wrong and everything else?

We have tried our best to bring out the truth. The distinguished Senator from Missouri said, "Where do you get this second coming of Brandeis? I have never heard of these accolades."

Mr. President, Who is the leading liberal scholar who taught for several years at the University of Minnesota and Yale and Harvard? Who wrote cases on Federal courts and the revision to the seven volume set of Barron and Holtzoff Treatise on Federal Practice and Procedure? Who is the man who read every decision, not just the ones he wrote, but every decision ever participated in by Judge Haynsworth, covering 167 volumes of the Federal Reporter—Prof. Charles Alan Wright, McCormick professor of law at the University of Texas. What did he say of Judge Haynsworth?

He read all the decisions. He had to sit there day in and day out to keep up with his profession and his particular skill, to keep up with all of the decisions in writing the various treaties. He said:

With this professional interest, and with these writing commitments, I necessarily study with care all of the decisions of the federal courts, and inevitably form judgments about the personnel of these courts. We are fortunate that federal judges are, on the whole, men of very high caliber and great ability.

I am trying to find the second coming of Brandeis for a distinguished colleague of mine.

I continue to read:

Among even so able a group, Clement Haynsworth stands out.

That is not Fritz Hollings talking. That is not a personal friend from South Carolina. I wish I were from elsewhere so that I could tell the Senate from a different viewpoint. Everything I say is compromised. He said that even among so able a group of legal scholars, Clement Haynsworth stands out.

He said further:

Long before I ever met him, I had come to admire him from his writings as I had seen them in the *Federal Reporter*.

Professor Wright further stated:

It would be very hard to characterize Judge Haynsworth as a "conservative" or a "liberal"—whatever these terms may mean—because the most striking impression one gets from his writing is of a highly disciplined attempt to apply the law as he understands it, rather than to yield to his own policy preferences.

Mr. President, I know of no greater compliment to a man of the legal profession, particularly to a presiding judge.

I wish to emphasize the fact that Professor Wright is not a Johnny-come-lately embroiled in the Nixon nomination of Judge Haynsworth. Professor Wright emphasized this in a letter to me on November 13, and I quote from that letter:

You have referred several times to my remark at page 592 of the hearings that long before I ever met him, I had come to admire him from his writings as I had seen them in the Federal Reporter. I did not cite any authority or any example because in early September I did not realize it would be needed and I naively supposed that Senators would regard me as competent to have an expert opinion on the abilities of Federal judges and as honest when I express that opinion.

Professor Wright, used to the due process, as is Judge Haynsworth, came to Washington and naively thought that Senators would regard him as competent and know of his opinion and credit him with honesty.

Professor Wright continues:

My hornbook on Federal courts was published in 1963, nine months before I first met Judge Haynsworth. I enclosed a Xerox of page 151 of the hornbook in which I describe the Fourth Circuit's opinion in Markham vs. the City of Newport News as a notable opinion, and say that the argument for a contrary result was effectively refuted by the Fourth Circuit. I think you know my work and my book well enough to know that it is sparing in its praise, and there are few occasions in which I call an opinion notable. The opinion in Markham was by Clement Haynsworth.

There are many other instances that I could cite, but this is the one in which my praise for his work has been a matter of public record for seven years.

Professor Wright came to Washington three times and never had an opportunity to testify, but only filed his written statement. If he had testified, he could have been cross-examined on his high regard for Judge Haynsworth. He would have gone into it thoroughly, it would have impressed the news media, and we would have positive facts appearing in behalf of Judge Haynsworth as to why we regard him as outstanding.

Mr. President, what makes a good judge? I have my own ideas, but I never heard it so clearly, succinctly, cogently, and impressively stated in an extemporaneous fashion as was done by Professor Wright on a TV program some 2 weeks ago. After the program, I could not get a transcript, so I spoke to him over the telephone and he dictated substantially what he said. One of the reporters asked, "What makes a good judge?" And this is what Professor Wright said referring to Judge Haynsworth:

He is able to write opinions that proceed logically, so that you can see what the Court's reasoning process was and why it decided as it did.

Second, he does not not talk about things that are not involved in the case. He avoids the temptation to express his views on a lot of issues that do not have to be talked about in order to have the case decided.

Third, he makes a discriminating use of precedent. He is able to recognize which cases are really authoritative and ought to be followed and which cases do not directly bear on the case.

Fourth, he has a breadth of viewpoint in humanity.

Do Senators recall the statement in the New York Times? He just was not quite humane; he was insensitive. He is on that front porch rocker on the weekend—how to make money without really trying, with his slave servant cooling him off, and reading the Wall Street Journal.

Is this the man Professor Wright was talking about, having come to his opinion from the writings of Judge Haynsworth?

I quote further what Professor Wright said makes a good judge:

Judge Haynsworth recognizes the context in which cases come in two ways. First,

he is quite conscious that these are not just numbers he is dealing with; these are real people. This can be seen especially in criminal cases. There are many cases in which, for example, a person is under a death sentence or a long prison sentence and there is considerable doubt about whether a person is sane. Judge Haynsworth is not going to worry about technical barriers. He insists that such a person can get a fair hearing, and he finds out whether he is actually sane before he is electrocuted or sent up to prison for life.

If you read and heard that, you would think that is a sort of callous thing—actually sending people to be electrocuted and admitting them to insane asylums. They are. We of the profession, the lawyer of experience knows it. Here is a real scholar writing of it. He said this is not a fellow sitting on the porch, waving a fan and reading the Wall Street Journal, but he insists that a person get a fair hearing, and he finds out whether the person is actually insane before he is electrocuted or sent to prison.

Second, he realizes that the law grows. You can't decide a restriction on habeas corpus today simply on what happened 200 years ago. You have to approach it in light of today's problems rather than simply by sterile history.

Where are the colleagues who say that Judge Haynsworth's decisions are those of 10 or 15 years ago? Where are they who say he is in yesteryear? I have related what the man says who reads all his decisions. He says that Judge Haynsworth is true to the charge that you must approach these problems in the light of today's problems rather than simply by sterile history .

Professor Wright asks:

What about his true sensitivity? There is only a limited amount to what a good judge can do in respect to the movements in our society. An awful lot of that has come from Congress and from the Executive Branch, but foremost is the attitude of a judge on free speech. Those parts of society which are unhappy should have an opportunity which the Constitution guarantees to voice their grievances as long as they do so in a peaceful manner. Judge Haynsworth's First Amendment cases, though they are not numerous, show that Judge Haynsworth is much aware of that. In fact, he goes a little further than I would.

This is from a liberal legal scholar who perhaps would have recommended someone else, as he said in his statement and discussions. He said that on the first amendment, on freedom of speech. "he goes a little further than I would."

Second is the administration of the criminal law, and this is one of the ways in which the poor and minority groups feel downtrodden, that the police are their enemies. Here Judge Haynsworth's record is outstanding.

Where have my colleagues heard that? This is what Professor Wright has said:

Here his record is outstanding. His full record on criminal law shows that he is very responsive to this concern.

Finally, a judge makes sure that the courts are always open so the people can vent their grievances in a lawful way rather than resort to—

There is no judge in the country who has been more insistent that you do not keep cases out of court simply on technical grounds.

If a person has a grievance, you ought to hear it and see if there is any substance to it instead of saying, "You did not draw up the papers right."

Mr. President, that language is very persuasive. That was not a prepared statement by Professor Wright but a statement given extemporaneously on the television program on which I appeared with him.

Who among the Senators has ever heard of Louis B. Fine, for 12 years an officer of the American Trial Lawyers Association and a member of the Board of Governors? What did he say?

I feel that the criticism that has been made by labor is unfounded, and I feel that the representation that has been made here that he is anti-Negro is not true, and I say that on the same basis that I am not anti-Semitic being of the Jewish faith.

On page 230 of the hearings before the Committee on the Judiciary a previous witness had talked about civil rights and anti-Negro. Here comes Louis B. Fine, of Norfolk, Va., and he said:

Now, let us take his personal character which I will tell you gentlemen about.

As a member of the Judicial Conference of the Fourth Circuit, it is necessary to be appointed to that, and if you are appointed and selected for 3 consecutive years you become a permanent member, and during the time that Judge Haynsworth was Chief Judge he personally had more black men on the judicial conference who attended the Homestead and the Greenbrier at Virginia, not only as a member of the bar but socially to determine what was good and best for the fourth judicial circuit. This is a matter that he did not have to do. It was a matter of discretion, and I say that to you as a matter of personal conduct on the part of the judge.

Later in his testimony he made other references. He was the first person to introduce black participation in the Fourth Circuit Judicial Conference. But Judge Haynsworth insisted that black members participate.

But whoever heard of that? Was that in the news? Was this covered where colleagues could study it?

And how many know Frederick F. Leister, Jr., No. 34802, inmate at the Federal Prison at Lewisburg, Pa. He was in the leading case, that landmark decision, where Judge Haynsworth adopted the American Law Institute test for insanity, *United States* v. *Leister*, 393 Fed. 2d. 920 (1968). Frederick F. Leister, Jr. ,wrote to the judge on October 26:

HON. CLEMENT HAYNSWORTH,
Chief U.S. District Judge,
Fourth Circuit Court of Appeals,
Greenville, S.C.

DEAR JUDGE HAYNSWORTH: If you were to give up now you would be unworthy of the man who wrote the decision in my appeal. The man who saw that I had no attorney and appointed one of high calibre, the man who saw the need for treatment for the mentally ill but who gave society first priority: The man who condemned me to prision and who was right in doing so.

Because of the decision you wrote and your words, I began to strike back gainst the problems that I myself created. And I'm winning the battle.

This is probably the first time that you have ever been under serious attack for anything and I know how it hurts. Oh how it hurts! I have been under attack since I slipped from my mother's womb but I am not about to give up. Admittedly, I almost did a few times, but somewhere, someone always gave me the strength not to.

Your words helped me. They weren't fancy or glittering words but they were sensible words and I listened to them.

I am on my way back from the road that I once traveled, for the first time in my life. I will become a law-abiding citizen. I am not there yet but I am fast approaching my destination.

If you were to give up now, it would be a disappointment and shock to me that would certainly encourage me (and men like me) to detour if not to do so.

Stand firm, your honor, and stand proud. You have done nothing wrong, only human (and we are *all* human, aren't we?)

Keep in mind the tribulations that Christ and his followers encountered and yours will be easier to bear, and I am as positive as I am that I sit in this prison cell, that (1) you *will* be confirmed, and (2) that you will become one of the greatest Supreme Court Justices of all times . . .

May God bless you.

Respectfully,

FREDERICK F. LEISTER, Jr.,
PMB 34802, Federal Prison.
LEWISBURG, PA.

This is a man writing from the penitentiary and he was committed to the penitentiary by Judge Haynsworth. I think this is the highest testimonial for a man who has been through the wringer.

Mr. President, "Seek and ye shall find; knock and it shall be opened unto you." How many have really sought the truth and who have refused it.

When I presented Judge Haynsworth on September 6, I laid down the challenge. I stated at that time that while the opposition was working feverously in Judge Haynsworth's backyard, that from South Carolina labor would not have a labor attorney or official appear in opposition to the judge. The NAACP would not have an NAACP attorney or official appear in opposition to the judge and the ADA would not have an attorney or official of the ADA appear in opposition to the judge. Today I stand with my charge unchallenged. They could not bring you anyone. On the contrary, we brought the TWUA lawyer who testified in the judge's behalf.

Only a couple of weeks ago, while this hearing was being held, the direction from the local was, "Get rid of that lawyer." He faced them in Rock Hill, S.C. He was the Textile Workers' Union lawyer in South Carolina and he was proud of his support of Judge Haynsworth. We brought him here. He came voluntarily of his own accord. He feels strongly in this case about the witnesses presented. The fact is, he came voluntarily. We brought the attorney for Longshoremen's Union who testified in the judge's behalf. We brought the dean of the ADA who testified in the judge's behalf. Every Bar Association in the judge's circuit has endorsed him. Every U.S. District Judge of the Fourth Circuit subsequent to the adverse headlines and charge of violation of ethics has endorsed the judge's position.

Every U.S. Circuit Judge in the Fourth Circuit represented in the telegram on October 9 which was sent to the Senator from Mississippi (Mr. EASTLAND), chairman of the Committee on the Judiciary, and seven past presidents of the Ameri-

can Bar Association, that they endorsed him since the holocaust.

Deliberate process—who has deliberated these facts? Questions of impropriety—the judge came without question. The mere fact that questions are asked must not disqualify. We must not approve the strategy of the opposition that if we charge falsely, loud enough and long enough, and keep charging, then the nominee, for the good of the Court, should withdraw from the field. That is what this is, a matter of confidence in the judge, and confidence in the court.

We must reject the idea that even though the attacks are unfounded, the very fact that they have raised such misunderstanding is in itself reason for refusing confirmation. Such a contention is contrary to the American tradition of fair play. To accede to this view would be to place the nominee's fate not in the hands of senators charged by the Constitution with advising and consenting to the nomination, but in the hands of his accusers. For those who find the judge not guilty of either a violation of ethics or law, for those who find the judge honest yet still question appearances, talk of shadows and allude to insensitivities, then I can only say that they malign their responsibilities as members of the most deliberative body and aid in impugning the integrity of the U.S. Senate. For our responsibility as Senators cannot be more clearly stated than in John 7:24:

Judge not by appearance but give just judgment.

As we reach the vote, a popularity poll on yesterday indicates that only 38 percent of the people support the judge and 53 percent oppose him.

What about that? Are we going to elect judges popularly? Are we really protecting the Union and preserving the role of advise and consent? Are we to yield to popularity polls?

The story alongside tells of the leader of the Republican Party in the U.S. Senate recommendation of another southern jurist. No one would claim Clement Haynsworth indispensable. But I shall continue to claim as indispensable the uniqueness of this body as being the most deliberative of all democratic institutions. John C. Calhoun, one of John F. Kennedy's "Profiles in Courage," once asked:

Are we bound in all cases to do what is popular? Have the people of this country snatched the power of deliberation from this body?

I believe this is an hour for sensitivity. I believe this is the hour for candor. Where is the candor and the courage that Kennedy spoke of in his profiles? Does any one really believe this is the Fortas case all over again?

We know the philosophical differences. Justice Fortas did not elect to come back before the Judiciary Committee. "Explain or resign" was the charge. Justice Fortas chose to resign.

But when Judge Haynsworth comes to explain, they fault him for it, because his very explanation gives the appearance of explaining and discussing charges of impropriety.

This is something we always say "After Fortas, you know how it is in the Senate. Fine. We welcome the improvement of the detail and concern that we have." Justice Burger was appointed after the Fortas case. Was he subjected to this scrutiny, this inquisition, this trial by headline? Justice Burger is of the same philosophy as Judge Haynsworth. Why was he not opposed with equal vigor? Judgment—poor judgment. The fact is that Judge Haynsworth's poor judgment consists purely of allowing himself to be born in the South. That is his poor judgment. Senators know that.

Could it be because Chief Justice Burger is from Minnesota, and Judge Haynsworth is from South Carolina?

The shaken confidence in the Court itself—is it really the individual conduct of the Justices that shakes the confidence, or the Court's philosophy in unleashing known convicts upon a defenseless public, tying the hands of law enforcement officers, allowing Communists to run rampant in defense plants, and denying prayer in the public schools, as the Court's bailiff chants:

God save the United States and this honorable Court.

That is the shaking of confidence—not in individuals—but in the Court itself.

No, the crying need of the hour in America today is for leadership. As in the administration before, this administration continues to deal with the politics of problems rather than with the problems themselves. This country is being polarized, and those who call for soft tones are leading in the shouting. In this atmosphere, it is next to impossible to consider anything divorced from politics and pressures. The popular is tempting. Let it be said that Judge Haynsworth did not seek this office. He was recommended by a Democratic Senator who took note of his balanced judgment and his capacity to grow in these changing times. Amidst the change, the demonstration, the charge, the headline, and the devastating pressure upon Senators, it would behoove this body soberly to reflect, deliberate, and confirm.

Mr. President, I yield the floor.

THE CIVIL RIGHTS OF JUDGE HAYNSWORTH

Mr. BAKER. Mr. President, I have previously made known my strong support for the nomination of Judge Clement Haynsworth to the Supreme Court. Yesterday I stated in some detail my belief that Judge Haynsworth has diligently followed the rulings of the Supreme Court in civil rights cases and that his decisions in this area have been objective, fair-minded, and without bias.

On Friday last the distinguished senior Senator from New York (Mr. JAVITS) addressed himself to the civil rights record of Judge Haynsworth, concluding that he has demonstrated an insensitivity to the constitutional rights of Negroes. While I was not on the Senate floor at the time these remarks were made, I have since had the opportunity to read and consider them in detail.

In discussing this important question Senator JAVITS relied only on the cases in which Judge Haynsworth filed a written opinion either for the court or concurring or in dissent. While there can be no doubt that the written opinion is of great significance in ascertaining the philosophy of a particular judge, I believe it is a serious error not to consider the entire record, which obviously provides a more complete reflection of a judge's judicial philosophy.

There have been numerous civil rights cases in which Judge Haynsworth had joined in opinions written by his colleagues upholding the guarantees of Federal rights of minority groups and voting against the party charged with engaging in discriminatory practice. I discussed these cases yesterday, but in light of the conclusions of Senator JAVITS, I would like to restate some of them briefly today.

I refer, first, to the case styled *McCoy* v. *Greensboro City Board of Education*, 283 F. 2d 677, in which 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.

Cummings v. *City of Charleston*, 288 F. 2d. 817: In that case there was 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.

Wheeler v. *Durham City Board of Education*, 309 F. 2d 630: 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.

Brooks v. *County School Board of Arlington*, 324 F. 2d 303: 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.

Wheeler v. *Durham City Board of Education*, 346 F. 2d 768: 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.

Felder v. *Harnett County Board of Education*, 348 F. 2d 366: This was another en banc decision, a per curiam decision, upholding the district court's order that the school cease its discriminatory application of North Carolina's assignment and enrollment of pupils act.

Wanner v. *County School Board of Arlington County*, 357 F. 2d 452: Judge Haynsworth joined Judge Sobeloff, Judge Boreman, and Judge Bell in reversing the district court, which had 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: 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."

Smith v. *Hampton Training Schools for Nurses*, 360 F. 2d 577: 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 reinstated.

Wheeler v. *Durham City Board of Education*, 363 F. 2d 738: 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.

Chambers v. *Hendersonville City Board of Education*, 364 F. 2d 189: Judge Haynsworth was the "swing" vote in this case. 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.

Cypress v. *Newport News General and Nonsectarian Hospital Association*, 375 F. 2d 648: 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.

Wall v. *Stanly County Board of Education*, 378 F. 2d 275: 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.

Wooten v. *Moore*, 400 F. 2d 239: 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.

Felder v. *Harnett County Board of Education*, 409 F. 2d 1070: 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 some; there are others. In each of these decisions, Mr. President, Judge Haynsworth voted in favor of the party claiming the deprivation of a federally guaranteed right. A reading of this record will clearly indicate that Judge Haynsworth has been most sensitive to the civil rights of all of our citizens.

It is undeniable, as pointed out by Senator JAVITS, that there have been three cases involving civil rights issues in which a written opinion by Judge Haynsworth has been reversed by the Supreme Court. In my judgment, a fair reading of these opinions indicates that each involved points on which reasonable men could and did differ, and while the Supreme Court disagreed with the viewpoint espoused by Judge Haynsworth, these three opinions do not evidence any bias or unreasonableness.

Senator JAVITS was particularly critical of the opinion of Judge Haynsworth in *Brewer* v. *School Board of the City of Norfolk*, 392 F.2d 37, a decision in which Judge Haynsworth dissented in part and in which it is alleged that by mentioning freedom of choice with favor Judge Haynsworth acted contrary to a decision of the Supreme Court rendered 4 days prior thereto.

It is, of course, correct that the Supreme Court in *Green* v. *County School of New Kent County*, 391 U.S. 430, held that a freedom-of-choice plan which does not work is unconstitutional. The Court expressly stated, however, that a freedom-of-choice plan which promises to result in the dismantling of a dual school system is constitutional. The Court said:

> There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief.
>
> * * * * *
>
> We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself.

It is apparent that Judge Haynsworth's statements on freedom of choice were, therefore, not at variance with the Supreme Court's pronouncement.

In his remarks Senator JAVITS did mention several decisions in which Judge Haynsworth held for plaintiffs claiming deprivation of their constitutional rights. These cases include *Hawkins* v. *North Carolina Dental Society*, 355 F. 2d 718, a case in which a Negro dentist brought suit against the North Carolina Dental Society contending that the society in excluding him from its membership had violated the equal protection clause of the 14th amendment. In reversing the district court in an opinion written by Judge Haynsworth, the Fourth Circuit held that "the activities of the society being 'State action,' its practice of racial exclusivity is patently unconstitutional."

Another written opinion by Judge Haynsworth in favor of a black plaintiff in a school desegregation case is *Coppedge* v. *Franklin County Board of Education*, 394 F. 2d 410, in which the Fourth Circuit upheld a district court order to abandon a freedom-of-choice plan.

A case of significance that Senator JAVITS failed to include in this latter group of cases in which Judge Haynsworth wrote an opinion holding for plaintiffs claiming a deprivation of their rights involved the same parties that were in an earlier action, *Coppedge* v. *Franklin County Board of Education*, 404 F. 2d 1177. In that case a Federal district court had ordered compliance with a school desegregation plan. The board of education appealed claiming it would be administratively impracticable for it to comply and claiming also that it had not been given an ample opportunity to present evidence on this claim. The court in an opinion written by Judge Haynsworth rejected the board's claim and regarding the appeal as devoid of merit, ordered the board to reimburse the plaintiffs for the costs incurred by them in the litigation of it. As I have said, this case involved the same parties that had been before the Fourth Circuit in an earlier case in which the court had struck down a freedom-of-choice plan with the opinion in the earlier action also written by Judge Haynsworth.

Mr. President, I believe that the following points can be accurately made in summarizing the entire civil rights record of Judge Haynsworth:

In 12 years on the court of appeals his decisions on civil rights matters have been reversed on only three occasions.

On the three occasions when he was reversed the decisions of Judge Haynsworth do not evidence any bias or unreasonableness.

There is not one case in which Judge Haynsworth has refused to apply a mandate of the Supreme Court.

The entire civil rights record of Judge Haynsworth demonstrates that he is an intelligent, fair-minded man with a serious concern for obtaining practical answers to difficult questions.

Mr. President, while Judge Haynsworth has not in every civil rights case that has come before him always attributed to the Supreme Court's decisions the broadest possible scope of application and while he has not always correctly anticipated later rulings of the high court, I do not believe that the full record of Judge Haynsworth on civil rights cases will justify a vote against confirmation.

COMMENTS OF SENATOR JAVITS CONCERNING REMARKS OF SENATOR BAKER WITH RESPECT TO JUDGE HAYNSWORTH'S CIVIL RIGHTS DECISION

Mr. JAVITS. Mr. President, I have reviewed the remarks of Senator BAKER concerning certain civil rights decisions in which Judge Haynsworth has participated, and I find nothing in those remarks which would contradict the analysis I submitted to the Senate last Fri-

day, November 14, and which appears in the CONGRESSIONAL RECORD beginning on page 34275.

Senator BAKER cites 15 cases—the same 15 cases cited on pages 17 and 18 of the Judiciary Committee Report, Senate Executive Report No. 91–12, and the same 15 cases discussed yesterday on the Senate floor by Senator BAKER in a previous statement by him. These cases are: *McCoy* v. *Greensboro City Board of Education*, 283 F. 2d 677 (4th Cir. 1960); *Cummings* v. *City of Charleston*, 288 F. 2d 817 (4th Cir. 1961); *Wheeler* v. *Durham City Board of Education*, 309 F. 2d 630 (4th Cir. 1961); *Brooks* v. *County School Board of Arlington*, 324 F. 2d 303 (4th Cir. 1963); *Wheeler* v. *Durham City Board of Education*, 346 F. 2d 768 (4th Cir. 1965); *Felder* v. *Harnett County Board of Education*, 349 F. 2d 366 (4th Cir. 1965); *Wanner* v. *County School Board of Arlington County*, 357 F. 2d 452 (4th Cir. 1966); *Franklin* v. *County School Board of Giles County*, 360 F. 2d 325 (4th Cir. 1966); *Smith* v. *Hampton Training Schools for Nurses*, 360 F. 2d 577 (4th Cir. 1966; *Wheeler* v. *Durham City Board of Education*, 363 F. 2d 738 (4th Cir. 1966); *Chambers* v. *Hendersonville City Board of Education*, 364 F. 2d 189 (4th Cir. 1966); *Cypress* v. *Newport News General and Nonsectarian Hospital Association*, 375 F. 2d 648 (4th Cir. 1967); *Wall* v. *Stanly County Board of Education*, 378 F. 2d 275 (4th Cir. 1967); *Wooten* v. *Moore*, 400 F. 2d 239 (4th Cir. 1968); and *Felder* v. *Harnett County Board of Education*.

Of these 15 cases cited by Senator BAKER, 13 were decided unanimously by the Court of Appeals—all except the second Felder case and the Chambers case. Those 13 cases, in my judgment, show Judge Haynsworth's conclusions, not his ideas; he wrote no opinions in them; and the cases raised no difficult or novel questions about which any of the Fourth Circuit judges could find anything to disagree.

The 14th case is the second *Felder* case, 409 F.2d 1070. The only real issue in that case, however, was whether to award counsel fees because of a "frivolous appeal" and it was Judge Craven's opinion, with which Judge Haynsworth joined, which denied counsel fees. Judges Sobeloff and Winter dissented and would have found the appeal frivolous. Thus, Judge Haynsworth's stand in this case could hardly be defined as siding with the black plaintiffs, as he decided against them on such a central point.

In the 15th of the cases cited by Senator BAKER, *Chambers* v. *Hendersonville City Board of Education*, 364 F.2d 189 (4th Cir. 1966), Senator BAKER refers to Judge Haynsworth as casting the "swing" vote in that he joined Judges Sobeloff and Bell while two other judges dissented. My own reading of the case, however, convinces me that the majority opinion, in which Judge Haynsworth joined, was "amended" to absorb the views of the dissenters and make the decision substantially unanimous. The dissenters—Judges Bryan and Boreman—complained that the court was ordering the school board to rehire teachers without regard to their ability to meet minimum qualifications. In the words of the dissenters, appearing in 364 F.2d at 194—

> Whatever Constitutional guidelines are recognized the bald facts here plainly reveal that at least 15 of the 16 unretained teachers were not kept because of their own preference, their physical incapacity or their failure to meet minimum criteria.

Obviously in an effort to meet this point after becoming aware of the dissenters' views, the majority opinion contains, at the end, a footnote, 364 F.2d at 193 n. 3, as follows:

> While all of the improperly discharged teachers are entitled to re-employment, we do not think any practical benefit would be derived by requiring the Board to offer re-employment to a teacher who failed to meet definite, objective minimum standards.

Putting the footnoted majority opinion together with the objections of the dissenters, I fail to see how Judge Haynsworth was really a "swing" vote to all; we have here what amounts to another unanimous decision.

In sum, of the 15 cases cited by the committee report and repeated by Senator BAKER, not one reflects Judge Haynsworth's views in his own words; 14 of the 15 were clear-cut cases; and the 15th, the Felder case, was one in which Judge Haynsworth opposed the award of counsel fees to the black plaintiff.

In addition to citing these 15 cases, Senator BAKER has suggested that I did not mention "several decisions in which Judge Haynsworth held for plaintiffs claiming deprivation of their constitutional rights."

The first such case, Senator BAKER argues, is *Hawkins* v. *North Carolina Dental Society*, 355 F. 2d 718 (4th Cir. 1966). I believe the Senator is in error, as I mentioned that case in my analysis, appearing on page 34276 of the CONGRESSIONAL RECORD of November 14, 1969, and pointed out that the case was clear-cut, as the State dental society in that case had, in effect, been given the State's licensing power.

The next case which Senator BAKER says I overlooked was *Coppedge* v. *Franklin County Board of Education*, 394 F. 2d 410 (4th Cir. 1968). In point of fact, I did mention that case, also on page 34276, and pointed out that Judge Haynsworth did in fact find no "freedom of choice" in that case, but only after Ku Klux Klan bombings of those who chose to exercise their "freedom," and I remarked that, short of a bombing, Judge Haynsworth seems to adhere, to this day, to his preference for so-called "freedom of choice" plans, now overruled by the Supreme Court.

Senator BAKER does, however, correctly note that I overlooked one decision, the second half of the very same case, *Coppedge* v. *Franklin County Board of Education*, 404 F. 2d 1177 (4th Cir. 1968). My oversight was a result of the fact that the case bears the same title as the one discussed above, which I did mention. But the second Coppedge case does not, in any event, appear to me to support any argument that Judge Haynsworth was "pro" civil rights. In this instance, Judge Haynsworth held, writing for an unanimous court, that Coppedge was entitled to attorneys' fees because the school board had taken a frivolous appeal. The school board contended that compliance with the court's order would present "insurmountable administrative problems," 404 F. 2d at 1179. The basis for award of counsel fees, as the court put it, was, "the school board carried on with its appeal notwithstanding the fact that, meanwhile, it had fully complied with the district court's order," 404 F. 2d at 1179. What could be more of an open-and-shut case of frivolous appeal than urging a court of appeals to reverse on the ground that the district court's order could not be complied with, while all the while the order had already been complied with? I see nothing in that decision to suggest that Judge Haynsworth was sensitive to civil rights, but I have never suggested that he was blind as a judge.

In sum, I stand by my original analysis. Judge Haynsworth's decisions in those instances cited which were not open and shut, and particularly in those in which he expressed his own views in his own words, are outside the context of our time in history on this most important civil rights question. I find nothing in the cases cited by Senator BAKER or the committee report to shake me in that conclusion.

I ask unanimous consent that I may speak out of order for 10 minutes.

The PRESIDING OFFICER (Mr. BOGGS in the chair). Is there objection? The Chair hears none, and it is so ordered.

Mr. BAYH. Mr. President, will the Senator from New York yield to me?

Mr. JAVITS. I yield.

Mr. BAYH. Mr. President, inasmuch as my distinguished colleague from South Carolina aimed a good portion of his very eloquent remarks at me and the impropriety of my acts, I want to serve notice to the Senate, now, that I intend to supply, at some later date, whenever convenient to the Senate, what I feel to be an adequate rebuttal to the remarks of the Senator from South Carolina. However, I certainly will not interfere with the Senator from New York at this moment.

Mr. JAVITS. If the Senator from Indiana would find it more convenient. I would be pleased to yield the floor and let him get the floor and then he could yield to me for a few minutes. I just wish to introduce a bill.

Mr. BAYH. The Senator from New York already has the floor. Why does he not proceed?

Mr. JAVITS. All right. I shall be just a few minutes. I think the Senator from Indiana is quite right, that I should go right ahead.

Mr. HOLLINGS. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. HOLLINGS. I would like the RECORD to show that I took approximately 2½ hours. My distinguished colleague from Indiana has had that much time on television since this debate started, I would gladly swap those 2½ hours for half the time he asked for.

I shall be glad to support the facts as I have given them to the U.S. Senate.

I thank the Senator from New York for yielding to me.

Mr. JAVITS. Mr. President, I yield to the Senator from Indiana.

Mr. BAYH. Mr. President, I have the greatest respect for the Senator from South Carolina, but I must say I have never seen a man better able to set up a strawman that is so far afield from the issue. This, the floor of the Senate, is the place to debate this issue.

I sincerely hope that my colleague from South Carolina and I can disagree without his impugning my motives, because I have not impugned his. If it ever gets to the point where 100 Members of the Senate cannot face issues and arrive at different conclusions, we might as well close up shop and let someone else conduct our business.

I give my friend—I call him my friend; I call him that and hope he still is—full faith and credit for everything he has said. I feel a little sensitive in that I do not think he is giving me and others who take the opposite side that same full faith and credit.

Mr. JAVITS. Mr. President, I yield to the Senator from South Carolina. [Laughter in the galleries.]

The PRESIDING OFFICER. There will be order in the galleries. The Chair must remind the occupants of the galleries that they are guests of the Senate and must be quiet.

Mr. HOLLINGS. Mr. President, let it be said that it is not the intent of the Senator from South Carolina to be personal, but to be factual. There is no intent to impugn. There is only the intent to reflect properly the facts and to have prepared, written answers to his own bill of particulars, and to tell this country exactly what is going on, what we have been experiencing, what are the real issues, and trying to bring them into focus. This is in fairness to Judge Haynsworth, in fairness to the U.S. Supreme Court, and, most of all, in fairness to the U.S. Senate as a deliberative body.

I know that in parliamentary tactics—and I have debated before—the immediate thing, when one gets on the weak side, is to say, "Oh, let us not be personal." I am not going to be personal, but I am going to be factual in everything I have lined up and everything the Senator from Indiana has lined up.

Reference was made to a straw man. The Senator from Indiana has been the leader of the opposition. I have tried my best to get in the ring with him and to get into debate with him. He knows that. We have been in correspondence. We have talked.

I have lost elections by 100,000 votes before getting elected, so I do not come here as a babe in the woods.

I think perhaps a majority would not confirm the nomination if they voted this very minute. I say that sincerely. But I am hoping to persuade members of the committee, so we can have it by a good majority.

There is no personal feeling about this matter whatsoever, but there is a personal, strong conviction. I have tried to establish, as strongly as I know how, that the Senate has been true to its charge in receiving evidence, hearing witnesses, making reports. The majority leader has not shoved or delayed or tried to influence; but, due to the news media and the rush of the news media, the debate was over before it began. I believe it is very, very important to realize that, in order to preserve the integrity of the Senate, the most deliberative body of all the democratic institutions, we should be able to debate and discuss an issue of this kind without being charged with various things.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. JAVITS. I yield to the Senator from Indiana.

Mr. BAYH. I am glad to have that clarification from the Senator from South Carolina. I hope that all Senators will read these remarks in light of what he said in his formal statement. It was my desire not to get personal and to disagree with the Senator from South Carolina only on the facts. I have been with him on other facts and issues, and I am going to be with him on issues in the future because he has been a good Senator.

I thank the Senator from New York. I shall continue later.

Mr. BAYH subsequently said: Mr. President, I thought I might make one or two observations in light of the statements of the distinguished Senator from South Carolina.

Mr. President, as I mentioned earlier, I hope we can have differences of opinion in this body. I noticed that the Senator from Montana (Mr. METCALF) had a lengthy and detailed critique which reached conclusions different from those of the Senator from South Carolina (Mr. HOLLINGS) with respect to the assessment of the nominee in the field of labor. Similarly, the Senator from New York gave the Senate a long and detailed assessment of the nominee's civil rights record which differs from the report given by the Senator from South Carolina.

I think there is also room for disagreement so far as ethical questions are concerned. Each of us sets out the criteria that he thinks should be met. Seven members of the judiciary joined in the conclusion that this nomination should not be confirmed, so I do not stand alone.

My position has not been an easy one. I started out by asking questions apologetically, hoping that the answers would be forthcoming. They were not.

Two or three of the allegations I made were mistaken, and I sent personal letters to our colleagues pointing out these errors. In one instance, the mistake was made by one of my staff who misread certain records; and in the other instance, certain records had not been made available to us.

I do not intend to reiterate point by point some of the charges made because I share the concern of the Senator from Iowa that some allegations made by the press have not had any merit. I do not intend to add dignity to those allegations by repeating them in the Senate. I have not made these charges and do not intend to do so.

I think the standard of conduct of one nominated to the Court is an important factor to be considered by the Senate.

Mr. President, in order to save time, I ask unanimous consent to have printed in the RECORD at this point the minority views which I submitted when the nomination was reported from the Committee on the Judiciary.

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

INDIVIDUAL VIEWS OF MR. BAYH

It is a fundamental principle that in order to govern effectively, a government must have the confidence of the people. That confidence is quickly eroded when those in positions of public responsibility fail to meet the standards expected of them by the public, Thus, Government has long been concerned with insuring the even handed and disinterested administration of the functions and powers given it by the governed.

The judicial branches of our State and Federal Governments have been most diligent in safeguarding the integrity of their officers. Among public officers, judges occupy a unique position. Unlike legislative and executive officials who are constantly judged by their political choices and decisions and by the practical success of their proposals and programs, Supreme Court judges are lifetime appointees and are primarily appraised by a test of trust: Are their decisions impartial, just, and in accordance with the law? To meet this test, rules have been established in case law, statutes, and canons of ethics, calling for judges to disqualify themselves from cases in which their personal interests might knowingly or unknowingly influence their decisions. Though these rules may appear strict, they are especially important today. For the first time in history, the U.S. Senate is asked to confirm a nominee for a Supreme Court seat which was vacated by the resignation of a sitting justice accused of conduct involving the appearance of impropriety.

In exercising its constitutional power to advise and consent to the present nomination, the Senate thus has the added responsibility, at this time, of shoring up public confidence in the Federal judiciary in general, and, more specifically, in the Supreme Court itself. Supreme Court Justices truly must be beyond reproach and must be sensitive to the ethical standards which have been established in order to guarantee propriety, the appearance of propriety, and equal justice to all who come before them.

In light of the judicial rules which have been laid down over the years governing the conduct of judges and the pressing concern of the people to see these standards adhered to, it would be a mistake for the Senate to confirm the nomination of Clement F. Haynsworth, Jr., to the Supreme Court of the United States. It is true, as the majority of this committee has said, that Judge Haynsworth is basically an honest man. It is also true that the nominee has been a tremendously successful businessman and member of the bar in his home community. But these are not the sole standards on which the Senate must base its decision in determining whether or not to confirm the nomination of a Supreme Court Justice. The Senate must also consider the standards of ethical conduct which the nominee has established for himself while serving on the Federal bench. Has the nominee taken those precautions in his personal and financial relationships which are necessary to avoid even the appearance of impropriety in the eyes of those who might appear before him as litigants and in the eyes of the public as a whole?

Unfortunately, Judge Haynsworth has not taken these necessary precautions and, as a result his record has been blemished by a pattern of insensitivity to the appearance of impropriety:

1. On at least four occasions, Judge Haynsworth sat on cases involving corporations in which he had a financial interest.

2. Judge Haynsworth invested in companies which were apt to be subjects of litigation in his court.

3. Judge Haynsworth sat on cases, at least six times, involving customers of Carolina Vend-A-Matic Co., a company in which he had a one-seventh interest worth $450,000.

4. Judge Haynsworth violated Federal law in his administration of the Carolina Vend-A-Matic Co. profit sharing and retirement plan.

5. Judge Haynsworth has displayed a marked lack of candor with this committee and with the Subcommittee on Improvements in Judicial Machinery.

Some of these failings would be relatively minor if each stood alone. But they do not stand alone. Together they produce a profile of a judge who consistently failed to give ethical questions the weighty consideration they deserved.

Proprietary interests in litigants

On at least four occasions, Judge Haynsworth sat on cases involving corporations in which he had a financial interest and in doing so he violated both the disqualification law and the canons of judicial ethics. The cases are: *Brunswick* v. *Long* 393 F. 2d 337 (1968); *Farrow* v. *Grace Lines Inc.* 381 F. 2d 380 (1967); *Donohue* v. *Maryland Casualty Co* 363 F. 2d 442 (1966); and *Maryland Casualty Co. v. Baldwin* 357 F. 2d 338 (1966).

Judge Haynsworth purchased 1,000 shares of Brunswick Corp, for $16,230 while *Brunswick* v. *Long* was pending. At the time of the *Grace Lines* decision, Judge Haynsworth owned 300 shares of W. R. Grace and Co., which wholly owned Grace Lines. That stock was worth $13,875. Similarly, Judge Haynsworth owned 66⅔ shares of common stock and 200 shares of convertible preferred stock of American General Insurance Co., which owned over 95 percent of Maryland Casualty Co., when the *Donohue* and *Baldwin* cases were decided by his court. Maryland Casualty was a major subsidiary of American General Insurance. On the days of *Donohue* and *Baldwin* cases were decided, the value of Judge Haynsworth's stock in American General Insurance was $10,201 and $10,734, respectively.

The sources of the law on judicial disqualification are in the common law, constitutional law, and statutory law. Each source indicates that a judge should not sit in cases where he holds stock in a litigant. As John P. Frank, whom President Nixon has described as the country's leading expert on disqualification law, has stated:

"The law of disqualification, in the heavy majority and clearly better view, treats a shareholder as though he individually were the concern in which he holds shares. In other words, 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. [Footnote: This is the heavy majority rule; see cases collected at note, 48 A.L.R. 617, updated in a comprehensive collection at 25 A.L.R. 3d 1331. There is some refinement where the holding is very small * * * (20 shares on 13,881,016). See also my own article at 56 Yale L.J. 605, 637 (1947), reporting that in 33 State and Federal courts there is disqualifications in such circumstances, but that two State and two Federal courts reported that disqualification might be waived where the holding was very slight, and one Federal court reported that a judge had sat where the holding was very slight. Nonetheless, the view is overwhelming. * * *] As my study shows, every State and Federal court reporting agrees that if a judge has a pecuniary interest in the party, he may not sit * * *. (Letter from John P. Frank to Hon. James O. Eastland, Sept. 3, 1969, hearings, p. 119.)"

Mr. Frank amplified his written statement in the following colloquy concerning the Federal disqualification statute.

"Senator BAYH. How large is a substantial interest [for the purposes of 28 U.S.C. 455, which governs disqualifications of Federal judges]?

"Mr. FRANK. I think that generally the better view, Senator, but not the only view is that if there is any interest it ought to be regarded as a disqualifier. But the word "substantial" is used here to cover the marginal situation of the small stockholdings, let us say, in a corporation, somebody has a few shares of G.M., that sort of thing * * *

"Senator BAYH. Then general nationwide authority on substantial interest would be that if you hold stock of any appreciable value in any corporation that is before you, you should automatically disqualify yourself?

"Mr. FRANK. Yes, that is certainly my view of it. (Hearings, p. 127.)"

As Mr. Frank noted, there is a minority view that when a judge's holdings in a corporation are small and there is a vast amount of stock outstanding, the judge need not disqualify himself. This minority view, however, does not apply to the cases involving Judge Haynsworth for several reasons.

First, the minority view is flatly contrary to the cases decided by the Supreme Court. As the Court noted in *Commonwealth Coatings* v. *Continental Casualty Co.*, 393 U.S. 145, 148 (1968):

"For in *Tumey* [v. *Ohio* 273 U.S. 510, 524] the Court held that a decision should be set aside where there is 'the slightest pecuniary interest on the part of the judge, and specifically rejected the State's contention that the compensation involved there was 'so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty * * *' * * * in the case of courts this is a constitutional principle * * *"

Second, the minority view was accepted by the Fourth Circuit only to the extent that a judge disclosed his interests to the parties before his court. As Judge Haynsworth stated the practice of his court:

"Even here, we, on the Fourth Circuit, regard a proportionately insignificant interest in a party as not disqualifying if, after being informed of it, the lawyers do not request the substitution of another judge. (Letter from Clement F. Haynsworth to Hon. James O. Eastland, Sept. 6, 1969.)"

There is no evidence that Judge Haynsworth ever disclosed his interests to the parties in the four cases cited above.

Finally, Judge Haynsworth himself espoused the majority view of ethical standards as described by Mr. Frank. In the September letter to Chairman Eastland, he stated,

"I have disqualified myself in all cases * * * in which I had a stock interest in a party or in one which would be directly affected by the outcome of the litigation."

As the record clearly shows, he ignored the rules he set for himself by sitting in *Brunswick, Grace Lines,* and the two *Maryland Casualty* cases. Indeed, Judge Haynsworth testified:

"Senator MATHIAS. You consider that your interest [in Brunswick] was substantial then?

"Judge HAYNSWORTH. Yes, I do, without question, though it was not in the outcome in terms of that, but much more substantial than I think a judge should run the risk of being criticized. (Hearing p. 305.)"

It has been contended that it was not improper for Judge Haynsworth to sit on the *Farrow, Donohue* and *Baldwin* cases because he held stock in the parent companies of the subsidiaries which were before him, and not the subsidiaries themselves. It is obvious that this defense makes no practical sense. It improperly emphasizes a form of corporate structure as opposed to substantial ownership interest which is the basis of the law. In June 1964, the judge purchased 200 shares of Maryland Casualty Co. and in August 1964, upon a corporate reorganization, he exchanged that stock for 200 shares of convertible preferred stock and 66⅔ shares of common stock of American General Insurance Co., the parent company of Maryand Casualty. Both before and after that exchange he had a substantial ownership interest in Maryland Casualty. Thus, there is no reason to apply one rule to the June-to-August period and another to the period after August.

It is true that there is one State court case supporting the proposition that ownership in the parent of a subsidiary does not require disqualification. However, there is no Federal authority for such a rule of law. As Mr. Frank has pointed out, the California case which supports this distinction, *Central Pacific Railway Co.* v. *Superior Court,* 211 Cal. 706, 296 P. 883 (1931), is based on the theory "that the judge must be capable of being made an actual party to the case . . ." in question. Mr. Frank concluded that "this is not the better view . . . The proper test is whether the third party has a 'present proprietary interest in the subject matter." (See letter from John P. Frank to Hon. James O. Eastland, Sept. 3, 1969.)

Requiring disqualification in cases involving subsidiaries of corporations in which a judge holds stock can at times be a difficult standard to adhere to. As Judge Harrison L. Winter testified during the hearings of the Judiciary Committee:

"Certainly, Senator, with the growth of conglomerates and the tendency of so many companies to diversify, this presents a real problem. I know myself that inadvertently once or twice I have almost sat in cases where parties were subsidiaries of something on [sic] which I had an investment, and quite frankly I did not recognize it until the very 11th hour. I just do not know what the answer is. It becomes almost impossible to learn all the trade names and all the subsidiary names and what have you, if you are about to make an investment, so that you are fully advised if you are in judicial office, when one of the parties in which you may have an interest or do have an interest is before you. (Hearings p. 259.)"

Judge Haynsworth cannot plead ignorance to the parent-subsidiary relationship, however. His interest in American General Insurance Co. was acquired in 1964 in exchange for 200 shares of Maryland Casualty Co. when the companies merged. He had purchased the Maryland Casualty stock a few months earlier for over $12,000, a fact he would certainly remember. He also should have known W. R. Grace & Co. wholly owned Grace Lines Inc., since W. R. Grace had been a client of Judge Haynsworth's law firm before he assumed the bench. The evidence indicates, therefore, that Judge Haynsworth's disregard for the rule requiring disqualification for interest was either willful or grossly negligent.

Judge Haynsworth's defenders protest that his failure to disqualify himself in *Brunswick* v. *Long* was proper on the ground that he made his investment in Brunswick after the case had been heard. The essential facts are these: The case was heard on November 10, 1967, by a panel of circuit judges composed of Judge Haynsworth, Judge Winter, and District Judge Woodrow Wilson Jones. The judges met in conference after hearing the case and arrived at the conclusion that a judgment in favor of Brunswick should be affirmed in an opinion to be written by Judge Winter. On or about December 15, 1967, Judge Haynsworth had his regular year-end meeting with stockbroker, Arthur C. McCall, who recommended that the judge buy Brunswick stock. The judge agreed, and his order for 1,000 shares of Brunswick stock was executed on December 26 at $16 a share. A confirmation notice was sent to Judge Haynsworth on December 26, and on the 27th the judge signed and sent his check

in payment to Mr. McCall, who received it on December 28. Judge Haynsworth testified that the Brunswick case did not enter his mind during his discussion with Mr. McCall or at the time he received the confirmation and signed his check as payment for the stock.

On December 27, 1967, Judge Winter circulated his written opinion in *Brunswick* v. *Long* to Judges Haynsworth and Jones by mail. During the first full week of January 1968, during a term of court in Richmond, Va., Judge Haynsworth and Judge Winter discussed that opinion. Judge Haynsworth noted his concurrence in the opinion and also suggested the possible need for changes due to certain points of South Carolina law noticed by his law clerk. Judge Winter accepted these changes and recirculated the amended opinion on January 17, 1969. The amended opinion was finally approved by the other judges of the court, and on February 2, 1968, after a judgment had been prepared, the opinion and judgment were filed.

The Federal rules provide for 30 days in which a party may ask for rehearing. On March 12, 1968, counsel for Long filed a petition to extend the time for filing a petition for rehearing. Counsel argued that the extension should be granted because he had not been furnished a copy of the opinion by the clerk until February 27, 1968. This petition was considered on the merits, it being agreed that the court had jurisdiction to do so, by Judges Winter, Haynsworth, and Jones who decided to deny it. On April 3, 1968, another petition for rehearing was filed. On August 26, it was denied in an order prepared by Judge Haynsworth.

Judge Haynsworth testified:

"The * * * [first] time [after the hearing], of course, that the [Brunswick] case entered my mind was when I received the proposed opinion from Judge Winter. At that stage, I realized it had not been completely disposed of, and at that time I thought what I should do. I had now become a stockholder.

"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 * * *. (Hearings pp. 271–272.)

"I considered what I should do and I made up my own mind * * *.

"I did not consult them at the time. (Hearings pp. 286–287.)"

It is plain that the judge performed the following judicial acts while he was a stockholder: reviewing and joining in the judgment and opinion, reviewing and rejecting two petitions for an extension of time to file a petition for rehearing. None of these acts was ministerial—indeed, the reasoned exposition of the result reached by a court is the very essence of the judicial process.

As Judge Winter testified:

"I think it may be fairly stated that a case is never decided finally or never put to rest until an opinion has been filed, all post opinion motions have been denied, and the Supreme Court has denied certiorari * * * (Hearings, p. 243.)"

This being so, Judge Haynsworth's failure to disqualify himself or even to notify the parties or his fellow judges of the situation was improper.

The canons of judicial ethics, though they do not have the force of law, have established accepted guidelines for the conduct of judges. Like the law on disqualification, the canons hold that a judge should not sit on cases where he has an interest. Canon 29 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 judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy."

In interpreting Canon 29, the American Bar Association's Committee on Professional Ethics stated in Opinion 170:

"A Judge should not perform a judicial act, involving the exercise of judicial discretion, in a cause in which one of the parties is a corporation in which the judge is a stockholder."

Judge Winter recognized the significance of this Opinion in his testimony before the Judiciary Committee:

"The American Bar Association committee at least has taken the position that if you own any stock, that is it. You ought not to sit at all. (Hearings, p. 248.)"

Judge Haynsworth's financial interests were involved in the *Brunswick, Grace Lines,* and *Maryland Casualty cases,* yet he did not refrain from performing judicial acts in these controversies. To argue that Canon 29 does not apply in situations where the litigant is a subsidiary of a corporation in which a judge owns stock is unreasonable. The Canon states that a judge should not sit in a case "in which his personal interests are involved," and Opinion 170 further indicates that even one share of stock in a corporate litigant is an interest. Certainly direct interest in a litigant through ownership in the parent corporation should be treated no differently.

Canons 4 and 34 also come into play when a judge sits on cases in which he has personal interests. They state:

"Canon 4—Avoidance of Impropriety.—A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

"Canon 34—A Summary of Judicial Obligations.—In every particular his conduct should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

Judge Haynsworth's conduct was not "beyond reproach." He disregarded the precedents on disqualification which have been so carefully established to avoid the appearances of impropriety. While not dishonest, he has callously ignored the ethical rules which the great majority of judges follow meticulously.

Investments in corporations apt to be subject to litigation

"Canon 26—Personal Investments and Relations.—A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relationship warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

"He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin."

On several occasions, Judge Haynsworth totally disregarded Canon 26. As was pointed out earlier, he purchased Brunswick stock while the case was still pending before his court. No business was more apt to be involved in litigation in his court than a company which was before the Court at the time he purchased its stock.

The investments in Maryland Casualty Co. and Nationwide Corp. were similarly in violation of Canon 26. It is common knowledge, even among laymen, that casualty companies are continuously involved in litigation. Judge Winter pointed this out to Senator Ervin during the hearings:

"Senator ERVIN. And this canon 26 which provides in part that a judge should abstain from making personal investments in enterprises which are apt, and I digress to say that my dictionary says the word "apt" means "likely," to be involved in litigation. Of course, does that not imply in the first place that he is apt to be involved in some litigation before his court, not that of some other judge? Isn't that implied?

"Judge WINTER. Well, I think it generally—I would read it to mean to him, before him.

"Senator ERVIN. Yes.

"Judge WINTER. I mean a typical example of this, at least in my estimation, is if you are a district judge, you do what I did, and that is sell stock in casualty insurers, because you cannot tell who is defending, who is the insurer behind the defender or who is not, and you refrain from going out and buying any other stock in casualty insurers.

"Senator ERVIN. Now, I would say not only a judge should abstain from buying interest in a business that is likely to be involved in litigation, but I would say just as a layman he would be a plumb fool if he would buy stock in an organization that is going to be involved in litigation.

"Judge WINTER. Except with casualty companies, litigation is a part of their business. (Hearings p. 255.)"

Finally, Judge Haynsworth maintained his holding in W. R. Grace & Co., even after Grace had appeared before the judge's court on one occasion. That litigation should have warned Judge Haynsworth that the company was apt to appear again. A sufficiently sensitive judge would have disposed of this holding.

Cases involving customers of Carolina Vend-A-Matic

The poor judgment and insensitivity shown by Judge Haynsworth in sitting on cases where he had a pecuniary interest in the litigant and his investments in corporations apt to be subjects of litigation do not stand alone. There are other commissions and omissions of the judge which raise further questions concerning his sensitivity to judicial ethics. Foremost among these is Judge Haynsworth's relationship with Carolina Vend-A-Matic Co. and the textile industry.

Judge Haynsworth was an organizer and founder of Carolina Vend-A-Matic in 1950, with an original investment of $2,400. He was a director and vice president of Carolina Vend-A-Matic until 1963. Although the judge stated that he orally resigned from the vice presidency in 1957, the corporation records show he was listed as vice president until 1963 and show further that he regularly attended meetings of the board of directors and voted for slates of officers including himself through the years, 1957–63. He was, in fact, paid director's fees amounting to $12,270 (including director's fees of $3,100 in 1960) during the years of 1957 to 1963 and the records show his wife, Dorothy M. Haynsworth, served as secretary of the corporation for 2 years (1962–63) while he was on the Federal bench.

Although the judge claims he was an inactive officer, the only information available from the minutes of the corporation indicates that the directors were active in locating new business. A resolution by the board

of directors of Carolina Vend-A-Matic which appears in the minute books of the corporation states that:

"It was pointed out that the main sales and promotional work of Carolina Vend-A-Matic had been done by its directors who are also the officers of the corporation and that any new locations were the result of many conversations, trips and various forms of entertainment of potential customers by one or more of the directors or officers over an extended period of time. A review was had of the various locations that had been acquired during the past several years and new locations that were being considered and practically without exception, these were the result of the board of directors. (Minutes, June 3, 1957.)"

Judge Haynsworth took an active part in directors' meetings, often making motions himself. While he was director of Carolina Vend-A-Matic, he took part in decisions to buy and sell land to himself and other directors and the profit sharing trust. Judge Haynsworth also endorsed notes for the corporation both before and after his appointment to the Federal bench.

In 1957, after Judge Haynsworth assumed the bench, the gross sales of Carolina Vend-A-Matic and its subsidiaries increased tremendously. In contrast, gross sales had only increased from $169,335 in 1951 to $296,413 in 1956. But in 1957, the year Judge Haynsworth assumed the Federal bench, sales jumped to $435,110 and continued a precipitous climb, reaching $3,160,665 in 1963, the last full year in which Judge Haynsworth owned a major share of the company. Between the end of 1956 and 1963, Carolina Vend-A-Matic sales increased by 966 percent, while sales of the vending machine industry as a whole increased by only 69 percent.

PERCENTAGE OF INCREASE IN SALES BY YEAR AS REPORTED BY VEND MAGAZINE

	Vending machine industry	Carolina Vend-A-Matic
1957	7.8	52.8
1958	3.9	8.0
1959	11.7	45.0
1960	8.8	31.1
1961	5.8	80.3
1962	8.0	50.4
1963	8.8	23.8

In 1963, more than three-fourth's of Carolina Vend-A-Matic's total business was with textile concerns. The textile oriented nature of Vend-A-Matic's business did not reflect the business in the area. Census figures show only 28.9 percent of the Greenville, S.C. working force was employed in textile mills. (See Census of Population: 1960, vol. I, pt. 42, p. 132)

It is also interesting to note that Judge Haynsworth's investments in textile companies amounted to $49,557.60 in 1963. Thus any precedent setting decisions in the Southern textile industry would directly affect Haynsworth's financial position through Carolina Vend-A-Matic and through his textile stocks.

For some years there had been an exodus of textile concerns from north to south in an effort to take advantage of lower wages as a result of strong regional pressures against collective bargaining in the South. The *Darlington Mfg. Co.* v. *NLRB* case was a landmark case for the industry because it enabled textile companies to close their plants in the face of union attempts to organize the workers.

The case of *Darlington Mfg. Co.* v. *NLRB* came before the Fourth Circuit Court of Judge Haynsworth in both 1961 and 1963, while Carolina Vend-A-Matic had vending contracts with plants of Deering Milliken Corp., Darlington's parent company, bringing in $50,000 per year. While the litigation was pending, Carolina Vend-A-Matic signed a new contract with a Deering Milliken plant, increasing their vending business with that company to $100,000 per year. The case was eventually decided in favor of Darlington in a 3 to 2 decision with Judge Haynsworth casting the deciding vote, thus establishing an important legal precedent for the textile industry. The decision was later substantially modified by the Supreme Court.

Between 1958 and 1963 Judge Haynsworth sat on at least five other cases involving customers of Carolina Vend-A-Matic.

1. *Homelite* v. *Trywilk Realty Co., Inc.*, 272 F2d 688 (1959).

2. *Textile Workers Union of America* v. *Cone Mills Corporation* 268 F2d 920 (1959).

3. *Textile Workers Union Workers of America* v. *Cone Mills* 290 F2d 921 (1961).

4. *Leesona Corp.* v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 308 F2d 895 (1962).

5. *Leesona Corp.* v. *Cotwool Mfg. Corp., Deering Milliken Research Corp. and Whitin Machine Works* 315 F2d 538 (1963).

Judge Haynsworth's failure to disqualify himself from the *Darlington* case and from other cases involving customers of Carolina Vend-A-Matic and his failure even to disclose his interests in CVAM again violates the strong precedents of disqualification law and the canons of judicial ethics on this subject.

These views do not suggest that Judge Haynsworth intentionally decided cases in a manner designed to enhance his financial interests. Such a charge would be unreasonable. However, the judge opened himself to legitimate criticism and the appearance of impropriety by permitting such a commingling of his judicial responsibility and his financial interests.

Although John Frank has testified that he believes Judge Haynsworth's interest in the litigation was too remote to require disqualification, Supreme Court cases indicate that the law of disqualification extends to cases of even relatively remote financial relationships.

The basic standard a judge is required to follow in deciding whether or not to hear a case is set out in *In Re Murchison* 349 U.S. 133 (1955), where the Supreme Court reversed contempt convictions handed out by a Michigan State judge who had investigated the underlying offense as a one-man grand jury. The Court stated:

"This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the accused, denies the latter due process of law.' *Tumey* v. *Ohio*, 273 U.S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the apperance of justice.' *Offutt* v. *United States*, 348 U.S. 11, 14 (349 U.S. 133, 136)."

This standard was clarified in *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U.S. 145 (1968). In that case, one of the parties to an arbitration proceeding had done business with one of three arbitrators, a consulting engineer. The relationship between the party and the arbitrator had been sporadic over the years and amounted to less than 1 percent of the arbitrator's business. In fact, there had been no business dealings between the two for over a year. The financial relationships in Commonwealth Coatings, obviously, was far more remote than Carolina Vend-A-Matic's relationship with Darlington. There, the relationship was current, and the business amounted to 3 percent of Carolina Vend-A-Matic's sales. Yet, the Court set aside the judgment of the arbitrators and applied the constitutional rules of judicial disqualification. Justice Black stated:

"It is true that petitioner does not charge before us that the third arbitrator was actually guilty of fraud or bias in deciding this case, and we have no reason, apart from the undisclosed *business* relationships, to suspect him of any improper motives. But neither this arbitrator nor the prime contractor gave to petitioner even an intimation of the close *financial* relations that had existed between them for a period of years. *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 (1947), where this Court held that a conviction could not stand because a small part of the judge's income consisted of court fee 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. *Nor should it be at all relevant, as the Court of Appeals apparently thought it was here, that "(t)he payments received were a very small part of (the arbitrator's) income * * *"* For in *Tumey* the Court held that a decision should be set aside where there is "the slightest pecuniary interest" on the part of the judge, and specifically rejected the State's contention that the compensation involved there was "so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty * * *" (393 U.S. 145, 147–48). [Emphasis added.]"

The opinion concluded by noting the similarity in rule 18 of the American Arbitration Association and the pertinent section of the 33d Canon of Judicial Ethics which states:

"Canon 33—Social Relations.—* * * [A judge] should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct."

The Court suggested further that the standard required for ethical conduct rested on a broader and more fundamental constitutional concept. In the words of Justice Black:

"This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies must not only be unbiased, but must avoid even the appearance of bias. (393 U.S. 145, 150)"

By sitting in the litigation when Carolina Vend-A-Matic was doing business with a litigant, Judge Haynsworth breached the standards established by the Supreme Court. His testimony before the Judiciary Committee indicated his disregard for ethical standards would continue in the future. In answering a question concerning the propriety of his relationship with Carolina Vend-A-Matic, Judge Haynsworth admitted he would act in the same manner were the situation to arise again.

"Senator BAYH. * * * Now, you have been quoted, and I wonder if it is accurate, that if you had that *Darlington-Deering Milliken* case to do over gain, that you would still feel that you did not have a sufficient conflict of interest.

"Judge HAYNSWORTH. Even if I knew at the time all that I know about it now, I would feel compelled to sit. (Hearings, p. 99.)"

Similarly, in answer to Senator Tydings' question of whether Judge Haynsworth disclosed his interests to the parties, the Judge stated, "No, sir; because I did not regard my-

self as having any financial interest in the outcome, and I still do not." (Hearings, p. 65.) It is unfortunate that Judge Haynsworth either refuses or is incapable of grasping the principle that the appearance of bias is as important as actual bias.

As in the cases where Judge Haynsworth owned stock in a corporate litigant or its parent, the Canons of ethics apply to the Judge's conduct in deciding cases involving customers of Carolina Vend-A-Matic, and were clearly stated throughout his term on the bench.

The applicable Canons

"*I. Canon 4—Avoidance of Impropriety.*—A judge's official conduct should be free from impropriety and the appearance of impropriety: he should avoid infractions of law; and his personal behavior, not only upon the Bench and in his performance of judicial duties, but also in his everyday life, should be beyond reproach."

By sitting on cases involving customers of Carolina Vend-A-Matic Co. Judge Haynsworth allowed his conduct to suffer the appearance of impropriety.

"*II. Canon 13—Kinship or Influence.*—A judge should not act in a controversy where a near relative is a party; *he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.* [Italic added.]"

By sitting on cases involving customers of Carolina Vend-A-Matic and ruling in their favor at least four times in 5 years, Judge Haynsworth conducted himself in such a manner as to "justify the impression" that he may have been improperly influenced.

"*III. Canon 24—Inconsistent Obligations.*—A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."

By acting as a director and vice president of Carolina Vend-A-Matic, Judge Haynsworth clearly accepted duties likely to "interfere or appear to interfere" with the proper administration of his official judicial functions. Shortly after investigating bribery charges in the Fourth Circuit Court of Appeals in 1963–64, Judge Simon Sobeloff, in an article for the Federal Bar Journal, observed:

"One can readily see that if a judge serves as an officer or director of a commercial enterprise, not only is he disqualified in cases involving that enterprise, but his impartiality may also be consciously or unconsciously affected when persons having business relations with his company come before him. (Sobeloff, *Striving for Impartiality in the Federal Courts*, 24 Fed. Bar J. 286, 293 (1964)).

"*IV. Canon 25—Business Promotions and Solicitations for Charity.*—A Judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relations which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties."

Judge Haynsworth's continued financial interest and active participation in the affairs of Carolina Vend-A-Matic constituted a clear breach of this standard.

"*V. Canon 29—Self-Interest.*—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 on the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy."

By deciding cases involving customers of Carolina Vend-A-Matic on at least six occasions, he performed judicial acts which clearly violated this canon.

"*VI. Canon 33—Social Relations.*—It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. *He should, however, in pending or prospective litigation before him, be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.* [Italic added.]"

By sitting in cases involving important customers of Carolina Vend-A-Matic, Judge Haynsworth gave grounds for the appearance that business relations influenced his conduct.

"*VII. Canon 34—A Summary of Judicial Obligation.—In every particular his conduct should be above reproach.* He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. [Italic added.]"

Judge Haynsworth, in view of the facts detailed above, has obviously not conducted himself in such a manner that his conduct is above reproach "in every particular."

Violation of 29 U.S.C. 301–308

Another matter deserves notice. Judge Haynsworth was a trustee of the Carolina Vend-A-Matic Co. profit sharing and retirement plan from 1961 until 1964 and qualified as an administrator by law. The Welfare and Pension Plan Disclosure Act provides that an administrator of a pension fund must file with the Secretary of Labor an initial description of the plan and annual reports thereafter. Willful violation of the act can lead to 6 months imprisonment or a fine of $1,000 or both. On September 17, 1969, the director of the Office of Labor-Management and Welfare-Pension Reports of the U.S. Department of Labor advised by letter, "Our records do not show that any reports have been received under the name of Carolina Vend-A-Matic Co., Inc., for a profit sharing and retirement plan."

The omission by the judge was in all probability an oversight and not an intentional violation. However, the facts are cited to reinforce the obvious conclusion that complicated financial relationships and judicial responsibility can become a dangerous mixture.

Lack of candor

The statements made by Judge Haynsworth to the Judiciary Committee have shown an amazing lack of candor. Senator Griffin has aptly pointed these out in his report, and there is no need to repeat these contradictions here.

Conclusion

The central theme of the canons of judicial ethics and the law of disqualification is that judges must be extremely careful to avoid bias or even the appearance of bias in administering their judicial functions. Judge Haynsworth entered into and maintained numerous relationships which, in view of the fact that he continued to perform judicial acts affecting other parties to those relationships, give the appearances of bias and thus constitute breaches of the canons of ethics and violations of the disqualification law.

He sat on cases involving litigants in which he had a financial interest; he purchased stock in corporations apt to appear before his court; he sat on cases involving customers of a corporation in which he was a major stockholder and for which he served as a director and vice president. Moreover, he failed to comply with Federal law in administering a profitsharing trust, and he displayed a lack of candor in testimony before this committee.

This is not acceptable conduct for a nominee to the Supreme Court.

The Supreme Court is the final determinant of the standard of judicial conduct not only for itself but also for every court in the land. The Court requires men sensitive to the many ethical problems which often arise. The Senate must await such a nominee before exercising its power to consent.

Mr. BAYH. Mr. President, I believe the individual views point out the reasons for my concern about the Brunswick case, the Grace Lines case, and the cases involving Maryland Casualty. The report points out how Judge Frank had questions about these cases although he disagreed with me as far as Carolina Vend-A-Matic is concerned.

I also ask unanimous consent to have a letter printed in the RECORD. It is a letter from Professor Mellinkoff of UCLA, who is very concerned about Judge Haynsworth's conduct in performing judicial acts affecting litigants in which the judge had financial interests.

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

UNIVERSITY OF CALIFORNIA, LOS ANGELES, SCHOOL OF LAW,
Los Angeles, Calif., October 20, 1969.

Hon. JAMES O. EASTLAND,
U.S. Senate, Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

MY DEAR SENATOR EASTLAND: As a professor of law teaching legal ethics to future lawyers, I write to invite your further attention to what I believe to be the central issue in the consideration of the fitness of Mr. Justice Haynsworth for appointment to the Supreme Court of the United States.

Three instances of apparent conflict of interest have been given prominence in the press: the Justice's purchase of Brunswick Corporation stock before announcement of his Court's decision in favor of Brunswick; his substantial ownership of Carolina Vend-O-Matic, a company having a valuable business relationship with a successful litigant before the Court; and his small stock holding in the W. R. Grace Co. at the time of a decision favorable to its subsidiary Grace Lines. According to report, Justice Haynsworth has explained that the Brunswick case had been decided and forgotten before he bought any Brunswick stock, and that financial interest did not influence his vote in any of these cases. As a member of the bar for 30 years I accept Justice Haynsworth's explanation.

At the same time I cannot but observe that to the unsuccessful litigant in Justice Haynsworth's Court the explanation would ring hollow. At best losing a lawsuit is a disheartening, at worst a crushing experience

to anyone convinced rightly or wrongly of the justice of his cause. The disappointment is endurable only under a system of justice in which the loser knows that the process by which he lost was a fair one.

In a grosser age, when the brilliant Francis Bacon was forced from office and forced to acknowledge that as Lord Chancellor of England he had been taking gifts from litigants, he was still able to assert, ". . . I am as innocent as any born upon St. Innocent's day: I never had a bribe or reward in my eye or thought when pronouncing sentence or order." It may have been true, but it was hardly satisfying, least of all to the man who lost his case in the Lord Chancellor's court.

In a United States district court a jury awards an injured seaman $50.00 on a claim against Grace Lines he thought worth $30,000.00. Saddened, he takes his case to the United States Circuit Court of Appeals. It is not difficult to imagine the bitterness in the heart of the injured seaman when he learns that one of the judges to whom he appealed in vain to right the supposed wrong of the Grace Lines was even a small owner of the company that owns Grace Lines. By the standard of the marketplace Justice Haynsworth's stockholding was trifling. It looms large in the mind of the unhappy litigant searching to discover just what it was that tipped the scales of justice against him.

To avoid such avoidable strains on the legal system, it has long been a maxim of the law that courts shall not only do justice but that they shall seem to do justice. This ancient wisdom finds expression in the Canons of Judicial Ethics of the American Bar Association providing that a judge's conduct should not only be "free from impropriety" but from "the appearance of impropriety." (Canon 4). The importance of the appearance of things is stressed again and again (Canons 13, 24, 26, 33), culminating in the injunction that "In every particular his conduct should be above reproach." (Canon 34).

These Canons apply to judges at every level. They apply most stringently to the men who are to grace the court which sets an example of right to the rest of the nation. I hope, Senator, that you will consider the nomination of Mr. Justice Haynsworth in this light. If you do, I believe you will come to share my conclusion that his confirmation would not promote that necessary public respect for our system of justice which each of us in his own way seeks to preserve.

Very truly yours,

DAVID MELLINKOFF,
Professor of Law.

Mr. BAYH. Mr. President, the matter of substantial interest is covered in the minority views which I have already asked unanimous consent to have printed in the RECORD. I will not labor that point any further.

Mr. President, I ask unanimous consent to have printed in the RECORD the remarks from the hearings of the Senator from Massachusetts (Mr. KENNEDY) relative to the Sobeloff letter since he cannot be here due to a tragic loss he sustained today. The Sobeloff letter has been a matter of controversy throughout this debate.

There being no objection, the statement of Senator KENNEDY was ordered to be printed in the RECORD, as follows:

Senator KENNEDY. Would the Senator yield?

Senator BAYH. Let me just pursue this one point. He based it on a letter of Judge Sobeloff. And in reading Judge Sobeloff's letter I have had no inclination to find, so no indication that the judge——

The CHAIRMAN. You better read it again.

Senator ERVIN. It's got all the facts.

The CHAIRMAN. It does raise a question, in fairness to this nominee.

Senator BAYH. I have read it, Mr. Chairman.

The CHAIRMAN. It does raise a question of conflict of interest.

Senator ERVIN. I have to say what Phillip said to the Ethiopians: "Understandeth what thou readeth."

Senator KENNEDY. Would the Senator yield?

Senator BAYH. Let me just pursue this one point.

Does the chairman find in the Sobeloff letter—and he has had a chance to study it a great deal more than I—the fact that Judge Haynsworth claimed a half million dollars in Vend-A-Matic?

The CHAIRMAN. I think the question of conflict of interest was raised in the Sobeloff letter, and I think it was raised in Miss Eames' letter. The letters are part of the record. They will speak for themselves.

Yes; I think that.

Senator KENNEDY. Will the Senator yield?

Senator BAYH. I yield.

Senator KENNEDY. I think we can clear it up. Mr. Duffner is here. He is familiar with that case. I have had a chance to review the file on it, and it is certainly my impression from reviewing the file that the only question that was brought up to Judge Sobeloff, the basis of the allegation of Patricia Eames was a criminal violation, whether a criminal violation had occurred because of the alleged "throwing" of the contracts.

In reading——

The CHAIRMAN. I think the——

Senator KENNEDY. Would the Senator permit me to continue?

The CHAIRMAN. Excuse me.

Senator KENNEDY. Nowhere either in the allegation that was raised by Patricia Eames or in Judge Sobeloff's records or comments did they ever reach the question about the initial propriety of Judge Haynsworth sitting on that case. And if any of my distinguished colleagues can find that within the record, then I would like to hear that now, because I have not seen that. And we have Mr. Duffner here, who is from the Justice Department, who can respond.

We can look.

The matter that came to the Justice Department was sent to the Criminal Division, referred to the Criminal Division of the Justice Department for the investigation of any criminal liability. It did not come before the Attorney General on a preexisting conflict of interest.

Senator HRUSKA. Would the Senator yield?

The matter was referred to the Criminal Division, and properly so, because the text of 28 U.S.C. 455 has to do with that, and it requires a judge to disqualify himself in a case in which he has a substantial interest, and so forth.

However, Judge Sobeloff's letter clearly indicates in the first two paragraphs that he is treating as completely unfounded the charge of bribery or corruption in connection with the award of contracts. Then he proceeds for the balance of the several page letter to devote himself to the task of describing the stockholdings of the nominee, and the fact of his resignation from these boards of directors long before any court rule was established requiring that that be done.

He arrives at the general conclusion that the court, having all of these facts in reference upon which any possible conflict of interest could be based, has declared itself as having full confidence in Judge Haynsworth.

Now, I doubt very much that when the record of stock ownership and the membership on the board of directors and all of these other things are so plainly evident to the members of the court as well as to the Department of Justice, that the Department would say: "Wait a minute. We are not going to deal with anything but Miss Eames' charge that there was corruption and bribery."

When they take charge of a case for the purpose of determining the violation of a statute on conflict of interest because of a substantial interest in a case and a failure to disqualify they take charge of it for all purposes. To deny that would put the argument on the basis of a narrow legalistic proposition: A charge of bribery was made; it was dimissed; and that's all.

That's not true interpretation. And the full import of all of that record will clearly substantiate. It was the basis of the memorandum which the chairman and this Senator issued and which is in the record. That conclusion is based upon a full and complete and fair consideration of the record.

Senator ERVIN. And I would like to add——

Senator KENNEDY. We have——

The CHAIRMAN. Would the Senator yield?

Senator KENNEDY. Would the Senator yield? I think I still have——

The CHAIRMAN. I say, will you yield?

Senator KENNEDY. Well, I would just like to repond to this question.

The letter that the Senator from Nebraska refers to does not state what he alleges is a part of the record. It is two paragraphs long and I will read it at this time.

"Dear Mr. Attorney General:

"Enclosed is the file of correspondence passing between our court and counsel for the Textile Workers Union of America and Deering Milliken Corporation following the argument of an appeal in our court. Inasmuch as this relates to alleged conduct of one of our colleagues, we think it appropriate to pass the file on to the Department of Justice."

In that record—and I cease reading the letter from Mr. Sobeloff—or in that letter, there are the charges on page 3 from Patricia Eames of whether or not a criminal violation has occurred, and in reading through the record what was suggested based upon the anonymous phone call is that as a result of this decision, that the vending contract was thrown to Carolina Vend-A-Matic. And you just can't get away from that, and I will stand by this record:

"We think it appropriate to pass the file on to the Department of Justice.

"Happily, Miss Eames, who wrote the initial letter to the court on December 17, 1963, has herself acknowledged that the assertions and insinuations about Judge Haynsworth, made to her by some anonymous person in a telephone call, are without foundation; but I wish to add on behalf of the members of the court that our independent—

and once again the telephone call came on the basis of the "throwing" of the contract and it is all the way through this file—

"are without foundation; but I wish to add on behalf of the members of the court that our independent investigation has convinced us that there is no warrant whatever for these assertions and insinuations, and we express our complete confidence in Judge Haynsworth."

The only point that we have raised both by Judge Sobeloff's letter, which is a part of the record, and is very clear and available to all of us—is that the question that was reached—and I think we have Mr. Duffner here who was in the Department of Justice at the time and can clear up this matter if there is any open question—that the question that was reached was about the criminal liability if the contract was "thrown." I don't see any place within the assertions by the Attorney General at that time that in any

or the ethical question about Judge Haynsworth's originally sitting on that case.

I don't believe that it was raised. And I way it reached the question of the propriety don't believe that the question was reached.

Senator ERVIN. Will the Senator yield?

The CHAIRMAN. The Attorney General said that he had complete confidence in Judge Haynsworth. I do not believe that Attorney General Kennedy would have made such a statement had he thought there had been a conflict of interest.

Senator KENNEDY. Well, I read that same file and I am completely confident that there was no criminality involved in it, and I share Attorney General Kennedy's expression as well as Mr. Sobeloff's expression of complete confidence in Judge Haynsworth.

The CHAIRMAN. There was no criminality involved in it and no conflict of interest.

Senator KENNEDY. That's not—where does it say that?

Senator ERVIN. Well, I can tell you, If you yield to me I will show you.

Senator KENNEDY. No, I am yielding to—I am asking——

The CHAIRMAN. That's the meaning of the letter the Attorney General wrote, and above it, above it in the file it had the initials.

Senator ERVIN. If the Senator will yield, I will show where the question was put.

The CHAIRMAN. All right.

Senator KENNEDY. If you stand up, does it help——

Senator ERVIN. I will tell the Senator from Massachusetts I always stand up, even when I am sitting down.

This whole investigation was set in motion by a letter of December 17, 1963, written by Miss Patricia Eames to Judge Sobeloff, the Chief Judge of the U.S. Court of Appeals. After setting forth this rumor which had been conveyed to her by an anonymous telephone call charging bribery, she wrote the three-page letter, and she put this in the closing paragraph:

"We believe that an investigation should be made immediately. We do not know whether we ourselves should ask the Justice Department to investigate or whether we should leave the handling of this matter entirely up to you. It is clear to us that you are the first person to whom the matter should be referred."

Now, here are the words I invite attention to:

"Whether or not a criminal violation has occurred, we certainly believe that if the Deering Milliken contract was thrown to Carolina Vend-A-Matic, Judge Haynsworth should be disqualified from participating in the decision in this case, and that the resulting two-to-two decision should lead to the sustaining of the NLRB decision below."

Now, so this statement coupled with the acknowledgement that Judge Haynsworth was a vice president of Carolina Vend-A-Matic contained earlier in the letter, conveyed the alleged criminal charge and also the charge of a conflict of interest. And that was investigated by Judge Sobeloff, and Judge Sobeloff sent a copy of a letter, wrote a letter on December 18, 1964, which is contained in the Department of Justice file. In the letter, Judge Haynsworth reviews all of these facts about Judge Haynsworth——

The CHAIRMAN. Let's have order.

Senator ERVIN (continuing). In connection with Carolina Vend-A-Matic, and he closed with a statement that "However unwarranted the allegation"—this is the first allegation—"since the propriety of the conduct of a member of this court has been questioned"—and it is questioned in two respects——

Senator KENNEDY. Does it say two respects?

Senator ERVIN. No, but I interpolate it was a question in two respects: First, whether there was evidence of a bribe and, second, whether there had been impropriety by reason of Judge Haynsworth holding office in Carolina Vend-A-Matic.

Senator BAYH. Will the Senator yield?

Senator ERVIN. Not yet; wait until I finish this.

"However unwarranted the allegation, since the propriety of the conduct of a member of this court has been questioned, I am today, at Judge Haynsworth's request and with the concurrence of the entire court, sending the file to the Department of Justice, together with an expression of our full confidence in Judge Haynsworth."

He sent the whole file, including Patricia Eames' letter stating that he ought to disqualify himself, irrespective of the other charge, the main charge. This was considered in the Department of Justice and a very brilliant Attorney General of the United States, Robert F. Kennedy, after getting this file and Judge Soboloff's, the file from Judge Sobeloff, he says—

"DEAR MR. CHIEF JUDGE: This will acknowledge receipt of your letter dated February 19, 1964, enclosing the file that reflects your investigation of certain assertions and insinuations about Judge Clement F. Haynsworth, Jr."

And I pause to interpolate that one of those assertions was that he should be disqualified by reason of his holding office in Carolina Vend-A-Matic.

Then he concludes with this paragraph:

"Your thorough and complete investigation reflects that the charges were without foundation. I share your expression of complete confidence in Judge Haynsworth.

"Thanks for bringing this matter to my attention.

"Sincerely,

"ROBERT F. KENNEDY,
Attorney General."

Both things were brought to his attention.

Mr. BAYH. Mr. President, I think that anyone who reads the views and the remarks I have made will understand the differences of opinion I have with my distinguished colleague from South Carolina.

I am certain that the Senate will work its will and that we will abide by the decision it makes.

Mr. DOLE. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. DOLE. I was in the Chamber throughout the very fine statement made by the Senator from South Carolina (Mr. HOLLINGS) today and I have since read his remarks again, especially the charges made in the Senator from Indiana's bill of particulars and the responses thereto.

I agree with the Senator that we can have differences of opinion and reach different conclusions without being disagreeable or impugning the motives of anyone. Surely that is not the purpose of any Senator here.

As stated during the remarks of the Senator from South Carolina, I have been concerned about one charge because it is, in effect, a violation of the criminal statutes as set forth in the Senator's bill of particulars; namely, violations of title 29 United States Code, sections 301–308, which refer specifically to the Welfare Pension Plan Disclosure Act. The charge of violation was leveled, at least the inference was drawn; therefore, if we look at the charge, violation of title 29 United States Code, it goes on to say: "Willful violation, 6-months' imprisonment or a fine of $1,000, or both."

This is, as a matter of fact, contained in the Senator's bill of particulars. It is not a matter of refuting anyone's opinion.

I am wondering, seriously, if the Senator believes in that charge, and, if so, has he pursued it or was it something in his bill of particulars that should have been withdrawn or should not have been made?

Mr. BAYH. Let me read from page 39 of the report of the Judiciary Committee. I think that the matter the Senator from Kansas brought out is a valid point.

I want the Senator from Kansas to have my thoughts on this.

Violation of 29 U.S.C. 301–308

Another matter deserves notice. Judge Haynsworth was a trustee of the Carolina Vend-A-Matic Co. profit sharing and retirement plan from 1961 until 1964 and qualified as an administrator by law. The Welfare and Pension Plan Disclosure Act provides that an administrator of a pension fund must file with the Secretary of Labor an initial description of the plan and annual reports thereafter. Willful violation of the act can lead to 6 months imprisonment or a fine of $1,000 or both. On September 17, 1969, the director of the Office of Labor-Management and Welfare-Pension Reports of the U.S. Department of Labor advised by letter, "Our records do not show that any reports have been received under the name of Carolina Vend-A-Matic Co., Inc., for a profit sharing and retirement plan."

The omission by the judge was in all probability an oversight and not an intentional violation. However, the facts are cited to reinforce the obvious conclusion that complicated financial relationships and judicial responsibility can become a dangerous mixture.

I would ask if the Senator from Kansas would have any objection to having the act printed in the RECORD, so that we will know what the facts are.

Mr. DOLE. No objection.

Mr. BAYH. Mr. President, I ask unanimous consent to have a copy of the act printed in the RECORD.

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

REFERENCES IN TEXT

The Fair Labor Standards Act, as amended, referred to in text, is classified to chapter 8 of this title.

Chapter 10.—DISCLOSURE OF WELFARE AND PENSION PLANS

Sec.
301. Findings and policy.
302. Definitions.
303. Plans within chapter.
304. Administrator.
(a) Duty to publish description of plan and annual financial report.
(b) Definition of "administrator".
305. Description of plan.
(a) Time for publication.
(b) Contents.
306. Annual reports.
(a) Time for publication.
(b) Contents.
(c) Unfunded plans.
(d) Additional information required where benefits are provided by insurance carrier or other service or organization.
(e) Holding or investing of funds.
(f) Plans funded through trust; plans

funded through contract with insurance carrier; unfunded plans.

(g) Certification of information by insurance carrier or service or other organization.

(h) Simplified reports.

Sec.

307. Publication of description of plan and annual report.

(a) Availability for examination in office of plan; delivery of copy of description of plan and summary of report.

(b) Filing of copies of plan and report with Secretary; availability for examination in Department of Labor.

(c) Preparation and availability of forms for description of plan and annual report.

308. Enforcement.

(a) Penalty for violations.

(b) Liability for failure or refusal to make publication.

(c) Actions to recover liability; jurisdiction; attorney fees and costs.

(d) Investigations to disclose violations.

(e) Attendance of witnesses and production of books, records, and documents; applicability of other laws.

(f) Injunctions.

(g) Jurisdiction to restrain violations.

(h) Regulation or interference in management of plan; restriction on power of Secretary.

(i) Information to Attorney General.

308a. Reports made public information.

308b. Retention of records.

308c. Reliance on administrative interpretations and forms.

308d. Bonds.

(a) Requirement; amount; conditions; sureties.

(b) Violations.

(c) Procurement from surety or other company or through agent or broker in whose business operations such plan or party in interest has significant control or financial interest.

(d) Bonding requirements in other provisions of law.

(e) Regulations; exemption of plan.

308e. Advisory Council.

(a) Establishment; appointment of members.

(b) Duties; meetings; report to Congress.

(c) Executive secretary; secretarial, clerical and other services; statistical data, reports, and other information from governmental agencies.

(d) Compensation of members.

(e) Exemption of members from provisions of other laws.

308f. Administration.

(a) Applicability of Administrative Procedure Act.

(b) Prohibition on administration or enforcement by employee with respect to organization in which he has an interest.

(c) Limitation on number of employees.

(d) Authorization of appropriations.

309. Effect of other laws.

(a) State laws.

(b) Present or future Federal or State laws.

§ 301. Findings and policy.

(a) The Congress finds that the growth in size, scope, and numbers of employees welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

(b) It is declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto. (Pub. L. 85–836, § 2, Aug. 28, 1958, 72 Stat. 997.)

EFFECTIVE DATE

Section 18, formerly § 12, of Pub. L. 85–836, renumbered by Pub. L. 85–420, § 16(a), Mar. 20, 1962, 76 Stat. 38, provided that: "The provisions of this Act [this chapter] shall become effective January 1, 1959."

SHORT TITLE

Section 1 of Pub. L. 85–836 provided that Pub. L. 85–836, which comprises this chapter, should be popularly known as the "Welfare and Pension Plans Disclosure Act".

SEPARABILITY OF PROVISIONS

Section 17, formerly § 11, of Pub. L. 85–836, renumbered by Pub. L. 87–420 § 16(a), Mar. 20, 1962, 76 Stat. 38, provided that: "If any provision of this Act [this chapter] or the application of such provision to any person or circumstance is held invalid, the remainder of this Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected."

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

§ 302. Definitions.

(a) When used in this chapter—

(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by any employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.

(2) The term "employee pension benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing or to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.

(3) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing wtih employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee welfare or pension benefit plan, and includes a group or association of employers acting for an employer in such capacity.

(5) The term "employee" means any individual employed by an employer.

(6) The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit.

(7) The term "beneficiary" means a person designated by a participant or by the terms of an employee welfare or pension benefit plan who is or may become entitled to a benefit thereunder.

(8) The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(9) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(10) The term "commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

(11) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(12) The term "Secretary" means the Secretary of Labor.

(13) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan or employee pension benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan.

(Pub. L. 85–836, § 3, Aug. 28, 1958, 72 Stat. 997; Pub. L. 86–624, § 21(d), July 12, 1960, 74 Stat. 417; Pub. L. 87–420, §§ 2–5, Mar. 20, 1962, 76 Stat. 35.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in par. (9), is classified to sections 1331—1343 of Title 43, Public Lands.

The Labor-Management Relations Act 1947, referred to in par. (11), is classified to chapter 7 of this title.

The Railway Labor Act, referred to in par. (11), is classified to chapter 8 of Title 45, Railroads.

CODIFICATION

Section was enacted without a subsec. (b).

AMENDMENTS

1962—Pub. L. 87–420 substituted "communicated or its benefits" for "communicated for its benefits" in par. (1), included American Samoa, Guam, Wake Island and the Outer Continental Shelf lands in par. (9), substituted the definition of "industry or

activity affecting commerce" for provisions which defined "affecting commerce" as meaning in commerce, or burdening or obstructing commerce or the free flow of commerce, in par. (11), and added pars. (12) and (13).

1960—Subsec. (a)(9). Pub. L. 86–624 eliminated "Hawaii," preceding "Puerto Rico."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 19 of Pub. L. 87–420 provided that: "The amendments made by this Act [adding sections 308a–308f of this title and sections 664, 1027, and 1954 of title 18, Crimes and Criminal Procedure, amending this section and sections 303–309 of this title, and, renumbering sections 10–12 of Pub. L. 85–536, classified to section 309 of this title and as notes under section 301 of this title] shall take effect ninety days after the enactment of this Act [Mar. 20, 1962], except that section 13 of the Welfare and Pension Plans Disclosure Act [section 308d of this title] shall take effect one hundred eighty days after such date of enactment [Mar. 20, 1962].

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

SHORT TITLE

Section 1 of Pub. L. 87–420 provided that Pub. L. 87–420, which enacted sections 308a–308f of this title and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, amended this section and sections 303–309 of this title, and renumbered sections 10–12 of Pub. L. 85–536, classified to section 309 of this title and as notes under section 301 of this title, may be cited as the "Welfare and Pension Plans Disclosure Act Amendments of 1962."

§ 303. Plans within chapter.

(a) Except as provided in subsection (b), of this section, this chapter shall apply to any employee welfare or pension benefit plan if it is established or maintained by any employer or employers engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce or by both.

(b) This chapter shall not apply to an employee welfare or pension benefit plan if—

(1) such plan is administered by the Federal Government or by the government of a State, by a political subdivision of a State, or by an agency or instrumentality of any of the foregoing;

(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws;

(3) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of Title 26 and is administered as a corollary to membership in a fraternal benefit society described in section 501(c)(8) of Title 26 or by organizations described in sections 501(c)(3) and 501(c)(4) of Title 26: *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining; or

(4) such plan covers not more than twenty-five participants.

(Pub. L. 85–836, § 4, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87–420, § 6, Mar 20, 1962, 76 Stat. 35.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420 substituted, in par. (3), "such plan is administered by an organization which is exempt" for "such plan is exempt" and inserted proviso stating that such paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining, and in par. (4) substituted "participants" for "employees."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

§ 304. Administrator.

(a) Duty to publish description of plan and annual financial report.

The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with section 307 of this title to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 305 and 306 of this title in such form and detail as the Secretary shall by regulations prescribe and copies thereof shall be executed, published, and filed in accordance with the provisions of this chapter and the Secretary's regulations thereunder. No regulation shall be issued under the preceding sentence which relieves any administrator of the obligation to include in such description or report any information relative to his plan which is required by section 305 or 306 of this title. Notwithstanding the foregoing, if the Secretary finds, on the record after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits described in section 302 (1) and (2) of this title which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available for publication in the manner or for the period prescribed in any provision of this chapter, or that the information if published in such manner or for such period would be duplicative or uninformative, the Secretary may by regulations prescribe such other manner or such other period for the publication of such information as he may determine to be necessary and appropriate to carry out the purposes of this chapter.

(b) Definition of "administrator".

The term "administrator" whenever used in this chapter, refers to—

(1) the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

(2) in the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

(Pub. L. 85–836, § 5, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87–420, § 7, Mar. 20, 1962, 76 Stat. 36.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420 empowered the Secretary to prescribe the form and detail in which the information shall be reported, provided for filing copies of the report, prohibited issuance of a regulation which relieves any administrator of the obligation to include in the description or report any information relative to his plan which is required by section 305 or 306 of this title, and authorized the Secretary to prescribe the manner or period for the publication of information in cases where specific information on plans of certain kinds or on any class or classes of benefits described in section 302 (1) and (2) of this title which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available in the manner or for the period prescribed, or that the information if published would be duplicative or uninformative.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

§ 305. Description of plan.

(a) Time for publication.

Except as provided in section 303 of this title, the description of any employee welfare or pension benefit plan shall be published as required herein within ninety days of the effective date of this chapter or within ninety days after the establishment of such plan, whichever is later.

(b) Contents.

The description of the plan shall be published, signed, and sworn to by the person or persons defined as the "administrator" in section 304 of this title, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organizations, and any other offices, positions, or employment held by them; the name, address, and description of the plan and the type of administration; the schedule of benefits; the names, titles, and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 306 of this title, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported to the Secretary within sixty days after the change has been effectuated. (Pub. L. 85–836, § 6, Aug. 28, 1958, 72 Stat. 999; Pub. L. 87–420, § 8, Mar. 20, 1962, 76 Stat. 36.)

REFERENCES IN TEXT

"Effective date of this chapter", referred to in the text of subsec. (a) of this section, as Jan 1, 1959, see section 12 of Pub. L. 85–836, set out as a note under section 301 of this title.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420 required any change in the information to be reported to the Secretary within sixty days after the change has been effectuated.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

§ 306. Annual reports.

(a) Time for publication.

The administrator of any employee welfare or pension benefit plan, a description of which is required to be published under section 305 of this title, shall also publish an annual report with respect to such plan if it covers one hundred or more participants. However, the Secretary, after investigation, may require the administrator of any plan otherwise covered by the chapter to publish such report when necessary and appropriate to carry out the purposes of the chapter. Such report shall be published as required under section 307 of this title, within one hundred and fifty days after the end of the calendar year (or, if the records of the plan are kept on a policy or other fiscal year basis, within one hundred and fifty days after the end of such policy or fiscal year).

(b) Contents.

A report under this section shall be signed by the administrator and such report shall include the following:

The amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets specifying the total amount in each of the following types of assets: cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets; a statement of liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes. The Secretary, when he has determined that an investigation is necessary in accordance with section 308(d) of this title, may require the filing of supporting schedules of assets and liabilities. The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to examination by any agency of the Federal Government or the government of any State. In the case of reports sworn to, but not certified, the Secretary, when he determines that it may be necessary to investigate the plan in accordance with section 308(d) of this title, shall, prior to investigation by the Department of Labor, require certification of the report by an independent certified or licensed public accountant.

(c) Unfunded plans.

If the plan is unfunded the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by years; and a statement, if applicable, that the only assets from which claims against the plan must be paid are the general assets of the employer.

(d) Additional information required where benefits are provided by insurance carrier or other service or organization.

If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b) of this section) the following:

(1) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits.

(2) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose: *Provided*, That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

(e) Holding or investing of funds.

Details relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (C), and (D) of subsection (f)(1) of this section.

(f) Plans funded through trust; plans funded through contract with insurance carrier; unfunded plans.

Reports on employee pension benefit plans shall include, in addition to the applicable information required by the foregoing provisions of this section, the following:

(1) If the plan is funded through the medium of a trust, the report shall include—

(A) the type and basis of funding, actuarial assumptions used, the amount of current and past service liabilities, and the number of employees, both retired and nonretired covered by the plan;

(B) a statement showing the assets of the fund as required by section 306(b) of this title. Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

(C) a detailed list, including information as to cost, present value, and percentage of total funds, of all investments in securities or properties of the employer or employee organization, or any other party in interest, but the identity of all securities and the detail of brokerage fees and commissions incidental to the purchase or sale of such securities need not be revealed if such securities are listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or securities in an investment company registered under the Investment Company Act of 1940, or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and the statement of assets contains a statement of the total investments in common stock, preferred stock, bonds and debentures, respectively, valued as provided in subparagraph (B).

(D) a detailed list of all loans made to the employer, employee organization, or other party in interest, including the terms and conditions of the loan and the name and address of the borrower: *Provided*, That if the plan is funded through the medium of a trust invested, in whole or in part, in one or more insurance or annuity contracts with an insurance carrier, the report shall include, as to the portion of the funds so invested, only the information required by paragraph (2) below.

(2) If the plan is funded through the medium of a contract with an insurance carrier, the report shall include—

(A) the type and basis of funding, actuarial assumptions used in determining the payments under the contract, and the number of employees, both retired and nonretired, covered by the contract; and

(B) except for benefits completely guaranteed by the carrier, the amount of current and past service liabilities, based on those assumptions, and the amount of all reserves accumulated under the plan.

(3) If the plan is unfunded, the report shall include the total benefits paid to retired employees for the past five years, broken down by year.

(g) Certification of information by insurance carrier or service or other organization.

If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this chapter.

(h) Simplified reports.

The Secretary shall prescribe by general rule simplified reports for plans which he finds that by virtue of their size or otherwise a detailed report would be unduly burdensome, but the Secretary may revoke such provisions for simplified forms for any plan if the purposes of the chapter would be served thereby. (Pub. L. 85–836, § 7, Aug. 28, 1958, 72 Stat. 1000; Pub. L. 87–420, §§ 9–13, Mar. 20, 1962, 76 Stat. 36, 37.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (f)(1)(C) of this section, is classified to sections 80a–1 to 80a–52 of Title 15, Commerce and Trade.

The Public Utility Holding Company Act of 1935, referred to in subsec. (f)(1)(C) of this section, is classified to chapter 2C of Title 15.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420, § 9(a), limited the requirement of publishing the annual report to those plans which cover one hundred or more participants, empowered the Secretary to require the administrator of any plan to publish such report when necessary and appropriate to carry out the purposes of this chapter, and substituted "one hundred and fifty" for "one hundred and twenty" in two instances.

Subsec. (b). Pub. L. 87–420, § 9(b), (c), required the statement of assets to show the total amount of cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common

trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets, authorized the Secretary to require the filing of supporting schedules of assets and liabilities, and empowered the Secretary if he determines that it may be necessary to investigate the plan to require the certification of the report by an independent certified or licensed public accountant.

Subsec. (f)(1)(B). Pub. L. 87–420, § 10, substituted "a statement showing the assets of the fund as required by section 306(b) of this title" for "a summary statement showing the assets of the fund broken down by types, such as cash investments in governmental obligations, investments in nongovernmental bonds, and investments in corporate stocks."

Subsec. (f)(1)(C). Pub. L. 87–420, § 11, substituted "total funds" for "total fund" and "valued as provided in subparagraph (B)" for "listed at their aggregate cost or present value, whichever is lower," and eliminated words "by reason of being an officer, trustee, or employee of such fund" which followed "other party in interest."

Subsec. (f)(1)(D). Pub. L. 87–420, § 12, eliminated words "by reason of being an officer, trustee, or employee of such fund" which followed "other party in interest."

Subsecs. (g), (h). Pub. L. 87–420, § 13, added subsecs. (g) and (h).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

§ 307. Publication of description of plan and annual report.

(a) Availability for examination in office of plan; delivery of copy of description of plan and summary of report.

Publication of the description of the plan and the latest annual report required under this chapter shall be made to the participants and to the beneficiaries covered by the particular plan as follows:

(1) The administrator shall make copies of such description of the plan (including all amendments or modifications thereto upon their effective date) and of the latest annual report available for examination by any participant or beneficiary in the principal office of the plan.

(2) The administrator shall deliver upon written request to such participant or beneficiary a copy of the description of the plan (including all amendments or modifications thereto upon their effective date) and an adequate summary of the latest annual report, by mailing such documents to the last known address of the participant or beneficiary making such request.

(b) Filing of copies of plan and report with Secretary; availability for examination in Department of Labor.

The administrator of any plan subject to the provisions of this chapter shall file with the Secretary two copies of the description of the plan and each annual report thereon. The Secretary shall make available for examination in the public document room of the Department of Labor copies of descriptions of plans and annual reports filed under this subsection.

(c) Preparation and availability of forms for description of plan and annual report.

The Secretary shall prepare forms for the descriptions of plans and the annual reports required by the provisions of this chapter and shall make such forms available to the administrators of such plans on request. (Pub. L. 85–836, § 8, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87–420, §§ 14, 18, Mar. 20, 1962, 76 Stat. 37, 43.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420, § 14, substituted "an adequate summary" for "a summary" in par. (2).

Subsecs. (b), (c). Pub. L. 87–420, § 18, substituted "Secretary" for "Secretary of Labor", wherever appearing.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub. L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

§ 308. Enforcement.

(a) Penalty for violations.

Any person who willfully violates any provision of this chapter shall be fined not more that $1,000, or imprisoned not more than six months, or both.

(b) Liability for failure or refusal to make publication.

Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 307 of this title, of a description of the plan or an annual report containing the information required by sections 305 and 306 of this title, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of $50 a day from the date of such failure or refusal.

(c) Actions to recover liability; jurisdiction; attorney fees and costs.

Action to recover such liability may be maintained in any court of competent jurisdiction by any participant or beneficiary The court in such action may in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(d) Investigations to disclose violations.

The Secretary may, after first requiring certification in accordance with section 306(b) of this title, upon complaint of violation not satisfied by such certification, or on his own motion, when he continues to have reasonable cause to believe investigation may disclose violation of this chapter, make such investigations as he deems necessary, and may require or permit any person to file with him a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

(e) Attendance of witnesses and production of books, records, and documents; applicability of other laws.

For the purposes of any investigation provided for in this chapter, the provisions of sections 49 and 50 (relating to the attendance of witnesses and the production of books, records, and documents) of Title 15, are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(f) Injunctions.

Whenever it shall appear to the Secretary that any person is engaged in any violation of the provisions of this chapter, he may in his discretion bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted.

(g) Jurisdiction to restrain violations.

The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction, for cause shown, to restrain violations of this chapter.

(h) Regulation or interference in management of plan; restriction on power of Secretary.

Nothing contained in this chapter shall be so construed or applied as to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan, except that the Secretary may inquire into the existence and amount of investments, actuarial assumptions, or accounting practices only when it has been determined that investigation is required in accordance with section 308(d) of this title.

(i) Information to Attorney General.

The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this chapter which may warrant consideration for criminal prosecution under the provisions of this chapter or other Federal law. (Pub. L. 85–836, § 9, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87–402, § 15, Mar. 20, 1962, 76 Stat. 37.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–420, § 15(a), eliminated provisions which limited subsection to violations of section 304 or 307 of this title, and inserted provisions authorizing imposition of both fine and imprisonment.

Subsecs. (d)—(i). Pub. L. 87–420, § 15(b), added subsecs. (d)—(i). Former subsec. (d), which related to jurisdiction to restrain violations, is now covered by subsec. (g) of this section. Former subsec. (e) made section 1001 of Title 18 applicable to any description of a plan or any annual report which is sworn to under this chapter. See section 1027 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–420 effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 18 of Pub L. 85–836, set out as a note under section 301 of this title.

CROSS REFERENCES

False statements and concealment of facts in relation to documents required by this chapter, see section 1027 of Title 18, Crimes and Criminal Procedure.

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18.

Theft or embezzlement from employee benefit plan, see section 664 of Title 18.

§ 308a. Reports made public information.

The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this chapter shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such information and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate. (Pub. L. 85–836, § 10, as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat. 38.)

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308b. Retention of records.

Every person required to file any description or report or to certify any information therefor under this chapter shall maintain records on the matters of which disclosure

is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain. (Pub. L. 85–836, § 11, as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat 38.)

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308c. Reliance on administrative interpretations and forms.

In any action or proceeding based on any act or omission in alleged violation of this chapter, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with any provision of this chapter if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this chapter if he pleads and proves that he published and filed such information in good faith, on the description and annual report form prepared by the Secretary and in conformity with the instructions of the Secretary issued under this chapter regarding the filing of such forms. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this chapter. (Pub. L. 85–836, § 12, as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat. 38.)

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308d. Bonds.

(a) Requirement; amount; conditions; sureties.

Every administrator, officer, and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this chapter who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements of this section. The amount of such bond shall be fixed at the beginning of each calendar, policy, or other fiscal year, as the case may be, which constitutes the reporting year of such plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6–13 of Title 6. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) Violations.

It shall be unlawful for any administrator, officer, or employee to whom subsection (a) of this section applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee welfare benefit plan or employee pension benefit plan, without being bonded as required by subsection (a) of this section and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) of this section have not been met.

(c) Procurement from surety or other company or through agent or broker in whose business operations such plan or party in interest has significant control or financial interest.

It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any significant control or financial interest, direct or indirect.

(d) Bonding requirements in other provisions of law.

Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) of this section because he handles funds or other property of an employee welfare benefit plan or of an employee pension benefit plan to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) Regulations; exemption of plan.

The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section. (Pub. L. 85–836, § 13 as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat. 39.)

EFFECTIVE DATE

Section effective 180 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 301 of this title.

§ 308e. Advisory Council.

(a) Establishment; appointment of members.

There is established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the "Council") which shall consist of thirteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, two from management, four from labor, and two from other interested groups, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.

(b) Duties; meetings, report to Congress.

It shall be the duty of the Council to advise the Secretary with respect to the carrying out of the functions under this chapter, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the chapter for such preceding calendar year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the chapter's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

(c) Executive secretary; secretarial, clerical and other services; statistical data, reports, and other information from governmental agencies.

The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d) Compensation of members.

Appointed members of the Council shall be paid compensation at the rate of $50 per diem when engaged in the work of the Council, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (section 73b–2 of Title 5) for persons in the Government service, employed intermittently and receiving compensation on a per diem, when actually employed, basis.

(e) Exemption of members from provisions of other laws.

(1) Any member of the Council is exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of Title 18 and section 99 of Title 5, except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) of this subsection shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment. (Pub. L. 85–836, § 14, as added Pub. L. 87–420, § 16(a), Mar. 20, 1962, 76 Stat. 40.)

REFERENCES IN TEXT

Sections 281, 283, and 1914 of Title 18 and section 99 of Title 5, referred to in subsec. (e)(1), are repealed. See sections 201 et seq. of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

§ 308f. Administration.

(a) Applicability of Administrative Procedure Act.

The provisions of the Administrative Procedure Act shall be applicable to this chapter.

(b) Prohibition on administration or enforcement by employee with respect to organization in which he has an interest.

No employee of the Department of Labor

shall administer or enforce this chapter with respect to any employee organization of which he is a member or employer organization in which he has an interest.

(c) Limitation on number of employees.

No more than 260 employees shall be employed by the Department of Labor to administer or enforce this chapter for the first two years after March 20, 1962.

(d) Authorization of appropriations.

Not more than two million two hundred thousand dollars per year is authorized to be appropriated for the administration and enforcement of this chapter, for the first two years after March 20, 1962. (Pub. L. 87–836, § 15, as added Pub. L. 87–420, § 16(a). Mar. 20, 1962, 76 Stat. 41.)

REFERENCE IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), is classified to chapter 19 of Title I, Executive Departments and Government Officers and Employees.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 302 of this title.

CROSS REFERENCE

Offer, acceptance, or solicitation to influence operations of employee benefit plan, see section 1954 of Title 18, Crimes and Criminal Procedure.

§ 309. Effect of other laws.

(a) State laws.

In the case of an employee welfare or pension benefit plan providing benefits to employees employed in two or more States, no person shall be required by reason of any law of any such State to file with any State agency (other than an agency of the State in which such plan has its principal office) any information included within a description of the plan or an annual report published and filed pursuant to the provisions of this chapter if copies of such description of the plan and of such annual report are filed with the State agency, and if copies of such portion of the description of the plan and annual report, as may be required by the State agency, are distributed to participants and beneficiaries in accordance with the requirements of such State law with respect to scope of distribution. Nothing contained in this subsection shall be construed to prevent any State from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan.

(b) Present or future Federal or State laws.

The provisions of this chapter, except subsection (a) of this section and section 308d of this title, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law. (Pub. L. 85–836, § 16, formerly § 10, Aug. 28, 1958, 72 Stat. 1002, renumbered and amended Pub. L. 87–420, § 16(a), (b), Mar. 20, 1962, 76 Stat. 38, 41.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–420, § 16(b), excepted section 308d of this title.

Mr. BAYH. Mr. President, I do not think that Judge Haynsworth did that intentionally. I do not ask my friend from Kansas to share my concern, but I believe—and I hope the Senate will act on this later this year, or next year—that if a man is going to be on that bench for life and make those important determinations, he should absolve himself of all intricate financial relationships such as these. Not to do so gets a judge into this present sticky situation.

Mr. DOLE. Mr. President, the reason this question is raised is that it is one which has been highly publicized all across America, and in my State of Kansas; namely, did Judge Haynsworth commit a crime? It has raised doubts in the minds of many people who were neither for nor against Judge Haynsworth at the time. It is a rather serious situation, but perhaps, since he was only one of three trustees, there was no deliberate effort not to disclose information. In fact, the plan was made available to the employees. He was not the manager. It is unclear whether this law would apply to him, in the first instance, but the charge was made and it was made publicly, and apparently, for some reason. It certainly has not been helpful to Judge Haynsworth, because after the news media publicized it, displayed it, it then appeared in this regular bill of particulars. It was played up all over the country, and it has raised serious doubts in the minds of many people as to Judge Haynsworth's qualifications.

Mr. BAYH. I have not had the good fortune to read the papers of Kansas. I have not read all the newspapers in my State of Indiana, for that matter. I have not seen it in the clippings which have come over my desk. I have not seen this particular issue dwelt on. Certainly, Judge Haynsworth did not intentionally violate the statute.

I do not think this issue has received any attention in the press. At least I have not seen it. I expect the Senator from Kansas has.

Mr. DOLE. The Senator may have been on television at that time. The point is that in the statement issued by the Senator from Nebraska (Mr. HRUSKA) and the Senator from Kentucky (Mr. COOK) on October 15, 1969—let me read it for the RECORD:

PENSION AND PROFIT SHARING PLAN

While serving as a director of Carolina Vend-A-Matic, Judge Haynsworth was appointed in 1961 as a trustee of the company's pension and profit-sharing plan. The benefits of the plan did not accrue to the directors, only to the employees. He was one of three directors. (Hearings Pages 92, 290). His duties as trustee ended in 1964 when the corporation was merged. 29 U.S.C. Sec. 301–308 was passed by Congress in 1962. Its purpose was to require the disclosure and reporting to participants and beneficiaries of the details of pension and profit-sharing plans. Carolina Vend-A-Matic did fully disclose the details of the plan's operations to the participants: a description of the plan was given to the participants at the plan's inception and thereafter the participants received an annual statement of accounts. Records of the Department of Labor do not disclose that a short form description of the plan was filed with the Department. The only penalties included in the Act are for willful violation. Inadvertent failure to comply is not a willful violation. Because the short form filing was part of the daily administration of the plan and normally would be done by clerical staff, Judge Haynsworth was not aware of the inadvertence. (Hearings Page 291). There is no evidence that Judge Haynsworth was in violation of the Act. As a matter of fact, the reported cases have found a violation only if the trustees of a plan refuse to disclose the required information to employees after the information is demanded. Here the opposite is true. The information was made available to the employees willingly.

Mr. BAYH. Does the Senator have evidence that the trust had a clerical staff?

Mr. DOLE. It is my judgment there was.

Mr. BAYH. It is my judgment there was no clerical staff or administrator, but that there were three trustees, one of whom was a judge. I do not think he willfully violated it, but it is an example of a man not removing himself from complicated financial relationships that are likely to raise a question of impropriety.

The Senator from Kansas disagrees with that. It is certainly within his right to disagree.

If I may expand these remarks, I have tried my very best to make my feelings known, although I have not succeeded 100 percent. Remarks were made earlier by the distinguished Senator from Iowa that there have been allegations relative to certain activities of the judge that are not relevant. I have not made them. I do not know of any Senator who has made any that do not have a bearing on the case.

I think, in fact, whether the judge violated the law does not have any bearing, either. It is just that it is a relationship which is subject to question. I would rather that a judge going into that high position on the Court not involve himself in such relationships.

Mr. DOLE. We get back to the question raised earlier. Why is the allegation included in the bill of particulars of the Senator from Indiana if it has no relevance or bearing on the question? The inference is that he committed a crime.

Mr. BAYH. Is it difficult for the Senator to hear what I am saying?

Mr. DOLE. I can also read, and I read the bill of particulars.

Mr. BAYH. I suggest that the Senator read it further. It is my feeling that it is clear. I cannot understand why it is not clear to the Senator.

Mr. DOLE. It is also contained in the bill of particulars in a particular way.

Mr. BAYH. At the time the bill of particulars was submitted, and immediately afterwards I pointed out the same thing orally that I pointed out in the minority views.

Mr. DOLE. But the Senator agrees that his bill of particulars contains a different statement than contained in the report.

Mr. BAYH. In the first part it is almost verbatim, and it is factual.

Mr. DOLE. Charge No. 12 refers to a violation of title 29 of the United States Code, section 301. What other inference could anyone draw who read that charge than that he violated the provisions of that statute?

Mr. BAYH. I do not know how to say it any clearer.

Mr. DOLE. The Senator says it so clearly that perhaps he damaged the judge in doing so. That is why the question should be raised.

Mr. BAYH. If the judge is damaged by the activities he engaged in and the judgments he made, that is his responsibility. I have been as kind and sensitive as I know how, but I am not apologetic

for submitting this and letting everyone make his own determination. Anyone can come to a conclusion as to whether this is the kind of relationship which a judge going on the Supreme Court should have as an everyday kind of activity.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. HRUSKA. I have this particular paragraph in the bill of particulars before me. I fully agree with the Senator from Indiana that the public and the Senate should know all the facts and the truth about the facts. I would seriously question that the way in which the bill of particulars is fashioned gives us the entire truth. The entire truth would include a statement that there was no willful violation of the statute which is referred to. A willful violation can lead to 6 months' imprisonment or a fine of $1,000, or both.

In the bill of particulars the letter from the U.S. Department of Labor is quoted:

> Our records do not show that any reports have been received under the name of Carolina Vend-A-Matic, Inc. for a profit sharing and retirement plan.

The whole truth would be that this does not constitute a willful violation unless and until under those circumstances the Department of Labor asks for a report, and there is noncompliance with such a request. That is what the whole record shows.

I ask the Senator from Indiana for any commentary on that. The truth is fine, but should not we have the whole truth? I do not apologize for the judge, nor excuse the fact that a report was not filed, but we need all of the facts of the case. There is such a thing as willful violation, to be sure, but it is not to be inferred until such time as a request is made for the report and the request is denied.

Mr. BAYH. Perhaps the Senator would point out where these ameliorating circumstances that go beyond what I put in the RECORD are.

Mr. HRUSKA. I would be glad to read the whole text into the RECORD, so the Senator and I will be talking about the same thing.

Mr. BAYH. I suggested that the whole text go into the RECORD. I think that bill of particulars has been in there. I think it is going to be on the best seller's list, but if the Senator wants to put it in again, that is fine. I put the statute ino the RECORD, so we could see what we are talking about.

Mr. HRUSKA. Is that pension fund a profitmaking proposition?

Mr. BAYH. It is a profitsharing proposition and comes under the provisions of the act.

Mr. HRUSKA. It is not an organization organized for profit. It is a fund gathered together by joint contributions from employers and employees and dispensed according to the rules of the trust.

Mr. BAYH. It is for retirement and profitsharing. The Senator refers to a sentence from the second paragraph of the bill of particulars. Long before we even got into the matter of listing what I feel is an impropriety, I said I issued the bill of particulars with no malice toward Judge Haynsworth, and with considerable regret. The question is not whether Judge Haynsworth is dishonest, but whether he has shown a temperament which qualified him to sit on the highest judicial council. The Senator has heard me say this. He has heard me ask the questions as apologetically as I know how. I do not know what else to say.

Mr. HRUSKA. It is one thing to call attention to something which might give rise to an appearance of evil or to put a man in a position of reproach, but when it is clearly pointed out that there is no evil, that there is no violation of the statute, and there is nothing improper about being involved in transactions with that retirement fund, then it seems to me most Senators who would be reasonable and who would like to put this matter in the proper light and who had a fair intendment for the integrity of a man who has been on the bench 12 years, would say, "All appearance of evil disappears with this explanation." Unfortunately the Senator from Indiana apparently is reluctant to do that.

Mr. BAYH. May I quote from the guiding language of the statute which has already been put into the RECORD:

> The administrator of any plan subject to the provisions of this chapter—

Mr. HRUSKA. What is the Senator reading?

Mr. BAYH. Section 307, title 29—

> the administrator of any plan subject to the provisions of this chapter shall file with the Secretary two copies of the description of the plan and each annual report thereon. The Secretary shall make available for examination in the public document room of the Department of Labor copies of description of plans and annual reports filed under this subsection.

I have said this from the beginning. I will repeat it again. As I recall, when I discussed this matter in the hearings, I suggested that we were dealing with the provision under the canons of ethics that a judge should avoid getting himself involved in litigation. What if the proper precautions had not been taken, and the judge maintained that financial relationship? A complaint could have been made. The reports were not filed.

Mr. DOLE. Mr. President, will the Senator yield at that point?

Mr. BAYH. I yield.

Mr. DOLE. The Senator is saying he probably did not violate the Federal law.

Mr. BAYH. It is my judgment he was not subject to penalty. It was inadvertent. It is the type of relationship from which he should have severed himself before he went on the bench.

Mr. DOLE. I assume the Senator will admit that his individual views on that point were different. On page 26 of the report are shown the differences which come to mind, where he said Judge Haynsworth "violated Federal law in his administration of the Caroinla Vend-A-Matic Co. profit sharing and retirement plan."

If that is not a concise statement that a man had violated Federal law, then I do not understand the English language.

Mr. BAYH. If he violated the letter of the law, he is not subject to penalty unless it is a willful violation. It is that simple.

Mr. HRUSKA. In no event is he subject to penalty unless it is willful. He did not violate any law unless it is a willful violation. When we look for evidence of willfulness, it is not there. There is no showing that it was the duty of the judge, himself, to have filed that statement. There is no showing on that.

Mr. BAYH. The Senator is not at all concerned about this type of relationship, as far as this trust is concerned?

Mr. HRUSKA. No, not when all of the facts are related, because here we have a situation of no willful violation, no showing of the violation of any criminal statute, or the incurring of any sanction. We do have the rules of the Judicial Conference of the United States, which say, do they not, that "no justice or judge shall serve in the capacity of an officer, director, or employee of a corporation organized for profit?"

This corporation is not organized for profit. Judge Haynsworth got no profit out of it. The trust did not get any profit. There is no appearance of evil, nor any circumstances that would amount to a situation that he could be considered in reproach. Yet the Senator insists upon including in his statement inferences of violation of the law, of bad business, and that Judge Haynsworth got himself into a bad situation.

What is the bad situation? We would like to know what the bad situation is.

Mr. BAYH. The bad situation is that he did not adhere to the letter of this law, and it looks bad.

Mr. HRUSKA. Did what?

Mr. BAYH. He did not adhere to the letter of the law. You can violate one section of the law and not be subject to the penalty section; the Senator knows that.

Mr. HRUSKA. He did not violate the law.

Mr. BAYH. The report was not submitted——

Mr. HRUSKA. No; the law is that there shall be a penalty in case of willful violation. There was no willful violation; therefore, he did not violate the law.

Mr. BAYH. The Senator and I, standing here, are willing to concede that there was no willful violation, but we have no proof of it; do we?

Mr. HRUSKA. And since when is it incumbent upon a man to prove he is innocent? The Senator made the statement; it is for him to prove there was a willful violation. I do not think anyone accused of a crime has to prove he is innocent. Not in this country. Not in America.

Mr. BAYH. Whether it was a willful violation or not, I am trying to suggest that it is the relationship, the impropriety of the relationship.

Mr. HRUSKA. What is improper about it? No rule against it. No law against it. It is perfectly honorable: an effort to try to help the employees of the organization. No motive of profit; no corruption; what is improper about it?

Mr. BAYH. The very fact that the judge was a trustee of this profitsharing

and retirement fund, and no report was filed could be interpreted by one of the employees as a willful refusal to file.

Mr. HRUSKA. Oh, it could be, indeed.

Mr. BAYH. And that employee could bring a suit, which could ultimately come before the judge in his own court.

Mr. HRUSKA. Oh, that argument has no application at all.

Mr. BAYH. It is the very fact——

Mr. HRUSKA. None at all. With that standard, the judge would have to resign from the human race, because one member of the human race, somewhere along the line, might come before the court with litigation against the judge. How can a judge resign from the human race? That has no applicability.

Mr. BAYH. Therein the Senator from Nebraska is stretching the point just a bit.

Mr. HRUSKA. No more than the Senator from Indiana.

Mr. BAYH. To suggest that it is impossible for a man to sit on the bench, when he has a pretty good salary, lifetime tenure, and does not have to run for reelection the way the Senator and I do, without resigning from the human race is preposterous. A man has to resign from the human race, does he, to deny himself the opportunity to serve as a member of a board of trustees, or as an officer or vice president of a corporation such as the Carolina Vend-A-Matic Co.? Does that say you are going to have to resign from the human race?

Mr. HRUSKA. No, but the Senator is a good debater, and so he shifts from the question of a permanent trustee to that of a vice president. But his argument will not hold water. There is nothing from which an inference of impropriety could be drawn. He was a trustee, and of course he could be held to answer for a violation, if he willfully did it. He could have been guilty of defalcation or embezzlement. It is not proved, but he could be. Does that mean there is an appearance of evil? That would not follow. And I still say there is nothing upon which to charge that anything is improper, or that there is anything that would put the judge in a position of reproach, notwithstanding the recital here in the individual views and in the Senator's bill of particulars.

Mr. BAYH. May I make a suggestion?

Mr. HRUSKA. Surely.

Mr. BAYH. The Senator from Nebraska has had considerably more experience in the law than has the Senator from Indiana, and I say that with a slight touch of envy in my voice.

Perhaps we should let it rest at this: It is the contention of the Senator from Indiana, much junior as he is to his friend from Nebraska, that it is possible to violate provisions of a statute and not violate the criminal section. That is what we are talking about.

Now, if the Senator from Nebraksa says that is not possible, let us let the RECORD stand where it is and let the lawyers of this country decide whether it is right or wrong.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. BAYH. I am glad to yield.

Mr. DOLE. The reason for raising the point in the first instance in that the Senator lists five reasons why the judge's appointment should not be confirmed. The one just read to the Senator, on page 26, No. 4, states very clearly—in his words, not mine—that "Judge Haynsworth violated Federal law in his administration of the Carolina Vend-A-Matic Co. profit sharing and retirement plan."

The Senator concludes, after listing these five reasons why he should not be confirmed, by saying:

> Some of these failings would be relatively minor if each stood alone. But they do not stand alone. Together they produce a profile of a judge who consistently failed to give ethical questions the weighty consideration they deserved.

The point in raising the issue is this: First of all, as the Senator from South Carolina asked, "Do we have a criminal on trial, or are we trying to confirm or not confirm a judge?"

And second, if item No. 4 drops out of the Senator's bill of particulars——

Mr. BAYH. Does the Senator say I am calling Judge Haynsworth a criminal?

Mr. DOLE. I am quoting what the Senator from South Carolina said. He is talking about——

Mr. BAYH. Mr. President, is the Senator from Kansas saying I have called Judge Haynsworth a criminal?

Mr. DOLE. No, I am simply saying what the Senator from South Carolina said.

Mr. BAYH. I thought the Senator said that is what the Senator from South Carolina quoted me as saying.

Mr. DOLE. No; but I want to raise a question.

Mr. BAYH. The Senator knows there are civil and criminal statutes, does he not? He is a very learned member of the bar.

Mr. DOLE. I am a member of the bar. I am not very learned.

Mr. BAYH. That makes two of us.

Mr. DOLE. But the Senator said that for five reasons, the nomination should not be confirmed. The question is raised only in an attempt to sway the Senator over to our side, because if this point disappears, he has only four left, and if another of them disappears, perhaps there would not be sufficient reason to oppose the confirmation.

The Senator has said many times, and I agree, that Judge Haynsworth is a man of honesty and integrity; is that not correct?

Mr. BAYH. That is correct, basic honesty and basic integrity. And very successful financially.

Mr. DOLE. The only point he raises is that Judge Haynsworth is insensitive?

Mr. BAYH. That is correct.

Mr. DOLE. Is that word used anywhere in the canons of ethics?

Mr. BAYH. The Senator does not want me to get out the canons of ethics and start reading about the appearance of impropriety, does he?

Mr. DOLE. I could not find the word "insensitive" anywhere in the canons.

Mr. BAYH. The Senator is making a rather unique distinction, but certainly that is within his right.

Mr. DOLE. The point is this: We are all concerned. As the Senator has said many times, we may reach different conclusions; but if we are to have any meaningful debate on the floor of the Senate with reference to Judge Haynsworth, we should be perfectly candid with one another. There have been some spectacular charges made. Some may be correct, some not correct. But if we agree that perhaps the charge that he may have violated 29 United States Code is not correct, and the Senator now says that it probably was not correct in the bill of particulars, we ought to set the record straight, so that the weight may be lifted from the shoulders of Judge Haynsworth and the Senators who have to make a decision on Friday of this week.

Mr. BAYH. Nice try. But I repeat to my friend from Kansas: Let us read the whole paragraph there on page 26, because I think the preceding sentence, before the five points that the Senator listed, might put those five points in a little different perspective:

> Unfortunately, Judge Haynsworth has not taken these necessary precautions and, as a result, his record has been blemished by a pattern of insenstivity to the appearance of impropriety.

The Senator may not like the word "insensitivity," but I think he knows what it means. This is the whole frame of reference in which the following five points are listed.

Then, of course, if we are going to look at the whole picture, I think it is only fair to suggest that we look at what I said when dealing with that one point specifically, when I suggested that the failure to file was probably inadvertent.

Mr. DOLE. The Senator is saying there are some very minor points in the total reason for his opposing the judge?

Mr. BAYH. Shall I read again what I said?

Mr. DOLE. No, but if the Senator wants to amend that, when he says he violated the law——

Mr. BAYH. He did violate the civil statute.

Mr. HRUSKA. Where is the violation?

Mr. BAYH. The violation is that he did not file where the statute said he should, as was pointed out a while ago.

Mr. HRUSKA. Mr. President, there is no showing in that kind of a simple statement that it is a willful violation. And the statute has to do with a willful violation.

Mr. BAYH. Mr. President, there we get into the criminal penalty involved. And the Senator and I disagree on that point. There is no use of thrashing that matter out.

Mr. HRUSKA. There is no violation unless it is willful. If the Senator wants to prove that it was willful, he has a job.

Mr. BAYH. I never had any intention of proving it was willful. I said it was possible to have the violation of a civil provision of a statute and not of a criminal provision. And that is exactly what happened.

Mr. HRUSKA. Mr. President, we have here a situation where an allegation is made with reference to the nominee. The burden is not on the nominee to disprove that he has done something and that it was bad. The burden is on the people who say he is a bad man or an insensitive man to prove affirmatively that he did something. That has not been done.

Mr. BAYH. Mr. President, I appreciate

the Senator's bringing up these points. A couple of matters have been mentioned that I wish had not been mentioned. They were mentioned inadvertently. As I say, I disclosed those as quickly as I could.

Both sides have been fraught with frustration from time to time because of the inaccessibility of the records. Our distinguished friend, the junior Senator from Kentucky (Mr. COOK), made reference to this the other day when he was rather critical of the Justice Department for the way they handled this matter. His counter bill of particulars stated that there was no Furman trust. We have the copy of the trust instrument with Judge Haynsworth's signature on it. So I do not believe that any of us have intentionally misrepresented the facts. I know that the other side has not, and I trust that they will give me credit for the same intentions.

Mr. DOLE. Mr. President, this is in some respects a difficult decision because of the questions which were raised. And I do not doubt the propriety of raising some of the questions. However, I think in fairness to the judge, we should explain the matter. I have pointed out that a couple of times I had read the canons on prior occasions, but not as thoroughly as I have recently.

Canon 1 is directed to lawyers.

Mr. BAYH. The Senator is correct.

Mr. DOLE. Mr. President, we have some responsibility to Senators and to the members of the bar. And the members of the bar are in a rather peculiar circumstance. The court is not in a position to defend itself.

We have an obligation as members of the bar—and I assume it continues into our service in the Senate—when we think some of the charges are erroneous to discuss the matter and try to resolve it, if we can do so in all propriety, in favor of the court.

That is one of the reasons I have raised the issue. I think there will be a very close vote on the Senate floor on Friday.

Perhaps some Senators are sincerely in doubt. It seems to me that if we are now in agreement that there was no violation of the law, it might make a difference to two or three Senators.

I hope the Senator from Indiana will find it in his heart, if he agrees that there was no violation, to agree that we can say so on the RECORD and let the other Senators know that there was no violation and that the statements in the bill of particulars, while they were inaccurate, were inadvertently made, and there was not any violation of a law. And perhaps the charge might be withdrawn.

Mr. BAYH. Mr. President, why do we not let our colleagues read the RECORD, including the statute, the bill of particulars, and our colloquy, and then let them determine the matter in their own judgment?

I think the Senator knows what I will respond, and I know what he is trying to get to. I think we both realize we have reached an impasse.

As forthrightly as I can, I suggest that I do not see point 4 as a worldbeater insofar as being a significant conflict of interest. I do not think that it is. It is one of the unfortunate situations that the judge let himself get involved in.

Mr. DOLE. Mr. President, I think that is all we have here, one nuance piled on top of another.

Mr. BAYH. Mr. President, I respectfully take issue with that description.

Mr. DOLE. We will take them one at a time.

Mr. BAYH. Mr. President, if the Senator will rest easier tonight by reading that interpretation into my statement, I will let him do so. However, I do not interpret it in that way. Perhaps we have set the record straight on the matter.

Mr. DOLE. Mr. President, the Senator is saying that if there was any violation, it was of the civil part and not of the criminal part.

Mr. BAYH. The Senator is correct. And further—perhaps I should not open the matter any further—it was probably inadvertent, but it just goes to prove that judicial responsibility mixed with complicated financial relationships can result in a rather sticky business.

I have not tried to allege that this is a great cause celebre as far as the judge is concerned. I think that it is another little incident that helps to fill in the whole picture. That is what concerns me.

I respect the Senator's judgment.

Mr. DOLE. The Senator is saying that it probably is not very serious, but that it is evidence of an appearance of impropriety.

Mr. BAYH. I think that is correct.

Mr. DOLE. And the Senator has referred to several of these appearances of impropriety and they add up in his mind to a reason for not voting for confirmation.

Mr. BAYH. I think that is a fair statement. That is exactly the way I feel, as I read earlier:

> Some of these failings would be relatively minor if they stood alone. But they do not stand alone. Together they produce a profile of a judge who consistently failed to give ethical questions the weighty consideration they deserved.

I think that expresses my feelings as accurately as I am able to express them.

Mr. DOLE. Mr. President, the Senator said many times in the hearings that he does not question the judge's honesty or integrity and does not question the right of the President to appoint him for any philosophical reason.

The basis of the Senator's opposition boils down to the so-called insensitivity of the nominee which is based on the appearance of impropriety.

Mr. BAYH. If the Senator strikes the "so-called," I agree.

Mr. DOLE. The Senator can strike whatever he wants to, but I think that is the issue.

Mr. BAYH. I think the Senator is accurate.

Mr. President, over the last few weeks I have received many petitions and resolutions from various groups concerning the nomination of Judge Haynsworth to the Supreme Court. They include resolutions of church groups, political organizations, and the Student Bar Association of the University of Southern California. I invite the attention of the Senate to petitions circulated to several of the country's law schools by a group of law students at the University of Virginia. In a short time, they received an amazing response.

I ask unanimous consent that some of the resolutions and petitions and some of the correspondence which accompanied them be printed in the RECORD.

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

THE NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH

(Approved by the Board of Christian Social Concerns, of The United Methodist Church, October 7, 1969, Lake Junaluska, North Carolina, Annual Meeting. Vote: *41* for *11* against, *0* abstaining.)

The Board of Christian Social Concerns reaffirms its respect for and faith in the United States Supreme Court as the highest judicial body in our nation. We believe the Court should continue to reflect, with fine-tuned sensitivity, the ethical values which Americans historically have embraced. Recognizing this, we express deep concern over the possible appointment of Judge Clement F. Haynsworth as Justice of the high Court for the following reasons:

We believe that a judge should refrain from making a judicial decision in any case in which he has or contemplates a personal investment interest and that he should refrain from all relations which would arouse suspicion of prejudice or bias of judgment.

In view of this, we are gravely concerned over the question of conflict of interest, whether apparent or real, in the *Darlington* and *Brunswick* cases considered before Judge Haynsworth's court.

Further, we recognize that in major civil rights cases, Judge Haynsworth has taken a position opposing school desegregation, favoring "freedom of choice" plans, and denying rights to Negro hospital employees and patients.

We are also aware that in the seven labor cases on which Judge Haynsworth sat and which were reviewed by the Supreme Court, all seven were reversed by the Supreme Court.

The history of the United Methodist Church, and its predecessors, has been clear with respect to proclaiming strong and unequivocal statements on behalf of civil rights and the rights of labor.

Therefore, in considering the aforementioned, we oppose the nomination of Judge Clement F. Haynsworth to the United States Supreme Court and urge Senators not to support confirmation. We are not questioning Judge Haynsworth's personal integrity, but rather his ethical sensitivity at the points of conflict of interest and human rights. Prospective nominees to the Supreme Court should not give even the appearance of impropriety nor should they be involved in such relations which arouse suspicion regarding their objectivity, past or future, on the bench.

We encourage the President to appoint to the highest court of the land a distinguished appointee who has earned the right to the full respect of the American people by reflecting a sensitivity to ethical values and a responsiveness to this century's movement toward equal justice under the law for all.

STATEMENT OF TILFORD E. DUDLEY FOR THE COUNCIL FOR CHRISTIAN SOCIAL ACTION, UNITED CHURCH OF CHRIST, BEFORE THE SENATE COMMITTEE ON THE JUDICIARY, RE: CONFIRMATION OF JUDGE CLEMENT F. HAYNSWORTH

I am Tilford E. Dudley, Director of the Washington Office for the Council for Christian Social Action of the United Church of Christ. Our office is at 110 Maryland Ave. N.E., Washington, D.C. 20002.

The United Church of Christ is a relatively new denomination formed several years ago by the merger of the Congregational Christian Churches and the Evangelical and Reformed Church. It has about 7,000 local churches with slightly over 2 million members. The Council for Christian Social Ac-

tion is an official agency within that church with the responsibility of working to make the implications of the Gospel effective in society. Its 27 members are appointed by the Church instrumentalities.

At its meeting on September 20, 1969, the Council discussed the President's nomination of Judge Clement F. Haynsworth, Jr. to membership on the U.S. Supreme Court. The Council members were concerned over Judge Haynsworth's insensitivity over conflicts and the appearance of conflicts between his personal finances and cases that come before him and also over his philosophical inability to understand and meet the current challenges of society. The discussion culminated in the unanimous adoption of a formal statement which is set forth below.

I should point out that the Council's deliberations were before the revelation—or at least without any knowledge—of Judge Haynsworth's purchase of $16,000 worth of stock in the Brunswick Corp. while that company was involved in litigation before him and his Court. The Council also did not know that the Judge's wife still owns 10 shares of stock in the Chesapeake & Ohio Railroad and that the Judge has sat in several cases involving the C & O. These additional instances of improper, or at least questionable, conduct would have sharpened the Council's conviction that confirmation of the appointment should be denied. The nominee does not have the qualifications needed for the nation's top judicial authority.

A Statement Adopted September 20, 1969, by the Council for Christian Social Action Concerning the Appointment of Judge Haynsworth

The Council for Christian Social Action of the United Church of Christ opposes the confirmation of Judge Clement F. Haynsworth, Jr. as Associate Justice of the United States Supreme Court both because of his demonstrated indifference to conflicts of interest and because of the philosophy revealed by his decisions.

CONFLICTS OF INTEREST

Federal judges are appointed for life and the Constitution further provides that their salaries cannot be reduced during their tenure. Canon 26 of the Code of Judicial Ethics promulgated by the American Bar Association provides: "A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court, and after his accession to the bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss."

In 1950, when he was a practicing attorney, Mr. Haynsworth and his partners formed an automatic vending machine company. He became a stockholder, director, and vice president and his wife became the Secretary. In 1957 he was appointed to the U.S. Court of Appeals. He retained his holdings but now says he orally resigned as vice president, although the corporation records continued to list him as such for at least five years. His company did a substantial business with the Deering Milliken Company. Early in 1963 his court began hearing an important case involving that company and in November he cast the deciding vote and wrote the opinion favoring the company. The following spring he sold his stock at a profit of $434,710. Later in 1964, the U.S. Supreme Court reversed his decision by a vote of 7 to 0.

Testimony at the current Hearings of the Senate Judiciary Committee shows that Judge Haynsworth now holds more than $24,000 worth of stock in the J. P. Stevens textile firm. He stated at the hearing that he saw nothing wrong in retaining this investment. The Stevens company's labor relations problems, among the most turbulent in the South, have been in and out of the Fourth Circuit Court for many years.

PHILOSOPHY

We believe that the nation is entitled to a Supreme Court familiar wth current trends and able to interpret the Constitution so as to meet the new challenges that confront us each day. Judge Haynsworth's record discloses no such ability.

In the long, bitter fight for desegregated schooling in Prince Edward County, Virginia, Judge Haynsworth played an important role. In 1959, he wrote a 2 to 1 decision reversing a Federal Court order against school officials, holding that it was proper to await action by state courts of Virginia.

In 1963, he could find no way for Federal Courts to cope with the county's strategy of closing down public schools and helping private ones operate with tax credits for parents. He wrote:

"When there is a total cessation of the operation of an independent public 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 a locality."

The Supreme Court disagreed in 1964, holding that even if Virginia had no duty to operate public schools, it must operate them in Prince Edward if it operated them elsewhere.

We find a similar insensitivity in the area of civil liberties. For example, Judge Haynsworth upheld the conviction of an illiterate Negro, Elmer Davis of Charlotte, North Carolina, when Davis sought habeas corpus relief from a death sentence. He had confessed to a rape-murder after two weeks in police custody. The U.S. Supreme Court reversed the Haynsworth decision by a 7 to 2 majority.

Resolution on the Confirmation of Clement F. Haynsworth From the Polk County Democratic Conference, Des Moines, Iowa

Whereas, the Judiciary Committee of the United States Senate is presently considering the confirmation of the nomination of Clement F. Haynsworth to the position of Associate Justice of the Supreme Court of the United States of America, and,

Whereas Judge Clement F. Haynsworth appears to have substantial investment holdings in a broad spectrum of corporations whose activities are woven throughout the fabric of our nation's economy, and,

Whereas, litigation involving such corporations having a substantial effect upon the value of such holdings has in the past and will inevitably in the future come before Judge Haynsworth in his official capacity, and,

Whereas, Judge Haynsworth has admittedly exercised poor judgment with respect to the conflict of interest presented by such cases and the requirements of Canons 26 and 29 of the Canons of Judicial Ethics, and,

Whereas, Judge Haynsworth has admittedly been "forgetful" with respect to the cases pending before him and the investments that he contemporaneously makes, and,

Whereas, Judge Haynsworth, contrary to Canon 26, has admittedly engaged in speculative investments which turned an investment of several hundred dollars into an investment of a few hundred thousand dollars at a time when such corporation had substantial dealings with another corporation with litigation pending before him, and,

Whereas, contrary to Canon 26, Judge Haynsworth has not only held such investments longer than a reasonable time after his appointment, but has continued throughout his tenure to make such investments, and,

Whereas, such conduct has and will detract from the public confidence in the integrity of the legal system, arouse suspicion as to the soundness and impartiality of his decisions, and impair the integrity and effectiveness of the Supreme Court of the United States of America, and,

Whereas, sound judgment would require Judge Haynsworth to disqualify himself from sitting on cases involving his own extensive personal holdings, thereby depriving the Court and the public of one of nine justices, and,

Whereas, Judge Haynsworth has throughout his judicial tenure sought to frustrate the implementation of civil rights decisions of the Supreme Court of the United States of America; sought to limit the application of desegregation decisions to slow down integration; and continued to hang onto segregationist ways thereby feeding the fires of racial injustice and hatred, all under the guise of a strict constructionist, with nebulous distinctions and reasoning of gossamer strength, and,

Whereas, the elevation of such a person to the highest court of our land can only lead to a further deterioration of race relations, impairment of public confidence in the honesty and integrity of our courts, and further erosion of the confidence of minority groups in the ability of our courts and legal system to protect minority rights and to meet the social problems of our day,

Now, therefore, be it resolved by the Polk County Democratic Conference at a regular meeting of its members this 29th day of September, in the year of Our Lord One Thousand Nine Hundred and Sixty Ninth, and of the Independence of the United States of America the One Hundred and Ninety Fourth, that the United States should refuse to confirm the nomination of Clement F. Haynsworth to the position of Associate Justice of the Supreme Court of the United States of America, and,

Be it further resolved that the President of the United States request the resignation of Clement F. Haynsworth as a United States Court of Appeals Judge for the Fourth Circuit, or that the House of Representatives of the United States of America commence a Petition of Impeachment, and,

Be it further resolved that a copy of this resolution be sent to Richard M. Nixon, President of the United States of America, United States Senators Harold E. Hughes, Jack R. Miller, Birch Bayh, and James O. Eastland, and United States Congressmen Neal Smith, John C. Culver, Fred Schwengel, John H. Kyle, Wiley Mayne, William J. Scherle, and H. R. Gross.

Done this first day of October, 1969.

Glenn E. Buhr,
Chairman.

University of Southern California Law Center,
Los Angeles, Calif., October 27, 1969.

Senator Birch Bayh,
New Senate Office Building,
Washington, D.C.

Dear Senator Bayh: On Monday, October 13, 1969, the Board of Governors of the Student Bar Association of the University of Southern California Law School considered the appointment of Judge Clement F. Haynsworth, Jr., to the Supreme Court of the United States. Enclosed is a copy of the resolution expressing the Board's opinion as to this appointment. The Board has sent copies of the resolution to the Senators from California and wishes to express our appreciation for your efforts in rejecting this nominee. Your fight will prove of benefit to the United States judicial system and the American people.

Sincerely yours,

Board of Governors,
Student Bar Association.

[From the University of Southern California Law Center, Los Angeles, Calif.]

RESOLUTION

Whereas the Student Bar Association Board of Governors is greatly concerned about the leadership and influence of this nation's judicial system, and,

Whereas the stature of the United States Supreme Court has been diminished by recent events, and,

Whereas the pending appointment of Judge Clement F. Haynsworth, Jr., to the United States Supreme Court has raised the spectre of criticism and mistrust of the nation's highest judicial body, and,

Whereas Judge Haynsworth's insensitivity to judicial ethics has cast grave doubt on the propriety of appointing him to the Court whose support must ultimately rest in the respect accorded to it by the people,

Therefore, be it resolved that the Student Bar Association Board of Governors does strongly urge that the nomination of Judge Clement F. Haynsworth be rejected by the Senate of the United States.

A letter expressing opposition to the Haynsworth nomination has been circulating through all of the nation's law schools for the past week. We have already received the signatures of over one thousand students from sixteen law schools in fifteen states on copies of this statement. In some of these schools, this represents but one day's solicitation and in many others the petition is still in the process of circulation. This expression of sentiment by the young people who will constitute America's legal profession of tomorrow is in itself a serious indictment of any man who aspires to a position of leadership in the judicial system.

The signers clearly recognize the importance of the Supreme Court to the law, the government and to our society and rightly demand that a member of it be of unquestioned integrity. Clearly, they realize that Clement Haynsworth is not acceptable by that test, and the maintenance of confidence in the integrity of the court demands that a better qualified candidate be found.

The signers also have expressed their dismay over Mr. Haynsworth's disconsonance with the ideals and principles of equal justice in civil rights and in the rights of labor, which are so important to their generation.

The depth of their feeling and the extent of unanimity is definitely shown by a letter from the Cornell Law School where in one day, one-fourth of the student body signed the petition and the Student Law Association president estimates three-fourths of the student body will ultimately be signing.

A profession must look to its youth for the future and if the United States Congress looks to the future of the law, its youth has significantly indicated opposition to the Haynsworth nomination.

(Petition distributed by United Students for Society's Rights: Gregory Murphy, Bernie Carl, Linda Fairstein, James Ghee, c/o University of Virginia Law School.)

A PETITION FROM THE UNIVERSITY OF VIRGINIA, UNITED STUDENTS FOR SOCIETY'S RIGHTS

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynesworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Barbara A. Bailey, Gregg Murphy, Paul P. Taddem, Ralph W. Setner, Lucien Wulsin, Russel H. Lubbin, Philip S. Davi, Mark W. Brandt, Robert P. Hodores, Michall A. Solodor, Edward H. Bains, Jr., D. Sophodes Dodakis.

Dominick J. Thomas, Jr., Ronald R. Toral, Gary D. Twafel, Tim Spoman, Harvey A. Goldman, W. D. Tucker, Geoffrey P. Hull, Ron Steven, Stan Tharp, John P. Paone, David Bolzern, James J. Tanous.

Thomas J. Tgar, Jr., Carl W. Tobias, William S. Horn, Thomas A. Sandoboni, Robert W. Benjamin, R. Belk, Jeffrey H. Krasnon, Christopher J. Murphy, Dozle P. Wadills, R. T. Mundy, Liz Medagtia, Lawrence D. Rech.

Thomas E. Bundy, Dean L. Hassman, Stephen Milietto, Paul Vincent, John J. Millihler, Arden B. Schell, Charles Redick, William A. Parks Jr., John M. Oleyer, Paul W. Zeller, Gerald W. Walhney, Stephen T. Yandle.

Michael R. Brown, Callis T. Johnson Jr., Don Carroll Jr., King O. Golden Jr., Stephen Pevar, Jeffrey M. Proper, Mike Matyomas, Kenneth M. Murchison, Robert C. Miller, Bob G. Hexson, James G. Winstead, Robert A. Sugarman.

David R. Johnson, Michael F. Blair, Joseph A. Derrin Jr., Ken Royn, Gregory L. Juland, A. R. Snyder, Morris Rosenberg, Sandra J. Adkins, Arthur Strickland, R. A. Mbl, C. D. Cowley, Elaine R. Jones.

Dave Long, John F. Kuither, Stephen T. Nyking, Laird T. Riedel, Eugene Shapiro, James Bryan, J. L. Malone III, John Cassady, J. Rush Barnes, Michael A. Cohen, Neil S. McBride, Henry Hurton.

James P. Meyer, Bernard T. Carl, Linda Fairstein, Robert H. Tony (S.C.), Raymond G. Osberg, Jr., Robert C. Gary, Edward H. Stover, John T. Brodevile, Jr., James Ghee, Lee Caplin, William H. Wilson, Jr., Lindsay B. Donier, Jr.

John W. Brinkenloff, Peter H. Leroy, A. L. Williams, Jr., Prof. R. B. Lillust, Robert C. Smith, Charles A. Bentley Jr., Patrick M. Stanton, George W. House, Clifford F. Haygood, Steven R. Belaso, Jean Roane, Brad Foster.

Hans J. Warden, J. Richard Rossie, Barry A. Bryer, John J. Michal, Geoffery H. Keppel, Emmett R. Costrich, Brad Bryant, John T. Schell III, Lawrence D. Gaylan, Charles A. Shanon, Peter T. O'Keeffe, Michael D. Wright.

Philip T. Lacy, W Toderouri, Cecil Oiwe, Rick Kaplan, David Kirbein, John X. Denney, Jr., Thomas A. Morris, Sr., Vincent V. Shenlay Jr., Barry J. Levin, W. C. Ford, Charles L. Jaffee, Burton Greenspon.

John Ons, Andrew H. Goodman, Herb Hyl, W. U. Deane, B. L. Weston, W. Wm. J. Thorgood, Dan Sullivan, Daniel B. Mahony, B. Vicki Senski, J. W. Grawely, William O. Shapiro, Alfred T. Bolton.

Carol J. Duane, Jennifer Vantoyl, Frederick F. Staut, Jr., Rich Seein, R. A. Skeels, R. G. Andcery, Howard Myers III, David H. Nelson, Michael Friedley, Sue Ann Slackin, Kent Christison, W. Roger Adams.

Joseph C. Kenfott, Kurt Kaufmann, Anita Baly, William Grant, H. Gregory Skidmore, Thomas B. Spaulding, Gordon J. Brandt, Jr., John V. Buffington, Charles M. Oberlym, Elizabeth C. Thacker, Richard L. Clark, Terence M. Donnelly.

Richard H. Goodson, Daniel P. Parfett, Tom Johnston, K. Stewart Evans, Jr., Peter F. Edelman, Lorelei Haig, Donald B. Dillport, Craig M. Bradley, Samuel M. Bradley, Long Smith, A. J. Laubham, Steve Edwards.

Ron Tarrant, Tom Renehan, Fred D. Smith, Jr., Elaine R. Jones, Jerry R. Carter, William S. Bowe, Ed Haddock, Jr., Morris Rosenberg, Lois E. Anderson, Jeanne Erhardt, Robert E. Beach, Jr., Donald Oorenberg, Richard B. Mathews.

DEAR UNITED STUDENTS: The names on the petition represent about ¼ of the Cornell legal community. I received it Wednesday and it was posted but one day. I am returning it now on the theory that it's better to have less than the maximum number of potential signatures than to submit a full list too late for effective use. I would surmise that, given sufficient time, upwards of ¾'s of our students would have signed.

I wish you success on what is a most commendable effort.

CARL T. HAYDEN,
President, Cornell Law Student Association.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

O. J. Cleveland, Andy Hewit, Bradley Bank, Charles Paddy, Gynn J. Ink, Gordon L. Rashner, David C. Minc, Robert Hill, John Gallagher, Carl S. Taylor, Ellen S. George, Warren E. George.

Jay W. Waks, Booth Kelly, Ira Shepard, Robert D. Gaudet, William Beyer, Peter M. Smith, John H. Gros, Jon Brod, Carl Braunset, Lawrence S. Lese, Warren D. Brocy, Tony Smith, Bruce Allen, Daniel Sleasman.

Marc Silberman, Anthony J. Siurlino, Sheldon S. Cohn, Robert J. Leerw, Patrick R. Oster, Lun Anelin, Robert Fish, Stat A. Michlin, Robert Jethrers, A. J. Zarjuff, Norm Geer, D. C. Wilson.

Clifford Wiedberg, Frank L. Murray, Al Meyerhoff, James S. Strauss, Karl J. Eeze, Jeffrey Bivins, Doris Provine, Alex Gaynes, L. Pollan, Larry Berent, Stephen Hegles, Stanley Kantor.

Dan Sheehan, Bruce Roswick, Peter I. Wolff, David E. Burford, Nick Schiula, S. W. Dunto, Steve Brown, David F. Craver, William Fahey, Jan Bellsey, Bruce Gorman.

Leslie A. Reovern, Peter Bienstock, Jon Landau, Robert Magielnicki John J. Strothers, R. V. Kenon, Joseph M. Sharnoff, Harold G. Cohen, Kurt R. Kupohy, Jeffrey Mistike, Julie Hilliss.

A PETITION FROM THE SOUTHERN UNIVERSITY LAW SCHOOL, BATON ROUGE, LA.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image

of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

RODNEY M. WILLIAMS,
Student Bar Association President.

Jim Carnes, Rodney M. Williams, Fred L. Tinsley, Jr., Robert D. Richardson, Tom E. Roberson, Harold W. Isadore, Miss Regina McClay, Russell Castille, Charles Jones, Jr., Charles Yancy, Donald Robinson, Edward Rubin.

Mack McCaney, Charles Z. Hanel, Jesse Pebo, James A. Waye, Larry E. Roberts, Vincent Wilkins, Jr., Clod F. Richard, Allen Sims, Houston J. Patton, Douglas P. Wilson, Samuel Morgan, W. H. Samuel.

Otha C. Nelson, Steven Young, Earl D. Thomas, Robert L. Conneuf, Gail Sandle, Sid Cox, Rochard Snudy, Warren Phillips, Aaron Harris, Louis Drew, John Pohl, Mrs. P. Spencer Torry, Robert Torry.

A PETITION FROM SYRACUSE UNIVERSITY

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of changes in our times, especially in the areas of labor and civil rights.

David D. Kerman, Laurence Uhlick, Richard B. Boddie, Edward M. Onlinofsba, M. D. Lenith, George Fiesinger, Joe Nathanson, Rick Tremaine, James A. Rosel, Robert Baumann, Edward Fingerman, John A Yaskow.

Richard Q. Catanise, Steve Mullens, Tony Adany, James J. Hook, Mike DiPrima, William J. Welles, Dan Shaugnessy, Jr., Michael Coopiever, Lawrence Keller, Harry Newman, Richard Kirk, James P. Donald.

Harvey Spring, Joe DiPalma, Tom Haburn, Pete Panels, Jeffrey Weitzman, Marc S. Seigle, James A. Cuparts, Jeffrey L. Hill, Robert Rubine, Karen Debrow, Frederick G. Tobin, Kim Gorman.

Arthur A. Petoona, Kenneth W. Tucker, Neil H. Deutsch, Paul K. Mulligan, Richard B. MacFarland, Stephen D. Fryk, Joseph R. Catanise, Rubin England, Gerald Mingobelle, Jr., Harvey Scot Mandelcom, Jerry Dorfman, Robert P. Rothman.

NOVEMBER 6, 1969.

GREGG MURPHY,
United Students for Society's Rights, University of Virginia Law School, Charlottesville, Va.

DEAR SIRS: Enclosed is a copy of a petition that was circulated at the University of Colorado law school before we received yours. Hopefully this one will be satisfactory, although it was addressed to Senators Allott and Dominick. The petition was posted for a period of about five hours, during which time it was signed by fourteen members of the faculty and about 143 students. This figure represents almost half of the student body at this law school. Undoubtedly more would have signed had we left the petition up longer.

Hopefully this petition will produce the desired results.

Sincerely.

WALTER J. HOPP.

OCTOBER 20, 1969.

Hon. GORDON ALLOTT,
Hon. PETER DOMINICK,
U.S. Senate,
Washington, D.C.

GENTLEMEN: As members and future members of the legal profession, we urge you to oppose the confirmation of Judge Clement Haynsworth as an Associate Justice of the United States Supreme Court.

Because of the vital role the Supreme Court plays in our government and society, it is imperative that its members be unbiased in cases confronting them and of unquestioned integrity in their professional conduct. In a time of unprecedented social change and conflict, confidence in the integrity of the Court is especially necessary. The appointment of an individual whose integrity and impartiality are open to serious question would undermine this confidence and do a disservice to the judicial system.

Serious questions have been raised regarding Judge Haynsworth's personal interest in cases before him. In addition, we feel that his opinions are not consonant with the principles of equal social justice in the area of civil rights. For these reasons a better qualified candidate for the Supreme Court should be found.

Walter J. Hopp, J. W. Raisch, J. W. Earley, Walter Slatkins, Charles S. Sisk, Andrew Vargas, Bruce Nelson, Dan Hale, Nicholas J. Bourg, Robert F. Hill, James A. Collins, Peter A. Goldstein, Evelyn Roberts, L. J. Tobe.

Gus Pluor, E. H. Hoffey, H. W. Cavallera, F. J. Baxter, James S. Swift, John ——, Austy Grant, W. J. Klakey, Gail F. Linn, Jon C. Hilges, Woody Norman, Tnomas Fhorsheim, Marc Collins.

Charles Hutchens, J. Michael Harry, Chester C. Edward, Luize Q. Adler, Jill Ragsdale, Annette Pierce, Ann Trumble, Jim Windhos, Jane Tueance, Catayton Adams, Alfred Tate, Don B. Miller.

Bruce G. Smith, Mark Levy, Stan Stark, Gary Stumf, U. W. High, Don Humphrey, Thomas E. Meacham, David T. Fisher, Richard Valdy, Bette Halorian, Marion B. Farris, James A. Lowe.

Phil Cochran, Rick Pike, Jim Moranek, Diane Horn, Paul Pinson, Fred Charleston, J. J. Bland, C. W. Maes, Paul Salem, Thomas A. Trainer, Burch Billard.

Tyler Mekpeace, Linder Grueskin, Charles Bolen, L. N. Wood, Jr., Beth Peck, Jack Truburable, John Walker, Dennis M. Ginnis, Mary A. Allen, Philip E. Colmer, Rober H. Lichty, Archer B. Howse, Kyth P. Pecant, Russel P. Rowe, R. H. C. Lehr.

John T. Bruce, N. H. Barnes, Seymour Jensen, Erwin Pidican, Jane L. Cauges, Alan Brothers, Robert Felton, George Keldonlaw, Tr Ax Fulton, Jeffrey A. Bullen, Barry M. Johnson, Edward Stevenson, Kent McDonald, Mrs. Natalie S. Ellwood, Charles David Miller, Piper Murray, Rina Jankelli, Prof. R. Marony, Carolyn S. Mckinnon, David Snyder, M. W. Hertzog, Edwardo Voitzman, Felix Licini, Tim Rivera, Carmen Krakling,

Adam MacLaughlin, Peter E. Rivers, Walter V. Lawrence, Stanley J. Mayhew, Albert C. Proctor, Diane Delany, Robert E. Ray, Dan M. Haskell, Gus Sandstrom, Jr., Raymond P. Reyes, J. K. Miller, Gary M. Jackson, Silvaro Aeldicel.

George Clough, W. Sherman Weidner, Patrick Moynihan, Daniel Brantley, J. Downing, Michael Ehrlich, Jonathan B. Chase, J. D. Hynes, Frank Dubb Eskey, William L. Ripley, Donald M. Hoerl, Morton L. Stanton.

Douglas W. Parker, Clifford J. Calhoun, Oscar J. Miller, Russell Olin, James W. Burroughs, Gay P. Sandblon, Doug Brown, H. V. Ellwood, Stephan Oder, Walter Parish, William Brown, Timothy Murphy.

Michael L. Calvin, John C. Flanders, H. G. McCleary, Gilbert N. Whitener, David D. Belian, Anthony Frank Renzo, Francis M. Goldsberry II, Robert J. Adler, Charles D. Tribtz, C. F. Hurd, John C. Richardson, Harold S. Beudent, Homer H. Clark Jr., Howard Plummer, Terrence A. Fribee.

STUDENT BAR ASSOCIATION, WEST VIRGINIA UNIVERSTIY COLLEGE OF LAW,
Morgantown, W. Va., November 10, 1969.

Mr. GREGG MURPHY, et al.
United Students for Societys' Rights, University of Virginia School of Law, Charlottesville, Va.

GENTLEMEN: This is the best we could do on such short notice. Maybe it will help a little.

Sincerely,

E. F. THAXTON,
President.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Lewis G. Brewer, Betty L. Caplan, R. W. Bltytap, Diana Everett, J. Davitt McAtun, Alan B. Mollohan, Fred Ioder, Dennis L. Schrader, E. L. Hoffman III, Robert Joseph Simol.

Robert L. White, J. F. Boomer, James S. Arnold, Larry Alan Stark, F. L. Satter, David J. Milliston, Charles H. Damron, Daniel F. Hedges, John Krisa, J. David Cecil, R. S. Cavallars, William Robert Wooton, William S. Cummings, E. F. Thornton.

JUNIOR BAR ASSOCIATION, NORTHWESTERN UNIVERSITY SCHOOL OF LAW,
Chicago, Ill., November 10, 1969.

UNITED STUDENTS FOR SOCIETY'S RIGHTS,
University of Virginia Law School, Charlottesville, Va.

Gentlemen: Enclosed please find petitions concerning the Haynsworth appointment. These petitions have been signed primarily by students of Northwestern Law School. The student body at the Law School numbers approximately 500.

Sincerely,

DAVID M. MITCHELL,
Secretary.

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Douglas G. Brown, Senior; Jeffrey M. Thiner, Senior; Elizabeth Mulford; David A. Rood; Ben E. Cohen; Hndreu M. Stroginy; John F. Rodhska; Stephen F. Stoht; Michael Mushlin; Seva Dubuac; Richard Q. Fox; Carter W. Emerson.

David Rudstein, Judge T. Ellis, Norman Mulddo, Douglas M. Brannont, Donie Bwoley, Charles E. Levin, Kathy Miller Hahn, Arnold Harrison, James G. McConnell, A. C. Cunningham.

Joan Humphrey, Walter W. Nielsen, Michael G. Binton, Zoela Goldstein, Robert S. Bayer, Stewart Gerhitt, Robert A. Steinberg, Wm. D. McIntyre, David Coeler, Jack Fong, Thomas Wm. Branehi, Thomas R. Pendin.

Larry Zanger. Nicholas Bulle, Richard Booth, Bradford J. Race, Frederick S. Burstein, Barbara Caulfield, Robert W. Queeney, Eugene Runster, Myron D. Novik, Michael H. Holland, Alee D. Berry, David O. Kallick.

John L. J. Tronaiczyk, Paul E. Slater, John A. Relias, Henry A. Abey, Gary Martin, Dennis P. McPencon, Victor M. McAron, John J. Blake, Jack Wesokay, S. J. Commody, Ron Zernlicker, Enis Shiller.

Catherine Ryan, James J. Aufini, Jack H. Welch, Clark Mitchell Rose, Henry Vess, Alan Norogrud, Diane Crawford, Robert Garfolich, Jeffery L. Gibbs, Dennis Fields, John K. Weir, Stephen M. Miller.

Kevin E. Gallagher, Richard Chanzet, Harry Seigle, Richard Kling, Martin Denis, Laurence K. Hellman, Thomas F. George, Stephen Horbut, Laurence H. Levine, Starn Samuels.

Charles Uchland, V. Shaw, John M. Smyth, Jr., R. C. Freeso, Donald S. Cohen, Jonathan Solomon, Jeff Johnson.

UNIVERSITY OF PITTSBURGH

We the undersign law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

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(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Peter D. Jacobson, Ralph S. Pinkus, Robert L. Flint, Peter R. Penney, A. E. Deelanch, J. T. Gillenbal, Trevor Edwards, Howard L. Rubenfield, Pete Cherellia, Ted Miller, Samuel Acey, Martin H. Ausenberg.

Joe M. Lewis, Burt F. Swope, Ronald M. Chesin, D. M. Smith, Nathania. Williams, Homer J. Harris, Albert Jay Mendelson, James H. Logan, Ken Bake, Stuart M. Blane, Mark Kaiserman, Daniel S. Kaploth.

Mari D. Ants, Larry T. May, John G. Stracner, Gary Wilson, John J. Keller, Stanford B. Dunn, Charles C. Tyson, Dennis Shitobac, Michael A. Nemec, Thomas C. Jameson, Paulet Pittman, Michael Handler.

Eler Josephson, Michael Brenaham, Thomas M. Burly, Sam Victors, Elissa Parker, George Teaffer, Kim Patrono, Ken Lewis, Jess Warett, R. Lee McLadden, Ted Goldburg, James V. Seif.

Ames Cole, James V. English, Paul Boas, Marc Kranson, Gordon Banks, Edward D. delCanto, Denis DiLoretto, Janet Horner, John Knight, Edward Masar, Stanley Lederman, William Kinner, Dwight L. Kairber, George B. Jones, Jan T. Mahachlin, Clyde Miller.

HASTINGS COLLEGE OF LAW

We the undersigned law faculty and students of Hastings College of the Law strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

(1) The ethical questions raised about Mr. Haynsworth's conduct reveal his inability to comprehend his judicial responsibility and present a clear threat to the public image of the Supreme Court as well as, by implication, the legal profession.

(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the direction of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Stephen Bomes, Jorgen Nielsen, A. H. Rose, Lother Eiserloh, Steven N. Belaces, Howard Watkins, Ed Forstenger, John O'Connor, Mary T. Grove, Don Priego, Martin A. Kresse, Richard Stampor, Andrew C. Sigal.

J. W. Whitener, James D. Grandjeau, Paul Shingle, William S. Ogle, Thomas Dobyns, Mark Ross, Mike Miller, Jeffrey Surche, Richard Oliver, Dion Dury, Anne Chiverydagt, Karl Chandler.

Dale F. Smith, T. D. Woo, Ken Cochrane, S. J. Phonefan, Steven Obermay, Raymond A. Alyn, Jr., Paul Clark, Bob Tuts, David I. Stanton.

Joel Pressman, John S. Morfirms, Jim Fryman, Frank A. Konecz, Byron M. Rabin, William Runyarn, Jeff Forster, Margot Champagne, Michele Schwartz, Neal Snyder, Andrew I. Pott, Joseph N. Ighunder.

Dannis T. Gary, Joel Marsh, John Kubs, John D. Rortud, George Wright Twek, Mike Crady, John Rogers Jay, B. Pagi, Leo M. Pruett, I. Dewey Watson, Ralph Winter, R. Z. Pruit.

J. Kendrickresse, Dennis Wayne Krarke, Gregory C. Parashon, Philip E. Dullion, Ed Schulman, Sandrae Musser, Dan Lavery, Ben Taylor, Roger W. Pottor, Lawrence Rosenberg, Gary Couter, Daniel K. Whiteham, Gerard F. Roney.

UNIVERSITY OF MONTANA

We the undersigned law faculty and students strongly *oppose* the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

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(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Ron A. Belder, Michael S. McKeon, Jim Driscoll, Sharon L. Bretz, Paul B. Smith, Alexander Blewett III, Michael S. Murphy, Roger A. Barber, Daniel McCarthy, Ronald J. Glorvan, Harold W. Daze.

Terry Casgrove, Greg Skakles, Willard L. Poyer, Terry A. Wallace, Richard Volikaty, Jim Whalen, Max Haishman, Edward J. Brooke, Ted J. Poney, Richard T. McCann, Frank Kampfe, Keith Haker.

Pat Sherlock, Gary Wilson, Matthew W. Shaw, Bill Leaphart, Jim Sudler, Nat E. Ugrim, Nick A. Roteing, Chuck Evans.

UNIVERSITY OF NORTH DAKOTA

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

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(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Mark Thomason, Sal Lorello, Marcia O'Kelly, Keith Rodli, Henry F. Rompage, Judi McDonald, Tony Holter, Thomas H. Edstrom, James R. Flett, George V. Goodwin, R. E. Gross.

Dwight F. Kalash, William Muldoon, R. Paumephail, Barry T. Olsen, K. U. Reinck, Stanley M. Axelrod, Gary Schnech, Mario Gonzalez, Todd J. O'Malley, John Ohon.

TEXAS SOUTHERN UNIVERSITY

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(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Robert Anderson, Bibiam Rosa, Osborn L. Caldwell, Daniel E. Mueso, Jethro Currie, Earl L. Bush, Kenneth M. Hoyt, Amelia Hunter, Norma M. Watson, John F. Hofly, Patricia A. Catchinqse, Willow P. Connor, Jr.

Bruce Johnson, James Buttock, Thornben Cohincin, Bernard L. Middleton, Sam Jackson, Virgin J. Rhodes, Jr., Craig A. Washington, J. B. Keys, Thomas J. Jackson, V. E. Morgan.

Dan W. Hern, Jr., James R. Pierce, Bill Monkres, Clarie Sluderint, J. H. Jurim, Richard Wallearrs.

UNIVERSITY OF TOLEDO LAW SCHOOL

We the undersigned law faculty and students strongly oppose the nomination of Clement Haynsworth to the Supreme Court for the following reasons:

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(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Joseph J. Farna, Raymond R. Porte, Philip J. Berg, Peter W. Rimy, Jason Halp, Arthur Ecegcuw, B. W. Gallagher, Louis J. Petruzzo, Lawrence P. Brodie, John Korn, Peter J. Wayne, Douglas Alyard, Gary M. Victor.

Harris N. Walters, Rick Stearns, G. T. Merritt, William C. Buigle, Michael G. Breslin, Carolyn Wheat, John R. Warrick, Philip S. Fortune, Howard E. Engle, Jr., James I. Muhlatt, Sim Herb, Thomas V. Spinks, Russell A. Kelm, Samuel Lionel Rosenberg.

Alan M. Freedman, James D. Cohen, R. Cox, Nick Geven, Jr., Phillip M. Leshe, P. Gel, Neil D. Breslin, Anthony P. Capozzi, John L. Jacobson, Bernard Stern, Michael J. Vernacer, Alan L. Lapp.

Robert T. Maison, Barry Denkensohn, Thomas R. Cassant, Don Holmes, Stanley M. Brower, Vincent M. Nathan, Kenneth C. Shotland, Joel Rossen, Murray L. Ross, Kenneth A. Rohrs, Horace Rice, Kenneth C. Stein.

Bob Lindeman, Bob Sihien, Frank A. Stupah, Jr., Judy Jackson, Brian Sin, Robert J. Potter, Steven C. Rene, John Pjarnechi.

VALPARAISO UNIVERSITY

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(2) Mr. Haynsworth's (well-documented) record as a federal judge is replete with unanimous reversals by the Supreme Court, demonstrating his insensitivity to the directions of judicial thought, and to the important forces of change in our times, especially in the areas of labor and civil rights.

Robert Swanson, Stephen C. Raithe, A. R. Soderman, Larry Albrecht, Robert Veyter, Thomas Dent Cuelzar, William J. Brendemuhl, Jr., Thomas P. Young, Thomas J. Ruthkosh, Michael E. Hughes, Kenneth R. Tuel.

Michael S. Suggert, James L. Wieser, J. Peter Ault, W. Walter, Mrs. Carol Caldwell, Philip Sehaeter, John Halkonz, Alfred W. Myer, Burton D. Wichster, Henry C. Hagen, Stephen N. Brenman, David Horn.

DEAR VALPARAISO SCHOOL OF LAW: Enclosed is a copy of a petition being sent to as many law schools as we can contact. Please place this petition in an appropriate place in your law school and gather as many signatures as possible in any way you are able. Time is short.

When you have finished with this petition, please mail it to us by November 10 so that we can present them all to Senator Birch Bayh, who is leading the fight against the Haynsworth nomination.

The media has said that one more serious embarrassment to Haynsworth could result in the failure of confirmation, and we hope that a massive expression of opposition to Mr. Haynsworth by law students and young lawyers could provide the needed embarrassment.

Thanks for your help.

UNITED STUDENTS FOR SOCIETYS' RIGHTS.
THE UNIVERSITY OF VIRGINIA LAW SCHOOL.

WASHINGTON UNIVERSITY

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Mike King, Joseph S. Sanchez, Wendy N. Schiller, Bob Ford, Al Rosen, Don B. Palmer, Richard Bertram Teitelman, David H. Collins, John Biroth, Amos Ripesto, Barry Barr, Richard A. Knutson, Joe Ellis, Norman Wirey, Jr., Brenda Vander Host, Janice Carr, William T. Gagen, B. Platz, Chris Andreoff, Lowel Irving, Ed Page, Jim Cook, Wayne C. Harvey, Jerome Bulansky, Stanley E. Nolan, Thomas P. Watson, Ilene Spevack, Susan Glassberg, Glenn Altman, Geoffrey Z. Tucker, E. Stripes, Ruth Fehr, Clyde Ferris, Jr., Tom Haugelin, Thomas R. Trager, Ward Brue, Richard Kandeman, Barry S. Schermer, Andrew M. Brown, Steven B. Fishman, Robert A. Taylor, O. H. Douglass, Nancy Edelman, Jan Marble, Mark Painter, Alphonse Gibson, Phillip Morris, Gary D. Bullock, Derek I. Meier.

S. 3150—INTRODUCTION OF A BILL RELATING TO EMERGENCY ASSISTANCE TO THE NATION'S MEDICAL AND DENTAL SCHOOLS

Mr. JAVITS. Mr. President, as in legislative session, and out of order, I introduce for myself and 25 other Senators a bill that would authorize an additional $100 million in grants as a form of emergency relief to our Nation's medical and dental schools, many of which are in great financial distress and in danger of being forced to curtail teaching and research programs or to close down altogether. This is a crisis with the gravest humanitarian implications, and my bill is designed to enable these schools to continue programs and services that are in the national interest.

Joining as cosponsors in the introduction of the bill are Senators BAYH, BROOKE, CANNON, CASE, EAGLETON, GOODELL, HARRIS, HARTKE, INOUYE, JACKSON, MCCARTHY, MCGOVERN, MATHIAS, MONDALE, MONTOYA, MOSS, NELSON, PACKWOOD, PELL, PROUTY, RANDOLPH, SAXBE, SCHWEIKER, SCOTT, and WILLIAMS of New Jersey.

I introduce the bill as a partial response to a health-care crisis at the threshold of which America stands today. This crisis is evidenced by skyrocketing health costs and is exacerbated by marked shortages of doctors, dentists, and other health personnel—as well as seriously inadequate, obsolete, and outmoded health facilities. And yet, in the face of this crisis, there is the imminent danger of the closing of medical and dental schools or at least the cutback of several of their programs. The critical shortage of physicians and dentists is estimated at 52,000 and 9,000 respectively for 1969. If we are to meet this shortage, we must allocate sufficient resources to establish a Federal commitment for assisting schools of medicine and dentistry to increase their output of graduates. We must rescue those schools that face a clear and present danger to their survival.

The sources of the best, the newest, and the safest in health care and treatment are the medical and dental schools and their teaching hospitals. These institutions are traditionally committed to standards of excellence in the care of the sick, in the training of new physicians, dentists and other health professionals, and in the expansion of medical knowledge. Therefore, at the very time that their survival and their continued growth are so essential to keeping up with the exploding health needs of the Nation, it just does not make sense to have these schools on the brink of financial disaster.

A month ago I met with the deans of all the medical schools in New York State to discuss the financial problems of their institutions that have resulted from cutbacks in Federal programs—cutbacks that I will discuss in a few moments. I was told that three distinguished medical institutions from my State—the New York Medical College, the New York University School of Medicine, and the Albert Einstein College of Medicine of Yeshiva University—are in such acute financial straits that their very survival is threatened. So, the State of New York is in danger of losing three of its 10 medical schools.

Since that meeting, I have been informed by the Association of American Medical Colleges that this critical situation is common across the country. Two universities—St. Louis University and Loyola University in New Orleans—recently discontinued their dental schools because they were unable to continue to meet the financial commitment required for maintaining high professional standards. Although many medical and dental schools throughout the country face similar problems, some are reluctant to admit publicly their severe financial plight because of the repercussions these disclosures might have on the relations of these schools with the academic community.

I have communicated my concern over the growing financial problems of our Nation's medical and dental schools to Secretary Finch, who fully shares my concern. He responded in a letter to me:

> At this time of growing need, we can ill afford the loss of a single resource for training medical manpower . . . we will work with you in any way we can.

The bill I introduce today is designed to be a first step—not a final solution—to this problem. It is a stopgap, emergency measure that seeks to save our medical and dental schools from disaster while we begin to correct the basic problems through other means. In fact, the $100,000 in additional funding provided under this bill would be not altogether dissimilar to disaster relief programs that have been enacted to meet the ravages of flood and hurricane—only this time it is our entire Nation that faces disaster if our medical and dental schools cannot meet their current financial crisis.

I am proud to announce that the bill has the active support of the Associa-

tion of Medical Colleges, the American Dental Association, and the American Association of Dental Schools.

The bill would authorize the Secretary of Health, Education, and Welfare to issue grants to medical and dental schools in dire financial straits as a result of their affirmative response to one or more of the following aspects of national health policy: First, increasing enrollment of students for the purpose of augmenting the supply of trained health professions personnel; second, improving the quality or delivery of health care and services to disadvantaged persons in urban or rural areas; third, providing health care and services to a substantial number of patients who are beneficiaries of programs established by or pursuant to titles XVIII or XIX of the Social Security Act; fourth, maintaining present enrollments and maintaining or enhancing the quality of training, despite costs that increase more rapidly than school income from all sources.

In order to be eligible for a grant, an institution would be required to establish:

First, that its financial distress is attributable, in substantial degree, to seeking to fulfill any of the national health policies which I have just outlined.

Second, that without the benefit of financial assistance provided under this bill, the institution would be forced either to discontinue or curtail its performance in meeting this national health policy.

Third, that the institution submit a plan providing reasonable assurance that if it receive the grant, it will continue or expand its fulfillment of the national health policies.

Fourth, that any grant will be utilized in performing the stated national health policies pursuant to regulations of the Secretary of Health, Education, and Welfare.

The bill also provides that when a medical or dental school owns or is affiliated with a hospital, which the school utilizes for its teaching program, the hospital's activities shall be considered the same as the school's program in determining the school's participation in meeting the specified national health policies.

Mr. President, I am convinced that our medical and dental schools are willing to respond to the demands of our society, and it is the purpose of this measure to give them the support they require to meet these goals.

The reduction in appropriations for research training grants, and the inadequate funding for the programs contained in the Health Manpower Act, have caused a drain on our medical and dental schools and teaching hospitals. Inflationary costs involving the provision of sophisticated equipment and facilities necessary for the delivery or adequate health care in our large teaching hospitals have made it virtually impossible for many of these institutions located in our urban areas to exist without emergency Federal financial assistance.

The effects of research cuts reverberate throughout a medical school, affecting teaching and graduate training as well as science. When budget cuts slice deeply into funds for research training grants and fellowships, the effect is to dry up the supply of future teachers who will be needed to produce the larger numbers of doctors and dentists that both the present and earlier administrations have said the Nation must have, and that are called for in legislation we in Congress have passed.

I believe the proposed Federal budget for health programs—vital to the continued existence of medical and dental schools and at a time when their resources are greatly needed by all America—is insufficient in our ordering of priorities. My survey of the 1970 budget for the Department of Health, Education, and Welfare, shows why medical and dental schools, which have a major part of their support furnished through Federal grants, are in such dire financial straits.

The full authorization permitted in the Health Manpower Act for Institutional and Special Project Grants is $117 million, and yet the administration's budget request falls short by $15,600,000—a sum which would be most helpful in alleviating our medical schools' financial distress. This shortfall is of particular significance since an expressed purpose of special project grants is, and I quote the legislative language, to "assist any such schools which are in serious financial straits to meet their costs of operation."

Funds also should be appropriated to the full permissible authorization in the Health Manpower Act for support of construction and renovation of health professional educational facilities. In 1970, there is $170 million authorized for construction, and yet only $126 million is requested by the administration—a $44 million shortfall in constructive grants for teaching facilities so urgently needed to substantially increase the numbers of professional personnel trained at these schools.

For health research facilities construction, no funds are requested by the administration, despite the fact that the 1968 extension of the health research facility construction grant programs authorizes $20 million.

Health professions student loan and scholarship programs funds should be increased from the $16 million for scholarships and the $15 million for loans that are presently appropriated to meet the needs of medical and dental students. These schools have been urged to provide education for young people from economically disadvantaged backgrounds. They have attempted to do this, only to find that the funds for scholarship and loans have been cut back, forcing them to totally subsidize the education of these students out of resources that are badly required for the operation of their education programs—funds that are rapidly dwindling away under the onslaught of rising costs and inadequate income. The medical schools made known that students required $46 million in loans, and yet only $15 million was appropriated. The House action which transferred approximately $5 million from scholarships to loans not only failed to meet the need, but undermined the schools' ability to rely upon what little was previously committed for urgently needed scholarship funds.

Although the amount of the appropriations for student loans for both health professions, $15 million; and nursing, $9,601,000; remains constant from 1969 to the 1970 budget request, there is a substantial reduction in the student loan revolving funds.

There are two sources of student loans for health professions and nursing. One source is the appropriation, from which matching nonrepayable grants are given to the schools to loan to students. The second source is from a revolving fund, whereby the schools borrow loan funds from the Federal Government which must be repaid. Together, these sources make up the total amount of funds available for the loan portion of student assistance.

The revolving fund is maintained by the sale of notes obtained from schools who have borrowed from the revolving fund. The sale of the notes was not authorized in 1969, so that funds have not become available to maintain the revolving fund. As a result, the revolving funds have been drastically reduced—by $10.3 million for health professions schools and by $4.6 million for nursing schools. Since the requests for the appropriation portion of the loan program are the same for 1970 as for 1969, there will be $10.3 million less for health professions schools and $4.6 million less for schools of nursing than was available for the preceding school year.

So in terms of budgets and even in terms of student loans and scholarship funds, there have been sharp cuts, in one case attributable to the fact that there is just no money in the revolving fund which was provided. In addition, there have been sharp cutbacks in research funds for the National Institutes of Health.

Now let us look at some of our more established research programs. The National Cancer Institute estimated it needed $203,741,000. But only $160,513,000 is scheduled to be appropriated—a $26 million shortfall while diseases of the heart and circulatory system continue to be the major cause of death in the United States, accounting for 54 percent of all deaths.

The National Institute of Child Health and Human Development estimated it needed $85,065,000. But only $75,852,000 is scheduled to be appropriated—a $10 million shortfall while uncontrolled population growth continues to be one of the most critical problems of our time affecting the health and well-being of everyone.

Congress provides disaster relief when a flood or a tornado strikes. But this bill would provide disaster relief of a more basic nature, because without it the whole device of American medical care could collapse. This is not a wild dream When institutions authorize me to give their names as being on the verge of collapse, that certainly indicates the seriousness of the situation.

President Nixon, in his July 10, 1969 report on the health of the Nation's health care system, stated:

This Nation is faced with a breakdown in the delivery of health care unless immediate

concerted action is taken by Government and the private sector.

The President could have gone a step further by telling the people that we are faced also with a crisis in medical and dental education and research unless assistance is given through the same immediate concerted action. The medical and dental schools and teaching hospitals can make significant contributions in resolving the problems of providing quality medical care in adequate quantity to all of our citizens—but only if they can remain viable.

We must move boldly to rescue our medical and dental schools from the brink of financial disaster on which they stand.

I shall do my utmost, with the magnificent support of the 24 Senators who are cosponsors, to move the bill in our committee. Our chairman is sympathetic to the bill. Indeed, I told him I would introduce the bill this week.

I hope very much that the other body will see some bills introduced to the same effect, because confidence must be restored in the students, the faculties, and the institutions that contain the medical and dental schools. We must let them know that we are not going to allow those schools to be closed simply by virtue of a financial stringency. I think it is critically important to strike a note of confidence.

I hope that as many Senators as are moved to do so will join in support of the bill. I hope that I shall be able to move it as an emergency measure before the Committee on Labor and Public Welfare, on which I have the honor to be the ranking Republican member.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3150) to amend the Public Health Service Act to provide for the making of grants to certain medical and dental schools, which are in dire financial distress, to enable such schools to continue, without curtailment, certain services, functions, programs, and activities which are in the national interest, introduced by Mr. JAVITS (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, informed the Senate that Mr. DANIELS of New Jersey, and Mr. ASHBROOK of Ohio had been appointed as additional managers on the part of the House at the conference of the two Houses on the amendments of the House to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

The message announced that the House had passed, without amendment, the bill (S. 92) for the relief of Mr. and Mrs. Wong Yui.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H.R. 7066) to provide for the establishment of the William Howard Taft National Historic Site, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12307) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1970, and for other purposes; that the House receded from its disagreement to the amendments of the Senate numbered 34 and 50 to the bill, and concurred therein; and that the House receded from its disagreement to the amendments of the Senate numbered 5 and 14 to the bill, and concurred therein, each with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House has passed the joint resolution (S.J. Res. 121) to authorize appropriations for expenses of the National Council on Indian Opportunity, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had passed a bill (H.R. 7618) to provide for the conveyance of certain real property of the Federal Government to the Board of Public Instruction, Okaloosa County, Fla., in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

As in legislative session, the bill (H.R. 7618) to provide for the conveyance of certain real property of the Federal Government to the Board of Public Instruction, Okaloosa County, Fla., was read twice by its title and referred to the Committee on Armed Services.

INDEPENDENT OFFICES AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS, 1970—CONFERENCE REPORT

Mr. PASTORE. Mr. President, as in legislative session, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12307) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1970, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of November 17, 1969, pp. 34371–34372, CONGRESSIONAL RECORD.)

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

There being no objection, the Senate proceeded to consider the report.

Mr. PASTORE. Mr. President, if it is agreeable with the Senate, I should like to have a short quorum call. 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. PASTORE. 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. MANSFIELD. Mr. President, before the Senator starts, will he yield me about 2 minutes?

Mr. PASTORE. I yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, on November 10, 1969, I had a colloquy with the distinguished Senator from Rhode Island (Mr. PASTORE). The colloquy reads as follows:

Mr. MANSFIELD. Mr. President, before the Senator gets into the main part of his speech I wish to ask a question about the Veterans' Administration hospital at Fort Harrison, Mont.

I have been receiving a number of communications from various veterans' organizations and individual veterans in Montana about the fact that the Veterans' Administration at Fort Harrison has closed a 40-unit wing, stating they could give a better service with the remaining facility. That may be true or it may not be true, but the fear on the part of veterans in Montana—and the State covers approximately 148,000 square miles—is that the Veterans' Administration is using this as a first step to close down permanently this 40-unit wing, thereby reducing the capability of Fort Harrison to take care of the needs of veterans in Montana. Can the distinguished chairman of the committee give me some information on this particular situation?

Mr. PASTORE. Yes, I would be delighted to do so.

This is still Mr. PASTORE speaking:

Mr. President, the distinguished Senator from Montana raised the same question at the markup in full committee. Pursuant to that statement we had the staff check into it in detail. The staff took the matter up with the proper agency and the proper authorities therein. We have been assured that the particular wing is closed temporarily because of the lack of patients, but it is available and will be available, and it is not to be abandoned.

Mr. MANSFIELD. I could not ask for more of an assurance than that.

An assurance, incidentally, in which I believe the distinguished senior Senator from Colorado, the ranking minority member of the Appropriations Committee (Mr. ALLOTT), concurred.

Mr. ALLOTT. That is correct.

Mr. MANSFIELD. The colloquy continued:

On behalf of the veterans of Montana I wish to thank the chairman of the committee, the Senator from Rhode Island (Mr. PASTORE) for his assurance that this 40-unit wing will not be abandoned.

Mr. PASTORE. It was a pleasure to make the inquiry and gain that assurance.

Mr. President, this morning at approximately 10:57 a.m., Dola Wilson called from Helena. He said that he went

to Fort Harrison Hospital on Wednesday, November 12, to be admitted and he was told that there was no bed. At that time, he said he had a driver and he asked the people at Fort Harrison if there would be a bed at Miles City, as he would have his driver take him there. He was told by Fort Harrison that there was no bed at Miles City.

He was certified for admission on Monday, November 17, but still has no bed as of this morning. Dola is a 40-percent service-connected veteran. He stated that, while he was not exactly an emergency case, he was quite sick when he went up to Helena last week. He has been staying at his daughter's home in the meantime. Dola was told at Fort Harrison that they would pay for a motel room while he waited for a bed. He refused this.

He stated on the days that he has been up there, he has seen other veterans similarly turned away for lack of a bed. I asked him if he knew who they were and how many. He did not have any names but he said there were approximately 10 that he knows of. He went up to the Veterans of Foreign Wars office and saw Robert Durkee, and he was told by Bob that Bob knew personally one Vietnam veteran who was not admitted because of the lack of a bed. I asked Dola to call Bob Durkee and ask him to send in to us the names of any veterans he knows who have not been admitted to Fort Harrison Hospital because of the lack of bed space. He said he would do this.

I called the Veterans Liaison office and told them of this situation, and I have received a call back from the Veterans' Administration office. They are checking into this situation immediately, particularly in view of the information contained in the letter of November 14 which we just received, which I ask unanimous consent to have printed in the RECORD at this point, together with other letters having to do with the situation which seems to be developing at Fort Harrison.

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

VETERANS' ADMINISTRATION,
Washington, D.C., November 14, 1969.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: Thank you for transmitting the inquiry from Mr. John G. Gregory, of the Veterans of Foreign Wars, at Whitehall, Montana, pertaining to the Veterans' Administration Center, Fort Harrison, Montana.

We assure you that no veteran has been discharged prematurely or rejected for lack of available space. Also, no veteran has been forced to go to the Miles City Hospital. Some applicants for admission have been referred, with their consent, to our Miles City Hospital when geographical considerations make such referrals advisable. That Hospital has vacant beds and no waiting list.

Since closing the ward, there has been a sufficient number of vacant beds on the remaining wards to accommodate the admission of all eligible veterans. There is no waiting list. The action was effected to improve staffing and care of patients by the concentration of professional and other service personnel on the remaining three wards. The nursing staff available to patients has been significantly augmented by this means. These beds are available for reactivation; however, the demand at present does not exist. This was confirmed by recent contacts with the Center Director who indicated he had vacant beds on the three remaining wards.

We shall continue to meet the demand for medical care at the Fort Harrison Hospital and provide effective service to all eligible veterans.

Sincerely,

DONALD E. JOHNSON,
Administrator.

HELENA, MONT.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR MIKE: I hate to take all these complaints to you about the Hospital at Fort Harrison, but reading the information you put in the local paper, I would like very much to tell the man he is a you know what.

I will admit that in order for them not to have a waiting list there they very conveniently take care of that by putting every one they don't want to let in the hospital on what they call post Hospital Care that way they do not keep a waiting list.

Now this place and the man that gave you that false information I feel that if given a chance to talk to all the people they turn away I could prove them liars.

They tell us the only reason the hospital wing is closed because Congress did not appropriate enough money to operate it.

Some one is pulling someone's leg. Before election comes up again I would like to know who.

R. L. MOCK.

VETERANS' ADMINISTRATION,
Washington, D.C., October 7, 1969.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: Thank you for your inquiry in behalf of Mr. Lyle Jacobson who wrote you concerning the Veterans Administration Center, Fort Harrison, Montana.

We have recently taken out of operation one hospital ward of 40 beds. This action was effected to improve staffing and care of patients by the concentration of professional and other service personnel of the remaining three wards. The nursing staff available to patients has been significantly augmented by this means.

Since closing the ward, there has been a sufficient number of vacant beds on the remaining wards to admit veterans who, in the judgment of the professional staff, are in need of hospital treatment. You will be glad to learn that there is no waiting list. Some applicants for admission are being referred with their consent to our Miles City hospital, when geographical considerations make such referrals advisable. The percentage of applicants being admitted to Fort Harrison is comparable to that of other general medical and surgical hospital of the Veterans Administration.

We are confident that the hospitalized veterans will continue to be well served at Fort Harrison. There are no plans for closing either of the VA hospitals in Montana.

I appreciate your interest in the medical program of the Veterans Administration.

Sincerely,

DONALD E. JOHNSON,
Administrator.

Mr. MANSFIELD. I would express the hope that the Veterans' Administration is not again, for a second time in 6 years, trying an end-run around the Senator from the State of Montana. We had an awfully hard time keeping the VA hospital at Miles City. We had an awfully hard time getting the necessary beds and the enlargement at Fort Harrison, and had looked to this committee, on the basis of its assurances both in the committee and on the floor, to watch this matter carefully and see that what the committee said will be done and that this 40-unit wing will not be disbanded or done away with, but will be kept and that the veterans of Montana will be given every possible facility to take care of the needs which developed as a result of their service to their country. And what I have to say for Montana I intend to say for all other veterans of all States of the Union.

Mr. PASTORE. Mr. President, how long has he had the correspondence?

Mr. MANSFIELD. Since the Senate passed the appropriation bill being considered now in the conference report, a week ago Monday.

Mr. PASTORE. I can understand the indignation of the majority leader predicated on the fact that we gave him the report based on the investigation made by our staff. Had the majority leader given me the letter sooner, I would have had satisfaction for him today. If he will give me the letter now, I will get him satisfaction within 24 hours.

Mr. MANSFIELD. What I have read is information I have received as a result of a telephone call from Dola Wilson, from Helena this morning. But this is a letter dated the 14th, which was after the bill was acted on.

I hope that both will appear in the RECORD.

Mr. PASTORE. Mr. President, I will be in touch with the Senator within 24 hours.

Mr. ALLOTT. Mr. President, I state to the distinguished Senator from Montana that I previously indicated to him that I am in complete sympathy with the position he has taken.

I joined with him and with many other Senators in the fight we had 6 years ago to preserve some of our veterans hospitals. My feelings are wholly akin to his. I think we should see that our veterans are taken care of.

I join with the distinguished chairman of the subcommittee in this matter.

Mr. MANSFIELD. Mr. President, I thank the distinguished Senator from Colorado.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its action on certain amendments of the Senate to House bill 12307, which was read, as follows:

Resolved, That the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12307) entitled "An Act making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1970, and for other purposes."

The PRESIDING OFFICER. The clerk will report the amendments in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 5 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the matter stricken by said amendment, insert: ", of which $175,000,000 shall be available for the Appalachian Development Highway System, but no part of any appropriation in this Act shall be available for expenses in connection with commitments for contracts or grants for the Appalachian Development Highway System in excess of the amount herein appropriated.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 14 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: "$26,533,000".

Mr. PASTORE. I move that the Senate agree to the amendments of the House to Senate amendments Nos. 5 and 14.

No. 5 limits obligations to the amount appropriated in the bill, and appropriates $175 million for the Appalachian highway program.

No. 14 raises the appropriation amount to include both the Chicago project and the FBI Academy in the construction projects approved.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Rhode Island.

The motion was agreed to.

Mr. PASTORE. Mr. President, I ask unanimous consent to have printed in the RECORD a tabulation showing the action taken on the appropriation bill.

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

INDEPENDENT OFFICES AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATION BILL, 1970

H.R. 12307—COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1969, BUDGET ESTIMATES FOR 1970, AMOUNTS RECOMMENDED IN HOUSE AND SENATE VERSIONS OF BILL AND CONFERENCE ACTION

[Note—All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority enacted to date fiscal year 1969 [1]	Budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action
TITLE I					
EXECUTIVE OFFICE OF THE PRESIDENT					
NATIONAL AERONAUTICS AND SPACE COUNCIL					
Salaries and expenses	$500,000	$524,000	$500,000	$524,000	$500,000
OFFICE OF EMERGENCY PREPAREDNESS					
Salaries and expenses	4,950,000	5,290,000	5,000,000	5,000,000	5,000,000
Salaries and expenses, telecommunications	2,175,000	2,095,000	1,795,000	1,795,000	1,795,000
Defense mobilization functions of Federal agencies	3,130,000	3,260,000	3,200,000	3,200,000	3,200,000
Total, Office of Emergency Preparedness	10,255,000	10,645,000	9,995,000	9,995,000	9,995,000
OFFICE OF SCIENCE AND TECHNOLOGY					
Salaries and expenses	1,800,000	1,958,000	1,875,000	1,958,000	1,958,000
Total, Executive Office of the President	12,555,000	13,127,000	12,370,000	12,477,000	12,453,000
FUNDS APPROPRIATED TO THE PRESIDENT					
Appalachian regional development programs	173,600,000	[2] 462,500,000	445,000,000	107,500,000	282,500,000
Disaster relief	45,000,000	[3] 170,000,000	45,000,000	170,000,000	170,000,000
Total, funds appropriated to the President	218,600,000	632,500,000	490,000,000	277,500,000	452,500,000
INDEPENDENT OFFICES					
APPALACHIAN REGIONAL COMMISSION					
Salaries and expenses	850,000	890,000	890,000	890,000	890,000
CIVIL SERVICE COMMISSION					
Salaries and expenses:					
Appropriation	38,564,000	[4] 41,830,000	40,000,000	41,397,000	40,778,500
By transfer	*(6,460,000)*	*(7,364,000)*	*(7,364,000)*	*(7,364,000)*	*(7,364,000)*
Annuities under special acts	1,350,000	1,265,000	1,265,000	1,265,000	1,265,000
Government payment for annuitants, employees health benefits	40,478,000	41,185,000	41,185,000	41,185,000	41,185,000
Payment to civil service retirement and disability fund	72,000,000	73,000,000	73,000,000	73,000,000	73,000,000
Total, Civil Service Commission	152,662,000	157,280,000	155,450,000	156,847,000	156,228,500
COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES					
Salaries and expenses	100,000				
FEDERAL COMMUNICATIONS COMMISSION					
Salaries and expenses	20,720,000	23,950,000	21,600,000	22,850,000	22,225,000
FEDERAL POWER COMMISSION					
Salaries and expenses	15,878,000	[5] 16,650,000	16,000,000	16,400,000	16,400,000
FEDERAL TRADE COMMISSION					
Salaries and expenses	16,900,000	19,940,000	19,500,000	19,500,000	19,500,000
GENERAL SERVICES ADMINISTRATION					
Operating expenses, Public Buildings Service	278,671,000	[6] 309,119,000	301,500,000	309,119,000	307,000,000
Repairs and improvement of public buildings	80,000,000	[7] 61,600,000	70,000,000	61,600,000	61,600,000
Construction, public buildings projects		[8] 12,748,600	19,137,000	13,248,000	26,533,000
Construction, official residence of the Vice President		150,000			
Sites and expenses, public buildings project	10,995,000	11,000,000	11,000,000	11,000,000	11,000,000
Payment, public buildings purchase contracts	2,400,000	2,400,000	2,400,000	2,400,000	2,400,000
Expenses, U.S. court facilities	750,000	1,500,000	750,000	1,250,000	1,250,000
Operating expenses, Federal Supply Service	72,500,000	78,873,000	77,515,900	77,515,000	77,515,000
Operating expenses, National Archives and Records Service	19,348,000	[9] 22,153,000	21,350,000	21,350,000	21,350,000
National historical publication grants	350,000	350,000	350,000	350,000	350,000

Footnotes at end of table.

INDEPENDENT OFFICES AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATION BILL, 1970—Continued

H.R. 12307—COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1969, BUDGET ESTIMATES FOR 1970, AMOUNTS RECOMMENDED IN HOUSE AND SENATE VERSIONS OF BILL AND CONFERENCE ACTION—continued

[Note—All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority enacted to date fiscal year 1969 [1]	Budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action
TITLE I—Continued					
INDEPENDENT OFFICES—Continued					
GENERAL SERVICES ADMINISTRATION—Continued					
Operating expenses, Transportation and Communications Service	$6,150,000	$6,150,000	$6,150,000	$6,150,000	$6,150,000
Operating expenses, Property Management and Disposal Service	28,500,000	29,780,000	29,000,000	29,000,000	29,000,000
Salaries and expenses, Office of Administrator	1,939,000	1,926,000	1,926,000	1,926,000	1,926,000
Allowances and office staff for former Presidents	307,000	440,000	335,000	335,000	335,000
Expenses, Presidential transition	900,000				
Administrative operations fund (limitation on administrative expenses)	*(13,700,000)*	*(13,833,000)*	*(13,800,000)*	*(13,800,000)*	*(13,800,000)*
Total, General Services Administration	502,810,000	538,189,600	541,413,000	535,243,000	546,409,000
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION					
Research and development	3,370,300,000	[10] 3,006,427,000	3,000,000,000	3,019,927,000	3,006,000,000
Construction of facilities	21,800,000	58,200,000	53,233,000	58,200,000	53,233,000
Research and program management	603,173,000	650,900,000	643,750,000	637,400,000	637,400,000
Total, National Aeronautics and Space Administration	3,995,273,000	3,715,527,000	3,696,983,000	3,715,527,000	3,696,633,000
NATIONAL SCIENCE FOUNDATION					
Salaries and expenses	400,000,000	497,000,000	418,000,000	458,000,000	438,000,000
Scientific activities (special foreign currency program)		3,000,000	2,000,000	3,000,000	2,000,000
Total, National Science Foundation	400,000,000	500,000,000	420,000,000	461,000,000	440,000,000
RENEGOTIATION BOARD					
Salaries and expenses	3,140,000	4,140,000	3,640,000	4,140,000	4,000,000
SECURITIES AND EXCHANGE COMMISSION					
Salaries and expenses	18,624,000	[11] 20,416,000	19,750,000	20,416,000	20,416,000
SELECTIVE SERVICE SYSTEM					
Salaries and expenses	66,418,000	[12] 69,321,000	67,375,000	69,321,000	68,348,000
VETERANS' ADMINISTRATION					
Compensation and pensions	4,930,936,000	5,041,355,000	5,041,355,000	5,041,355,000	5,041,355,000
Readjustment benefits	701,200,000	742,200,000	742,200,000	742,200,000	742,200,000
Veterans insurance and indemnities	9,350,000	7,253,000	7,253,000	7,253,000	7,253,000
Medical care	1,474,064,000	[13] 1,524,101,000	1,541,701,000	1,541,701,000	1,541,701,000
Medical and prosthetic research	48,018,000	[14] 54,638,000	54,638,000	54,638,000	54,638,000
Medical administration and miscellaneous operating expenses	14,789,000	[15] 16,994,000	16,950,000	16,950,000	16,950,000
General operating expenses	207,000,000	[16] 220,865,000	220,865,000	220,865,000	220,865,000
Construction of hospital and domiciliary facilities	7,926,000	[17] 55,217,000	69,152,000	55,217,000	69,152,000
Grants for construction of State nursing homes	4,000,000	[18] 1,000,000	4,000,000	4,000,000	4,000,000
Grants to the Republic of the Philippines	1,776,000	1,362,000	1,362,000	1,362,000	1,362,000
Payment of participation sales insufficiencies	9,505,000	5,716,000	5,716,000	5,716,000	5,716,000
Loan guaranty revolving fund (limitation on obligations)	*(450,000,000)*	Language	*(425,000,000)*	*(425,000,000)*	*(425,000,000)*
Total, Veterans' Administration	7,408,564,000	7,670,701,000	7,705,192,000	7,691,257,000	7,705,192,000
Total, independent offices	12,601,939,000	12,737,004,600	12,667,793,000	12,713,391,000	12,696,241,500
DEPARTMENT OF DEFENSE					
CIVIL DEFENSE					
Operation and maintenance	$48,040,000	$50,700,000	$47,700,000	$50,700,000	49,200,000
Research, shelter survey, and marking	12,500,000	24,600,000	16,500,000	21,800,000	20,050,000
Total, Civil Defense, Department of Defense	60,540,000	75,300,000	64,200,000	72,500,000	69,250,000
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE					
PUBLIC HEALTH SERVICE					
Emergency health		[19] 4,000,000	6,000,000	4,000,000	4,000,000
Total, Title I	12,893,634,000	13,461,931,600	13,240,363,000	13,079,868,000	13,234,444,500
TITLE II					
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT					
RENEWAL AND HOUSING ASSISTANCE					
Grants for neighborhood facilities	35,000,000	[20] 45,000,000	40,000,000	40,000,000	40,000,000
Alaska housing	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Urban renewal programs	[21] 750,000,000	[22] 250,000,000	100,000,000	250,000,000	250,000,000
Rehabilitation loan fund		[23] 50,000,000	45,000,000	45,000,000	45,000,000
Low-rent public housing annual contributions	366,000,000	473,500,000	473,500,000	473,500,000	473,500,000
Housing for the elderly or handicapped fund	25,000,000				
College housing:					
Increased limitation for annual contract authorization	*(5,500,000)*	*(7,500,000)*	*(5,500,000)*	*(7,500,000)*	*(6,500,000)*
(Cumulative limitation for annual contract authorization)	*(5,500,000)*	*(13,000,000)*	*(11,000,000)*	*(13,000,000)*	*(12,000,000)*
Appropriation for payments		2,500,000	2,500,000	2,500,000	2,500,000
Salaries and expenses	35,907,000	[24] 37,500,000	37,000,000	37,500,000	37,000,000
Total, renewal and housing assistance	1,212,907,000	859,500,000	699,000,000	849,500,000	849,000,000

Footnotes at end of table.

INDEPENDENT OFFICES AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATION BILL, 1970—Continued

H.R. 12307—COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1969, BUDGET ESTIMATES FOR 1970, AMOUNTS RECOMMENDED IN HOUSE AND SENATE VERSIONS OF BILL AND CONFERENCE ACTION—continued

[Note—All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority enacted to date fiscal year 1969 [1]	Budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action
TITLE II—Continued					
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—Continued					
METROPOLITAN DEVELOPMENT					
Comprehensive planning grants	$43,838,000	[25] $60,000,000	$50,000,000	$50,000,000	$50,000,000
Community development training programs	3,000,000	8,000,000	3,000,000	3,000,000	3,000,000
Fellowships for city planning and urban studies	500,000	[26] 500,000	500,000	500,000	500,000
New community assistance		5,000,000	2,500,000	2,500,000	2,500,000
Open space land programs:					
Appropriation to liquidate contract authorization	(75,000,000)				
Appropriation		[27] 85,000,000	75,000,000	75,000,000	75,000,000
Grants for basic water and sewer facilities	165,000,000	135,000,000	135,000,000	135,000,000	135,000,000
Grants to aid advanced adquisition of land		5,000,000	2,500,000	2,500,000	2,500,000
Salaries and expenses	7,280,000	[28] 7,850,000	7,500,000	7,500,000	7,500,000
Total, metropolitan development	219,618,000	306,350,000	276,000,000	276,000,000	276,000,000
MODEL CITIES AND GOVERNMENTAL RELATIONS					
Model cities program	625,000,000	[29] 675,000,000	500,000,000	600,000,000	575,000,000
Salaries and expenses:					
Appropriations	1,466,000	[30] 550,000	550,000	550,000	550,000
By transfer	(6,171,000)	(7,000,000)	(6,500,000)	(7,000,000)	(6,750,000)
Total, model cities and governmental relations	626,466,000	675,550,000	500,550,000	600,550,000	575,550,000
URBAN TECHNOLOGY AND RESEARCH					
Urban research and technology	11,000,000	[31] 30,000,000	25,000,000	25,000,000	$5,000,000
Low-income housing demonstration programs (appropriation to liquidate contract authorization)	(2,000,000)	(2,510,000)	[32] (2,000,000)	[32](2,000,000)	(2,000,000)
Total, urban technology and research	11,000,000	30,000,000	25,000,000	25,000,000	25,000,000
MORTGAGE CREDIT					
Homeownership and rental housing assistance:					
Homeownership assistance, increased limitation for annual contract authorization	(70,000,000)	(100,000,000)	(80,000,000)	(100,000,000)	(90,000,000)
(Cumulative annual contract authorization)	(70,000,000)	(170,000,000)	(150,000,000)	(170,000,000)	(160,000,000)
Rental housing assistance, increased limitation for annual contract authorization	(70,000,000)	(100,000,000)	(70,000,000)	(100,000,000)	(85,000,000)
(Cumulative annual contract authorization)	(70,000,000)	(170,000,000)	(140,000,000)	(170,000,000)	(155,000,000)
Appropriation for payments	7,000,000	[33] 46,500,000	46,500,000	26,500,000	26,500,000
Rent supplement program:					
Increased limitation for annual contract authorization	(30,000,000)	(100,000,000)	(50,000,000)	(100,000,000)	(50,000,000)
(Cumulative annual contract authorization)	(72,000,000)	(172,000,000)	(122,000,000)	(172,000,000)	(122,000,000)
Appropriation for payments	12,000,000	[34] 23,000,000	23,000,000	23,000,000	23,000,000
Low- and moderate-income sponsor fund	500,000	[35] 3,000,000	2,000,000	2,000,000	2,000,000
Salaries and expenses	1,975,000	[36] 4,100,000	3,500,000	3,500,000	3,500,000
Total, mortgage credit	21,475,000	76,600,000	75,000,000	55,000,000	55,000,000
FEDERAL INSURANCE ADMINISTRATION					
Flood insurance	1,500,000	[37] 2,400,000	2,400,000	2,400,000	2,400,000
FAIR HOUSING AND EQUAL OPPORTUNITY					
Fair housing and equal opportunity program	2,000,000	[38] 10,500,000	5,000,000	7,000,000	6,000,000
DEPARTMENTAL MANAGEMENT					
General administration	6,230,000	[39] 9,000,000	7,000,000	9,000,000	9,000,000
Regional management and services	6,778,000	[40] 10,500,000	9,800,000	11,905,000	10,500,000
Working capital fund		5,750,000	4,338,000	4,338,000	4,338,000
Total, departmental management	13,008,000	25,250,000	21,138,000	25,243,000	23,838,000
PARTICIPATION SALES					
Payment of participation sales insufficiencies	47,638,000	56,238,000	56,238,000	56,238,000	56,238,000
SPECIAL INSTITUTION					
National Homeownership Foundation		[41] 250,000		250,000	
Total, Department of Housing and Urban Development—Title II	2,155,612,000	[42] 2,042,638,000	1,660,326,000	1,897,181,000	1,869,026,000
TITLE III					
CORPORATIONS					
FEDERAL HOME LOAN BANK BOARD					
Construction of headquarters facility		[43] 8,400,000	8,400,000	8,400,000	8,400,000
Grand total, new budget (obligational) authority	15,049,246,000	15,512,969,600	14,909,089,000	14,985,449,000	15,111,870,500
Consisting of—					
Appropriations:					
Fiscal year 1969	(14,299,246,000)				
Fiscal year 1970	(750,000,000)	(15,337,969,600)	(14,734,089,000)	(14,985,449,000)	(15,111,870,500)
Fiscal year 1971		(175,000,000)	(175,000,000)		
Memorandum—					
Appropriation to liquidate contract authorization	(77,000,000)	(2,510,000)	[44]	[44]	
Grand total	(15,126,246,000)	(15,515,479,600)	(14,909,089,000)	(14,985,449,000)	(15,111,870,500)

Footnotes on following page.

[1] Amounts have not been reduced to reflect reserves established pursuant to Public Law 90-218. Includes 2d supplemental but interaccount transfers are excluded.
[2] Includes $175,000,000 advance funding for fiscal year 1971.
[3] Includes $25,000,000 in H. Doc. 91-113 and $125,000,000 in S. Doc. 91-36.
[4] Reflects reduction of $210,000 in H. Doc. 91-100 and addition of $160,000 in S. Doc. 91-34.
[5] Reflects reduction of $80,000 in H. Doc. 91-100.
[6] Reflects reduction of $2,052,000 in H. Doc. 91-100.
[7] Reflects reduction of $19,672,000 in H. Doc. 91-100.
[8] Reflects reduction of $7,477,400 in H. Doc. 91-100 and addition of $7,396,000 in S. Doc. 91-29.
[9] Reflects reduction of $80,000 in H. Doc. 91-100.
[10] Reflects reduction of $45,000,000 in H. Doc. 91-100.
[11] Includes $300,000 in H. Doc. 91-113.
[12] Reflects reduction of $405,000 in H. Doc. 91-100.
[13] Reflects reduction of $17,600,000 in H. Doc. 91-100.
[14] Reflects reduction of $5,000,000 in H. Doc. 91-100.
[15] Reflects reduction of $333,000 in H. Doc. 91-100.
[16] Reflects reduction of $2,200,000 in H. Doc. 91-100.
[17] Reflects reduction of $41,151,000 in H. Doc. 91-100.
[18] Reflects reduction of $4,000,000 in H. Doc. 91-100.
[19] Reflects reduction of $3,728,000 in H. Doc. 91-113.
[20] Reflects reduction of $7,500,000 in H. Doc. 91-100.
[21] Advance funding for fiscal year 1970.
[22] For fiscal year 1970. Original budget estimate of $1,250,000,000 advance funding for fiscal year 1971 deleted in revised estimate in H. Doc. 91-100.
[23] Reflects reduction of $28,000,000 in H. Doc. 91-100.
[24] Reflects reduction of $1,250,000 in H. Doc. 91-100.
[25] Reflects reduction of $5,000,000 in H. Doc. 91-100.
[26] Reflects reduction of $500,000 in H. Doc. 91-100.
[27] Reflects reduction of $10,000,000 in H. Doc. 91-100.
[28] Reflects reduction of $150,000 in H. Doc. 91-100.
[29] Reflects reduction of $75,000,000. Original budget estimate of $1,250,000,000 advance funding for fiscal year 1971 deleted in revised estimate in H. Doc. 91-100.
[30] Reflects reduction of $100,000 in H. Doc. 91-100.
[31] Includes $5,000,000 in revised estimate in H. Doc. 91-100.
[32] By transfer from previous items.
[33] Reflects reduction of $22,500,000 in H. Doc. 91-100.
[34] Reflects reduction of $7,000,000 in H. Doc. 91-100.
[35] Reflects reduction of $2,000,000 in H. Doc. 91-100.
[36] Reflects reduction of $4,900,000 in H. Doc. 91-100.
[37] Reflects reduction of $70,000 in H. Doc. 91-100.
[38] Reflects reduction of $4,000,000 in H. Doc. 91-100.
[39] Reflects reduction of $1,100,000 in H. Doc. 91-100.
[40] Reflects reduction of $400,000 in H. Doc. 91-100.
[41] Contained in H. Doc. 91-100.
[42] Reflects reductions of $15,000,000 for "Grants for tenant services"; $5,000,000 for "Urban information and technical assistance"; $10,000,000 for "Planned areawide development"; and $7,750,000 for "Urban transportation".
[43] Contained in H. Doc. 91-117.
[44] Included in Urban Research and Technology.

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. DOMINICK. Mr. President, the Senate is to advise and consent to the nomination of Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court. Many view this nomination as unique in our history. There have been reports and polls from groups and individuals of all varieties, but they cannot and will not make this decision. The responsibility is solely that of the United States Senate.

Few nominations to the Supreme Court have raised so much controversy in this century since Louis D. Brandeis and John J. Parker. The debates on Charles Evans Hughes and Harlan Fiske Stone also bear some relevance on this nomination. Of these nominations only Judge Parker was rejected and most, including labor interests, concede that that rejection was unjustified. Judge Parker and Judge Haynsworth share the dubious distinction of being the only Supreme Court nominees opposed by organized labor, so the union representatives have testified. For those who did not hear or have not read Senator COOK'S excellent review of these hearings in his floor speech on November 14, 1969, they should certainly do so.

Judge Haynsworth is opposed also by certain civil rights organizations.

I, as one Senator, refuse to consider polls or political pressure from special interest groups as bearing on my decision. Special interest groups should not have the final say here, even if one happens to agree with the general objectives and purposes of such groups.

The sharp focus on this nomination has come about primarily because of the growing controversy surrounding the Supreme Court. We have all had something to say about the Warren court, judicial ethics and confidence in the Court at one time or another over the past few years. And because of this discussion many are apparently determined to see that there is no change in the membership of the Court which might change the philosophy which they conceive as been expressed. That does not, however, alter our responsibility under the Constitution to determine whether this man who has served 12 years in judicial office has the temperament, ability, integrity, and ethics to be a Justice of the Supreme Court.

Many charges and allegations have been made concerning Judge Haynsworth's ethical judgments and social, legal, and constitutional philosophies. All have been investigated and thoroughly reviewed. The record has been made over 8 days of testimony covering some 700 pages with intensive investigation of every conceivable point.

Out of all this, two factors have been publicized which, in my opinion, have no place in this debate. "Doubt" and "appearance" are those factors or watchwords governing the judgment of some of my colleagues. The record clearly shows criticisms to be founded on overgeneralization; unfounded and occasionally outright false facts; or ethical standards apparently espoused for this nomination alone and which are not supported by law, practice or judicial requirement. In addition, these opponents of the nomination wish to make these novel ethical standards retroactive for 6 or even the full 12 years he has been on the Federal bench.

But the power of "advise and consent" is an affirmative duty. We have the factual record and we must decide upon that record. We must vote "yea" or "nay." We cannot say, "I do not know."

Every accusation, every question, every "doubt" was investigated and explored. Nothing was glossed over. Every "appearance" was put under a microscope. The Judiciary Committee made a record that contains answers, not doubts—reality, not appearances. Let everyone in this country know that a man can come before this body for confirmation and have that decision made on evidence and facts.

False accusations and political smokescreens against this nominee should weigh almost as heavily on the reputation of the Senate as they do on the reputation of the man charged. The two highest requirements for a judge are fairness and unbiased judgment. The Senate has placed no less an obligation on itself while acting in a quasi-judicial capacity. Each of us must be equal to that burden.

The facts and the record show that we have before us a man of high reputation, eminently qualified by every judicial requirement to sit on the Supreme Court of the United States.

The American Bar Association through its chairman of the Committee on the Federal Judiciary, Judge Lawrence E. Walsh, gave its full approval of Judge Haynsworth. A man's reputation is a good indication of his integrity. We are fortunate to have before us a man who sat on the Federal Court of Appeals for the Fourth Circuit for 12 years. This court is only one step below the Supreme Court. His long tenure gave ample opportunity to interview judges and lawyers associated with him. Judge Walsh testified before the Senate Judiciary Committee on September 18 and I would like to quote part of his testimony which appears in the record on page 138:

At the request of Chairman Eastland, we have examined into the professional qualifications of Chief Judge Clement F. Haynsworth. Our investigation has consisted of interviews with his judicial colleagues, interviews with a cross-section of district judges and lawyers practicing in the Fourth Circuit and an interview with Judge Haynsworth himself.

These interviews were conducted by Norman P. Ramsey of Baltimore, the Committee member of the Fourth Circuit and his partner, David R. Owen. I also made certain inquiries of my own. The members of the bar from whom comments were received included lawyers from each State in the Circuit and lawyers having different specialities. For example, some customarily represented plaintiffs in personal injury cases. Others represent defendants. Two were deans of law schools. Two represent labor unions. One specializes in admiralty work for shipowners, another represents seamen and longshoremen. Two are outstanding Negro lawyers. Others include a past president of the American Bar Association and three members of the Council of the American Law Institute. A sincere effort was made to get candid reports from a representative sample of the bar.

All of the persons interviewed—

And I emphasize the words here—

All of the persons interviewed regarding Judge Haynsworth expressed confidence in his integrity, his intellectual honesty, his judicial temperament and his professional ability. A few regretted the appointment because of differences with Judge Haynsworth's ideological point of view, preferring someone less conservative. None of these gentlemen, however, expressed any doubts as to Judge Haynsworth's intellectual integrity or his capability as a jurist.

A survey of Judge Haynsworth's opinions confirmed the views expressed by those interviewed as to the professional quality of his work. As is its practice, the Committee does not express either agreement or disagreement as to the various points of view contained in Judge Haynsworth's opinions.

The conclusion was that "Judge Haynsworth was highly acceptable from the viewpoint of professional qualifications."

The six other judges who sit with Judge Haynsworth have expressed their "complete and unshaken confidence in his integrity and ability."

Judge Harrison L. Winter, one of these judges, personally testified:

But to begin, I would like to say that I have known Judge Haynsworth since he was appointed to the U.C. Court of Appeals, and I have had a very close association with him since I was appointed a district judge in 1961, and even closer association since I was appointed to the court of appeals in 1966.

I think that I have had ample opportunity to observe the manner in which he conducts himself, the manner in which he has led his court, and the quality and content of his written opinions.

To summarize my views, I would say that I know of no fairer judge, no more gracious, considerate or understanding leader, and no judicial officer more possessed of judicial temperament.

Keep in mind that what we are dealing with is ability, temperament, and judgment. These are the opinions of his fellow judges and the American Bar Association.

I continue to quote from Judge Winter:

Judge Haynsworth and I have differed on the decision of cases. At times I have sought to give decisions of the Supreme Court wider scope and wider application than he has. At times the converse has been true. And at times he and I have found ourselves in disagreement with our brethren on the Court, so that we were in a dissenting position. But I must say, sir and gentlemen, that when he and I have disagreed between ourselves, I have never felt or thought that this position on a particular matter has exceeded the area of legitimate and informed debate.

From my association with him, I have a profound respect for his capabilities as a legal scholar and as an intelligent, capable, and informed judge. (Senate Report 91–12, pp. 3–4.)

Judge Walsh reviewed the American Bar Association committee's study of Judge Haynsworth's opinions:

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 the 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 the rights of, for example, seamen and longshoremen. The Supreme Court has greatly expanded the old definitions of seaworthiness 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, after looking through these cases, that this was in no way a reflection of bias. This was a reflection of a man who has 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.

Incidentally, in reporting to this committee for the lower courts, we usually express our qualifications without limitation. When we report on a person under consideration for the Supreme Court, we realize that professional qualification is only one of many factors that has to be considered in this case. The Supreme Court has such broad responsibilities that there are many things that must go into selection besides professional qualification. It is only for that reason that we limit our endorsement to professional qualification. We feel that it is beyond the scope of our committee to go into these other factors, so we do not express any view as to the points of view expressed by Judge Haynsworth for example. All we say is that they are within the limits of good professional thinking. (Hearing Record, pp. 138–140)

Judge Walsh went on:

I think it was Senator Tydings who posed the three questions which must be considered at this time: first, integrity, second, judicial temperament, and third, professional ability. As far as integrity is concerned it is the unvarying, unequivocal and emphatic view of each judge and lawyer interviewed that Judge Haynsworth is, beyond any reservation, a man of impeccable integrity. His word is good. (Hearing Record, page 140)

There is also no question concerning his judicial temperament, and the quotations concerning his able professional ability have already been given.

The Senator from Maryland asked the following of Mr. Ramsey, one of the interviewers:

Senator TYDINGS. Would it be a fair statement to say that not just the great weight but the overwhelming opinion of the lawyers of Maryland who have had any contact, direct or indirect, with Judge Haynsworth would be that he, regardless of his political philosophy or political allegiance or political registration, is competent and qualified to be a Justice of the Supreme Court?

Mr. RAMSEY. I believe that is correct, sir, and I think our State bar association has advised the chairman of the Committee that in the opinion of the board of governors of our association, he is eminently well qualified to be a member of the Supreme Court and in addition, I would concur that I think that it is unvaryingly the opinion of our board. (Hearing Record, page 142)

Mr. President, there is nowhere in the record a challenge to Judge Haynsworth's professional ability, judicial temperament, or integrity as a judge or a man.

Opposition to Judge Haynsworth, then, lies not in his judicial qualifications—his ability to decide cases fairly in an unbiased manner. He has been attacked partly on manufactured flimsy ethics charges and largely on unfounded assumptions as to his legal, social and judicial philosophy. Specifically he is charged with being a "strict constructionist," anti-civil rights and antilabor. All of these challenges are unfounded.

Judge Haynsworth decided thousands of cases in 12 years. He was charged by one opponent of sitting in cases in which he owned stock in one of the litigants. He was so charged in Kent Manufacturing Corp. against Commissioner of Internal Revenue. It turned out to be a different Kent Manufacturing. He was so charged in Merck against Olin Matheson Chemical Corp. This case received wide publicity. He never owned stock in either. He was so charged in Darter against Greenville Community Hotel Corp. Judge Haynsworth owned one share for 1 year but had disposed of it 5 years earlier before the case ever came before the court. Another mistake. This matter has been detailed by the Senator from South Carolina (Mr. HOLLINGS).

There were other mistakes and the opponents so conceded but the damage was done. The report clearly states that out of the thousands of cases in which Judge Haynsworth participated a question is raised in only five cases. It is charged Judge Haynsworth should have disqualified himself even though the Federal law 28 U.S.C. 455 required that he sit and decide those cases. 28 U.S.C. 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 proceeding therein. (Senate Report 91–12, p. 5)

The key words are "substantial interests."

Canon 29 of the code of ethics provides in part:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. (Senate Report 91–22, p. 5)

The key words are "personal interest."

The five cases present three separate circumstances. The first is the question of an interest in a third party not a litigant in the case. This is Darlington Manufacturing Co. against NLRB, argued June 13, 1963, and decided November 15, 1963. Judge Haynsworth owned stock and was an officer and director in Carolina Vend-A-Matic, not a party to the suit. This company had vending machines in three textile plants. Deering-Milliken, Inc., owned controlling interests in 27 textile plants including these three. Darlington Manufacturing was one of these plants controlled by Deering-Milliken but not one in which Carolina Vend-A-Matic had vending machines. So here we have a situation where he is accused of conflict of interest, where he owned no stock in either litigant, and where the customer of one company did not have any interest in the plant involved in the suit.

Judge Haynsworth took no active part in the management of Carolina Vend-A-Matic and the litigation in no way affected Carolina Vend-A-Matic. There is certainly no substantial or personal interest in the litigation.

John P. Frank, a lawyer and expert on judicial disqualification, appeared before the committee and testified on September 17, 1969. I would like to quote part of his testimony.

Now, the precise question in disqualification terms which is presented is what is to be done in the so-called third party situation—that is to say where a judge is connected with a third party who, in turn, has a busi-

ness connection of some sort with a party to a lawsuit, and that reduced to its legal substance, is the problem which is here.

In this connection then we have the precise question, should Judge Haynsworth have disqualified himself in this case because he was connected with a third party, which, in turn, had such a business relation? (Hearing Record, p. 111)

Mr. Frank went on to state that the cases under the Federal law not only require disqualification if there is substantial interest in the litigation, it also requires the judge to sit where that requirement is not met. There is no third possibility. Judge Haynsworth was not disqualified and therefore he had to sit. There was no conflict of interest in appearance or reality from a factual or legal viewpoint.

Interpolating again, it would be as though we were saying there is a conflict of interest if one owned stock in any company doing any business with any company having a suit. Under those conditions, could any judge sit in any case where he owned any stock in any corporation? If so, we should make a law to that effect, if that is the way the Senate wants to work. But that was not the law when this happened, and it is not the law now. In my opinion, it is simply creating another red herring to so interpret it at this time.

A second line of three cases which Judge Haynsworth decided involved ownership of stock in a parent corporation when a subsidiary was before his court. Again the law requires the judge to sit where there is no substantial or personal interest in the litigation. Disqualification is clearly not automatic because of mere stock ownership in a subsidiary. If we want it so we must change the law.

This leaves the Brunswick case. The third situation is ownership of stock in one of the litigants. *Brunswick Corp.* v. *Long*, 393 Fed. 337 involving competing claims for repossession of bowling alley equipment. The case was argued on November 10, 1967. The judges met immediately afterward and unanimously affirmed the judgment of the lower court. The case was assigned to Judge Winter, not Judge Haynsworth, for preparation of the opinion.

On December 20, 1967, a stockbroker placed an order for Judge Haynsworth for 1,000 shares of Brunswick. The broker recommended the purchase and Judge Haynsworth testified he had no recollection at the time that the Brunswick case had not been finally disposed of. The purchase was made on December 26, 1967. The draft opinion was circulated on December 27, 1967, and signed by Judge Haynsworth on January 3, 1968. The opinion was released on February 2, 1968, and petitions for rehearing and certiorari to the Supreme Court were subsequently denied.

Had Brunswick been allowed the full claim of $90,000, which it was alleging and this amount distributed to each shareholder, Judge Haynsworth's personal interest would have been less than $5.

This could be a technical error in judgment but it is not a substantial "interest" as set forth specifically in the law of disqualification.

The committee report states:

It scarcely needs to be added that to regard an inadvertent error such as the purchase of the stock as a basis for refusing to confirm Judge Haynsworth would be to demand a degree of perfection seldom, if ever, achieved by those in either public or private life. This committee requires a nominee to be honest, honorable, and sensitive to ethical considerations. It does not require him to be infallible. (Senate Report 91–12, p. 12)

I fully agree with that conclusion.

There is no cumulative effect on small errors here as charged by some opponents. There was one inadvertent error of a highly technical nature in 12 years and thousands of cases.

Charges of "ethical insensitivity" are not valid. Opponents have tried to create a completely new standard of ethical practice, contrary to Federal law, and make it retroactive. They charge that if it was not wrong, it could have the "appearance" of wrongdoing. Again, that is contrary to Federal law and the overwhelming opinion of cases decided. There is no doubt. The record is clear. If we do not like these standards it is up to us to change them, but we have not changed them yet.

Judge Haynsworth has violated no existing standard of ethical conduct except the one that is being emphasized over and again, especially created to deny his confirmation. He was, in fact, scrupulous in his ethical conduct in the thousands of cases that came before him.

Mr. President, one of the major objections of Judge Haynsworth is that he is supposedly a "strict constructionist" of of the Constitution—a conservative. The history of the men who have sat on the Court should be fair warning to all of us that we cannot "pigeonhole" men's political philosophies. It is unique that this objection seems to be a central concern of many who stated that such considerations were not relevant when more "liberal" men were being considered for this position.

I would quote one excerpt from the record appearing on pages 75 and 76. The Senator from Michigan (Mr. HART) was questioning Judge Haynsworth.

We have been hearing for months, years, that what we need on the Supreme Court is a strict constructionist. Now, what is that? I take it you are one.

Judge HAYNSWORTH. Senator, I have been said to be one. I don't know—I don't know what it is and I certainly do not know that I am one. Again, one can read what I have written as judge and draw conclusions from it. But I have not labeled myself a strict constructionist. And I think if you read some opinions I have written, you would not think I was.

Senator HART. I am trying to find out what it is that I should establish as the standard against which to make that judgment. And apparently this definition was not discussed with you by the President who nominated you.

Judge HAYNSWORTH. The term has not been defined to me by anyone, sir.

Senator HART. I think it is politically a popular phrase, but we would all be the better off if it was more clearly defined.

Now, certainly in the mind of the man who nominated you, Earl Warren is not a strict constructionist.

That opinion is shared by many. I think he was an outstanding, magnificent Chief Justice.

Judge HAYNSWORTH. He is a very close friend of mine.

Senator HART. I am speaking now of what he did in terms of leading that Court in the direction that history will reflect was very timely, in the best long term interests of this country. He got into trouble because he said, among other things, that "separate but equal" wasn't equal and wasn't constitutional.

Do you agree with him?

Judge HAYNSWORTH. I certainly do.

Senator HART. He said that the right to counsel of a man under a criminal charge was a right that was available to rich and poor alike; if you couldn't afford it, you didn't lose it. We would provide counsel for you.

Now, do you think that is good?

Judge HAYNSWORTH. Senator, we have upheld that right again and again in my court.

Senator ERVIN. If the Senator will pardon me for committing an unpardonable sin, I am glad at long last the Senator from Michigan agrees with me that a Senator has a right to ascertain the view of a nominee for the Supreme Court.

Senator HART. I am ascertaining whether he agrees with Earl Warren.

Senator ERVIN. And I would like to say that I am glad to have a convert to my philosophy. However, I never did get one of the previous nominees to ever reveal any of his political or constitutional philosophy. And I was told at the time that it was highly improper for me to seek to ascertain it.

Excuse me, I won't interrupt you any more.

Senator HART. I was trying to figure out a device that would enable me not to backtrack on the position I have taken earlier, and nonetheless——

Judge HAYNSWORTH. It is very hard to do.

Senator HART (continuing). And nonetheless find out if we were asked to consent to the nomination of a man who thought that the direction of the Supreme Court under Earl Warren should be reversed or modified.

Now, I think that is a fair question because on its answer hinges, I suspect, my vote.

In other words, not a question of judicial temperament, not a question of ability, not a question of integrity but on the question solely, insofar as the Senator from Michigan is concerned, as to whether the movement of the Court as it was under Chief Justice Warren would be continued. If it is not, then he will vote against Judge Haynsworth. It says so right here. Read the record.

Mr. President, I submit that that is hardly a fair way to approach the question of whether this man who has been nominated has the judicial temperament, the ability, and the integrity to serve as a Justice of the Supreme Court.

A close examination of the cases and opinions by Judge Haynsworth show first of all a scholarly balanced approach to the law. Prof. G. W. Foster, Jr., submitted a statement particularly with regard to Judge Haynsworth's Civil Rights opinions as follows:

I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent and openminded man with a practical knack for seeking workable answers to hard questions * * *.

Judge Haynsworth is an intelligent, sensitive, reasoning man. His record as a judge shows him to be a man capable of continuing growth and responsive to the needs for change where needs are persuasively shown to exist.

Mr. ALLOTT. Will my colleague yield to me?

Mr. DOMINICK. I am glad to yield.

Mr. ALLOTT. I concur completely with the arguments made by my distinguished

colleague, who is a distinguished lawyer in his own right. Before he gets further into his discussion on this matter, I should like to ask him, knowing that he has studied the record, does he find any impugnment of the personal integrity of Judge Haynsworth anywhere in the record?

Mr. DOMINICK. I have not found it anywhere, but surely it is interesting that the Senator from Maryland (Mr. TYDINGS), who opposes Judge Haynsworth for reasons known only to himself, has clearly brought out the fact that Judge Haynsworth has unquestioned integrity and unquestioned ability.

Mr. ALLOTT. Yes, it is difficult for me to reconcile how a man could praise a judge in such a lavish way and then make a determination that he was going to vote against him.

Mr. DOMINICK. I wholeheartedly agree with my distinguished colleague.

Mr. ALLOTT. The Senator from Maryland is either 100-percent wrong now or, when he was speaking from his heart and mind, he was 100-percent wrong. Thus, he is wrong on one of the other occasions, too.

Mr. DOMINICK. I might say, on the first occasion, however, when he was praising Judge Haynsworth, that what he said about him was backed up by all the other witnesses.

Mr. ALLOTT. That is true. It was, entirely. To pursue the same line of questioning, all of the testimony of those qualified to judge Judge Haynsworth's legal abilities, as I read the record, indicated 100 percent that he has very high legal ability.

Mr. DOMINICK. Without any question. Some of the people did not agree with some of his philosophy, but they did say that they were able, well-reasoned and intelligent decisions.

Mr. ALLOTT. That is correct. Some of them did not quite agree with his philosophy, especially as to implementing or moving into an innovative field as might be interpreted by a future Supreme Court decision; but if we take the fact that no one has ever accused him of profiting from a decision in any respect, and if we take the Brunswick case, for example, that was decided within 10 minutes or so after the hearing had concluded and the only thing that remained was for Judge Winter—not Judge Haynsworth—to write the opinion and for them to affix their signatures.

When one considers all these factors, how can a reasonable and sane man question the ability of this man to sit on the Supreme Court?

I simply cannot fathom the reasoning of those persons.

Mr. DOMINICK. I concur. I think the major problem was that the attack got started before his qualifications were distributed nationwide. As brought out by the Senator from South Carolina (Mr. HOLLINGS), the attack was delivered by labor unions and others.

I was quite intrigued with the speech of the Senator from Kentucky (Mr. COOK), in which he went into what happened to Judge Parker when he was nominated. After reviewing the history of the career of the judge, his former opponents confessed they had been wrong. Yet, just on the basis of philosophy, they were able to carry enough weight to defeat his nomination.

For example, in the bill of particulars of the distinguished Senator from Indiana (Mr. BAYH), he cites cases of conflict of interest on the ground that the judge had stock in litigant companies; and in at least three out of four he did not have stock.

Mr. ALLOTT. It was spread around the country. The impression people got of the Haynsworth matter was that he was deciding cases in which he had a pecuniary interest, when he was not.

Mr. DOMINICK. That is correct.

Mr. ALLOTT. Let me carry this one step further. It has already been pointed out that in the Darlington case, Carolina Vend-A-Matic had machines in a particular building which was controlled by the Deering-Milliken Corp. Would that mean that if a man owned stock in Ford Motor Co., he could not sit on a Hertz Co. case? I am not sure that Hertz does business with Ford, or whether it is Avis, No. 2——

Mr. DOMINICK. The Senator is right, Hertz does do business with Ford.

Mr. ALLOTT. Does that mean that if one owned 100 shares of Hertz stock or 100 shares of Ford stock, he would be precluded from sitting on a case involving the other company, simply because it did business with that company?

Mr. DOMINICK. That is what the opponents are trying to say, although it is not a rule or canon.

Mr. ALLOTT. For example, it is a well known fact that the large motor companies do business with literally hundreds of companies. That is also true in the airplane business. I know my colleague well knows that, because he knows that field so well. If a company did business with hundreds of companies, and if a judge owned stock in a company which did part of its business with the litigant, it is then said he then would be precluded from sitting on that case. Where do we stop in this particular reasoning?

Mr. DOMINICK. I do not know. On that reasoning, if a judge owned a cow, he could not sit in a case involving a butter or cream company, because the milk from the cow had gone into that butter or cream. We would make a parade of horrors out of it. I hope we do not have that as a serious charge against the nominee, because it is ridiculous.

Mr. ALLOTT. In fact, I do not think there is a serious charge of any nature against Judge Haynsworth which has been proven.

I would like to ask the Senator one other question. I do not want to delay the completion of the Senator's stimulating discussion of this matter.

My colleague from Colorado has practiced law for quite a few years, as I have. I do not think any legitimate lawyer—thank God most of them are—has asked anything of a judge other than that he be honest and that he be intelligent. I would like to call my colleague's attention to the last paragraph of a letter written to me by a Democratic Congressman from South Carolina, in which, after mentioning his Democratic affiliation, he stated as follows, which I think is very persuasive:

> Of course, the decision is not to be mine. If it were, I would find it easy. I would rather have the honesty, objectivity, and judgment of Clement Haynsworth apply to my rights of life, liberty, and property than that of any judge who graces the bench of this great Nation.

Here is a man who has known him, who has lived in the same State with him. I cannot think of any greater tribute than that.

I am sure my colleague will join me when I say that if we were to pick a judge, we would ask for no greater tribute to a judge than that which was given by that Member of Congress, who lives in the same State as the judge.

Mr. DOMINICK. I certainly agree with my distinguished colleague. I am grateful to him for having highlighted many of the points I am trying to make.

I really have deep concern over the charges that have been made. It is interesting that the ethical charges have been knocked down by editorials in the Washington Post and many of the major newspapers throughout the country. Those charges have just been eliminated. They recognized there was nothing to them at all.

Yet, somehow or other, after saying that, some of the editorials have come to the conclusion that, nevertheless, the man should not have his nomination confirmed. One cannot really put his finger on why his nomination should not be confirmed from their reasoning except on the basis of some manufactured doubt or that they are concerned, as the Senator from Michigan (Mr. HART) said, as appears in the hearing record, that perhaps he would not move as rapidly as Earl Warren moved.

That should not be the focal point of our consideration. The President has nominated a person of great integrity, great ability, complete honesty, and objectivity. We may consider it, but we in the Senate cannot control what his philosophy will be when he gets on the Court.

Mr. ALLOTT. That is correct. I think of Justice Brandeis and what was said of him before he went on the Court. That matter has been discussed on the floor. It is recognized that he became a great Justice.

With respect to some of the charges made, and which were not proved, as was shown in the hearings, perhaps certain Senators cannot support the nomination of Judge Haynsworth simply because they were blocked out in the first instance, and would find it very embarrassing to change their positions, even though all logic and reason dictate that they should.

Mr. DOMINICK. I think the Senator has made a good point; but I would hope that we recognize that this body has some judicial authority when it comes to the nomination of members to the Court. We ought to look at those nominations objectively, as we would want the nominee to look objectively at cases he had before him as a judge. Yet we are not doing that here.

Mr. ALLOTT. The nominee is entitled to the same objectivity and fairness that

a Senator would ask of him were he to be so unfortunate as to be in any court of law. I say "unfortunate," because it is not fortunate when anyone has to go to a court of law, particularly if a person is to be before that judge on a criminal appeal.

I think one thing people do not recognize generally is that there is a great difference—and this is probably due to lack of knowledge on the part of a great many people—between the practice of law in a trial court and a proceeding before an appellate court. Most people think of a court hearing, for example, the Brunswick case, as a hearing in which witnesses are paraded in before the court, in which there is an evaluating of the testimony of the witnesses, and the jury is instructed. They do not realize that the hearing before the appellate court on that particular day was only one of three.

The only thing that occurred was that the briefs and the appellate papers were before the judges; they heard the argument of the lawyers in the case, and that was all that occurred. To them it was a fairly routine matter.

It is also noteworthy, I think, that at no time was the original finding of the judges disturbed or modified in that case.

Mr. DOMINICK. That is exactly correct. Another interesting thing, too, in connection with the so-called Darlington case, is that there were actually three cases. I do not think the unions opposing him actually bothered to look this thing up. The first time the matter came before the court, he voted for the union. Then it was sent back and came up on a side or procedural issue, and he voted for the company that time. Then it went to the Supreme Court, and was reversed in the Supreme Court and sent back. The NLRB put in an order and it was appealed, and he affirmed again.

So in two cases out of the three, in the Darlington Mills case, he actually was on the labor side, which seems difficult to put together with a so-called antilabor bias that we have heard alleged all around us.

Mr. ALLOTT. Mr. President, I thank the Senator for permitting me to intervene, and I shall be very interested in the subject matter which he had just started on when he permitted me to intervene.

Mr. DOMINICK. I thank my colleague. I think we have highlighted some of the points which are of such deep concern, I know, to the Senator as well as to all of us, and I know what a fine speech he made the other day pointing out some of these sensitive areas, and in fact rapping some people rather sharply on the knuckles in the process of doing it—something which I think needed to be done.

Mr. President, Judge Haynsworth's opinions show a deep respect for the law and he has consistently followed Supreme Court decisions or those of other circuits when the Supreme Court had not decided a point. He has in fact broken new ground in some criminal, civil rights and labor cases.

I have previously stated the conclusions of the ABA through Mr. Walsh after study of Judge Haynsworth's opinions. Labor witnesses freely admitted that their objection was based on a few cases decided generally against the organized labor viewpoint in those selected cases. They completely ignored any analysis of his opinions in favor of the organized labor viewpoint in other cases. The same criticism can generally be made of those who say he is anticivil rights. North Carolina Teachers Association against Asheboro City Board of Education is particularly relevant because the court split four ways in four separate opinions, Judge Haynsworth holding with the majority. Seven judges heard the case en banc. Several Negro teachers had been displaced as a result of desegregation, and had claimed the board's failure to reemploy them was racially motivated. The district court denied relief.

The majority opinion by Judges Winter, Butzner, and Haynsworth awarded injunctive relief to the Negro plaintiffs as a class and money damages to three plaintiffs, declared two were entitled to preferential hiring, and denied relief to four others. Judge Sobeloff thought more relief should have been granted to individual teachers. Judges Bryan and Boreman contended the district court should be upheld—it having denied relief—and Judge Craven concurred but thought preferential hiring rights should not be granted the two plaintiffs.

In order of "sympathies," then—speaking in terms of civil rights—Judge Sobeloff would be "most sympathetic." Judge Winter, Butzner, and Haynsworth second most sympathetic. Judge Craven would be third most sympathetic and Judge Bryan and Boreman least sympathetic.

I, for one, as a strong supporter of the civil rights movement—which I have been ever since I have held public office—have no doubts about Judge Haynsworth in the area of civil rights.

For those who still express doubts about Judge Haynsworth's philosophies I recommend a review of the testimony of Mr. John Bolt Culbertson appearing at pages 211 through 230 of the hearing record. Mr. Culbertson is a practicing lawyer in South Carolina. He is a member of ADA, supports the NAACP, has represented the AFL–CIO, in particular the textile workers and the criminally indigent. He has written no books or articles. He is truly a practicing lawyer. He calls himself an activist, not a theorist. His testimony bears that out. He does not agree wholeheartedly with Judge Haynsworth's philosophies, but he supported him as a judge, a lawyer, and a man.

At page 215, Mr. Culbertson stated:

Judge Haynsworth, in my opinion, has one of the best legal minds, the most incisive mind that I have run into.

At page 216, Mr. Culbertson continued:

Clement Haynsworth's mind, legal mind, is really sharp and he is a competent man. Now, don't misunderstand me, he has decided a lot of cases. I take a lot of cases on social security for disability before that court and I haven't had much success up there, and I have got some of those, one of those cases on the way now, on the pauper's oath, to the U.S. Supreme Court, but what I am saying in response to Senator Eastland's question is that he has as good a legal mind as there is in the United States, in my opinion. Now, I don't know whether that answers that or not.

The CHAIRMAN. And he has made a fair judge?

Mr. CULBERTSON. What is that, sir?

The CHAIRMAN. He made a fair judge?

Mr. CULBERTSON. If I didn't believe he was fair and honest, Senator, a thousand mules couldn't pull me from South Carolina up here.

Nobody is paying me for this. I am hoping before I go back that I am going over here to the Teamsters place and pick me up a check for $2,500 that they owe me.

[Laughter.]

For defending them.

At pages 221 and 222 of the hearing record, the following colloquy occurred between Senator ERVIN and Mr. Culbertson:

Senator ERVIN. I want to ask you if you agree with me that no single American and no group of Americans have a right to demand that no one will be appointed to the Supreme Court except those who will do their bidding or will share their views. Isn't the only thing we can ask is that appointees to the Supreme Court will be men who accept the Constitution as their guide and who do the best they can with all the fallibility of human beings to inform themselves about the merits of the case and then reach conclusion with respect to which they believe to be an honest conclusion?

Mr. CULBERTSON. Yes, sir.

Your honor, may I say this: When the American Bar Association called me, they didn't know I was president of the bar, they didn't call me for that reason, they called me because they thought again, my name had been given to them by someone and I told them substantially what I am saying here, and I said, *How can you pick a judge that has not lived, I said, you can't raise them in a vacuum. You can't come to the bench sterile. He has got to have some exposure, and the real criterion and test is the honesty and integrity of the individual.* They make a lot about textiles. It is true we have textiles in Greenville, and nobody can be involved in making a living or in politics or anything else that is not touched by the textile trade, but just to say that he is "Mr. Textile" or something, you have got to go to the character and the nature of a man.

Now, if he was a one-sided individual, if I thought he was vindictive or dishonest, I would be the first man to get on the stand in South Carolina and I would tell it all. I don't never hold anything back. And let me say this, your honor, if I may, some people asked me today, the News and Courier reporter, a black man here, Mr. Price, I think is his name, he said they want to know back in South Carolina what John Bolt Culbertson is doing up here. Let me read to you, just a second, "Certificate of Merit awarded to John Bolt Culbertson in recognition of praiseworthy service in the area of political action in efforts to secure equality of opportunity in behalf of the underprivileged by the South Carolina Conference of Branches, National Association for the Advancement of Colored People." Signed J. Hubert Nelson, president, D. C. Francis, secretary, J. D. Quincy Newman, field secretary. At the 24th annual State convention, November 11–14, 1965, at Sumter, S.C.

Do you think that I would prostitute myself and give up all that I have ever lived for and fought for to come up here and express a dishonest opinion? If I have to be condemned and criticized by my longtime friends and associates for honestly stating my convictions then what is America for? (Emphasis added.) (Senate Hearings, pp. 221, 222.)

Mr. Culbertson further stated:

I predict that Judge Haynsworth will prove to be one of the greatest Justices of the Supreme Court that ever has been on this Court. If I were a member of the U.S. Senate, I would vote for the confirmation of his appointment. (Senate Hearings, p. 222.)

Mr. President, Shakespeare wrote in "Timon of Athens": "Every man has his fault, and honesty is his." The bard could well have been speaking of Clement Haynsworth. He has been called a lawyer's lawyer, a judge's judge. Judge Haynsworth has been frank and honest with the committee. He has been subjected to one of the most detailed personal inquiries conducted by this committee for a nominee for the Supreme Court. He has furnished item after item on his personal finances. His decisions have been examined, dissected, and analyzed by friend and foe alike. Through it all he has remained cooperative and candid.

The reputation of this man as a judge shines clearly through the record. The esteem in which he is held, even by those who might disagree with him philosophically, is uniformly high. His professional credentials have withstood the determined attack against his confirmation. The record is clear. This man is exceptionally qualified to serve on the Supreme Court.

I wish to reiterate a word of caution which I pointed out in my opening remarks. Certain labor leaders have made much of the fact that this is only the second nomination they have opposed. The first, Judge Parker, was the only nominee rejected by the Senate as a body in the last 60 years. He was alleged to be antilabor, unsympathetic to Negroes, and supposedly politics dictated his selection. How familiar that sounds. He likewise was from the fourth circuit. The special interest groups finally conceded they had defeated a nominee who was essentially liberal. We should all be warned not to label people by their supposed political philosophies. History has proven this wrong time and time again.

Likewise we should not allow political pressure from special interest groups to dictate our individual decision as Senators. At best this is secondhand politics in a debate that should be without political motivations.

I shall vote to confirm Judge Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court. On the record I can do nothing less. I do so without reservation or doubt.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPARKMAN. 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. SPARKMAN. Mr. President, I am supporting President Nixon's nomination of the Honorable Clement F. Haynsworth, Jr., to be an Associate Justice of the U.S. Supreme Court. I believe he is well qualified, that he is a man of integrity, and that he will make an excellent Associate Justice.

I have followed the testimony as it has been given in the hearings on his nomination. I have read many, many articles in the papers and magazines of this country. I have heard his appointment discussed both favorably and unfavorably. I have tried to do my best in separating the chaff from the grain and I have come to the conclusion that on the record I should vote to confirm.

The framers of our Constitution gave to the Senate the sole power of confirmation. However, it gave only the power to confirm or refuse to confirm. It did not give to the Senate the power to nominate. That power vests in the President of the United States and in him alone. Ordinarily, I believe that doubts that are not sufficient to vote against confirmation, even though they exist, should be resolved in favor of the President's nominee, particularly since we are not empowered to select someone to his place.

Some very able arguments have been presented on the Senate floor. I have been particularly impressed with the elaborate and careful analysis given by the junior Senator from Kentucky (Mr. COOK) and by the senior Senator from Nebraska (Mr. HRUSKA). There have been other very fine, forceful, and able presentations in behalf of Judge Haynsworth.

The opposition to Judge Haynsworth has been of a twofold nature. In the first place, it is claimed by some that he has not rendered decisions as a Federal judge in the way they believe they should have been rendered. Yet, experienced lawyers in the American Bar Association have examined cases in which Judge Haynsworth has participated and have come up with a recommendation for his promotion to the Supreme Court.

I have not heard anyone say that Judge Haynsworth is not qualified for the Supreme Court. I believe even those who oppose his appointment say that he is a man of honor and integrity. What more can we require of a man's promotion to this high position than those very qualifications—that is, that he is an able lawyer and jurist and that he is a man of honor and of integrity?

The other point that has been made against him relates to his investments. Again, I believe there is nothing in his record that shows any dishonest or reprehensible conduct on his part in connection with his investments.

Mr. President, I have often wondered how a man who has accumulated wealth can invest that wealth in a way that secures him completely against ever running into any conflict of interest in any way whatsoever. As a matter of fact, if conflict of interest were strictly enforced, many times Members of Congress would have to abstain from voting on everyday issues, for we do have an interest in many things about which we must legislate. As it happens, such interest ordinarily is not of the degree that could be presumed to affect the vote of a Member of Congress. I have examined as best I can the securities listed as being owned by Judge Haynsworth, and I have heard the arguments presented by those who have spoken in his behalf that his interest was so small that it could not be expected to affect his decisions in any way.

As I have said, I have often wondered how a man in public office, such as Judge Haynsworth, possessing wealth, can safely invest. I know little about the field of investment from personal experience, but I do know that a person generally relies on a broker or a brokerage firm to look after his investment interests; and I am of the opinion that the average person, whoever he may be, simply does what his broker recommends. I believe that also true in the case of Judge Haynsworth and that he should not be denied the high office offered him on such evidence as has been presented against him. Accordingly, I shall vote for his confirmation.

Mr. MOSS. Mr. President, it was my hope that this debate on the nomination of Clement Haynsworth would never have had to take place. I had hoped that when the President of the United States realized that this nomination was not satisfactory to the Senate he would withdraw it. There are, after all, many other conservative lawyers who are eminently qualified and who would be confirmed readily.

But, the President has chosen to force this issue to a showdown and has once again brought bitter divisiveness to this floor. I, therefore, must tell the Senate that I will vote against the confirmation of Judge Haynsworth.

I will take no pleasure in this vote. This confirmation battle, whatever the outcome, only adds more hurt to an already injured man and only does more damage to an already weakened Supreme Court

Nor is there any gain for the liberal cause if this nomination should be defeated. President Nixon can simply propose another nominee whose ideology is just as conservative as is Judge Haynsworth's. The liberal Senators know this and so does the President.

In casting my vote, therefore, I seek not to preserve the so-called liberal block on the Court—that could not be accomplished by this vote in any event. I seek to preserve the integrity of the Supreme Court.

In the eyes of many American citizens, the integrity of the Supreme Court would be damaged by the confirmation of Clement Haynsworth. At a time when respect for law is so vital to domestic order, respect for the courts and their judges becomes even more crucial.

To command this respect judges who are appointed for life must conform to the Canons of Judicial Ethics. Unfortunately, Clement Haynsworth does not meet these high standards.

Judge Haynsworth sat on cases involving litigants in which he had a financial interest; he purchased stock in corporations likely to appear before his court; and he sat on cases involving customers of a corporation in which he was a major stockholder and for which he served as a director and vice president.

These activities were clearly contrary to the guidelines set down by the Canons of Judicial Ethics.

Canon 26 provides:

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation.

Judge Haynsworth purchased stock in corporations which later had litigation before his court.

It is not a defense to this breach of judicial ethics to claim that the judge's potential monetary gain was minimal. Litigants are entitled to expect that the judge will have no financial interest whatsoever in either party.

A Federal statute provides:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest.

Judge Haynsworth purchased 1,000 shares of Brunswick Corp. stock while a case involving that corporation was pending before his court. Later he participated in the denial of two post-verdict motions in that same case.

Canon 4 provides:

A judge's official conduct should be free from impropriety and the appearance of impropriety.

If it is not clear from the many incidents revealed concerning Judge Haynsworth's business activities while on the bench that he is guilty of improper conduct, it is at least clear that he has created the appearance of impropriety.

President Nixon disputes this standard saying that the appearance of impropriety can be created by any charge against a sitting judge. But it takes more than a few random charges to create the appearance of impropriety. In Judge Haynsworth's case there is, at least, reasonable doubt as to his conformity to judicial ethics.

Finally there is the grave matter of Judge Haynsworth's lack of candor. Judge Haynsworth testified that when he went on the bench he resigned from "all directorships and things of that sort." Yet until sometime in 1963 Clement Haynsworth was a director and vice president of Vend-A-Matic. This was not a casual relationship. Judge Haynsworth attended directors meetings, received a director's fee, and pledged his personal credit to enable the company to borrow substantial sums. Clement Haynsworth was not telling the truth to a committee of the Senate and I find it difficult to believe that he did not realize it.

In the final analysis Judge Haynsworth himself summarized the reasons why his nomination should be defeated:

While I am concerned about myself and my reputation, I am much more concerned about my country and the Supreme Court as an institution, and if there is substantial doubt about the propriety of what I did and my fitness to sit on the Supreme Court, then I hope the Senate will resolve the doubt against me.

Unfortunately, there is in my mind a substantial doubt and I must, therefore, resolve it against the nomination of Judge Clement Haynsworth to become a Justice of the Supreme Court of the United States.

Mr. DOLE. Mr. President, in these closing hours of debate on the confirmation of Judge Clement Haynsworth, it is important to remember that, throughout the Nation, people in general are convinced of Judge Haynsworth's integrity, honesty, and qualifications for a seat on the Supreme Court.

As evidence, I submit editorials from newspapers ranging from Seattle to Orlando, and commend them to the attention of my colleagues.

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

[From the Seattle Post-Intelligencer, Sept. 30, 1969]

COURT VACANCY

A P–I View: Senate confirmation of Judge Haynsworth to the vacant seat on the U.S. Supreme Court should be accomplished without further delay so he may be present when the Court begins its Fall Term Oct. 6.

We wonder how many men of 56 years, which is the age of Judge Clement F. Haynsworth, could have survived so well the hostile and exhaustive probe to which he was subjected for eight days by the Senate Judiciary Committee. In the end, the inquisitors were able to produce nothing to shake President Nixon's confidence—or ours—in the "qualifications and integrity" of the man he nominated to fill the Supreme Court seat vacated by the resignation of Abe Fortas.

All kinds of slurs and innuendoes were cast at Judge Haynsworth by his critics. It was alleged he ignored the "appearance" of judicial purity in failing to disqualify himself from two cases in which he had a remote personal interest. It was alleged he showed apparent favoritism in cases involving former law clients. Liberal senators joined civil rights and labor leaders in contending his rulings proved him biased against their causes. It was hinted that his Supreme Court nomination was a post-election payoff to Sen. Strom Thurmond (R–S.C.).

None of the politically-motivated aspersions jelled into anything solid. We concede that Judge Haynsworth may have been less than discreet in the two cases mentioned, but not even his strongest critics charged that he did or could have profited personally from his decisions in them. And so far as the rest of his many decisions during 12 distinguished years on the Fourth U.S. Circuit Court of Appeals are concerned, nothing was proven at all except that he is a legal conservative who goes strictly by the book.

This is precisely the kind of judicial philosophy President Nixon was after in making his nominaton. Judge Haynsworth has made a full, frank and convincing response to those who did their best to discredit him. He should be confirmed with no further delay so that he may take his seat as the ninth member of the Supreme Court when it begins its fall term Oct. 6, as the President hopes and expects him to do.

[From the Washington Star, October 22, 1969]

NIXON'S DEFENSE OF HAYNSWORTH

If ever there was a case of "character assassination"—as the term was used during Senate committee investigations in the 1950's—it is the attack which has been made on Judge Clement F. Haynsworth, who has been nominated by President Nixon to be an associate justice of the Supreme Court.

President Nixon is plainly displeased with accusation that have been leveled against a man who he considers innocent of any wrongdoing. Were the President's comments—a most significant presentation made at a news conference here on Monday—widely distributed throughout the country? Nixon says that, having evaluated all of the allegations, he reaffirms "with even greater conviction" the support he has given Judge Haynsworth, and makes a pointed plea for fairness as follows:

"When a man has been through the fire, when he has had his entire life and its entire record exposed to the glare of investigation—which, of course, any man who is submitted for confirmation to the Senate should expect to have—and in addition to that, when he has had to go through what I believe to be a vicious character assassination, if after all that he stands up and comes through as a man of integrity, a man of honesty, and a man of qualifications, then that even more indicated that he deserves the support of the President of the United States who nominated him in the first place, and also the votes of the senators who will be voting on his nomination."

Nixon now has personally examined all the charges mentioned by opposing senators. The President is particularly critical of those who say Judge Haynsworth's nomination should be withdrawn just because "a doubt has been raised." Nixon continues:

"The appearance of impropriety, some say, is enough to disqualify a man who served as judge or in some other capacity. That would mean that anybody who wants to make a charge can thereby create the appearance of impropriety, raise a doubt, and that then his name should be withdrawn. That isn't our system. Under our system, a man is innocent until he is proven guilty."

The President declares that it is not proper to turn down a man just because he is a Southerner or a Jew or a Negro or "because of his philosophy," and that the real question relates to what kind of lawyer he is and what his attitude is toward the Constitution. Nixon contends that it is the duty of the senators to take into consideration the following:

"Is he a man of integrity? Is he a man that will call the great cases that come before him as he sees them, and in this case will provide the balance that this great court needs? I think Judge Haynsworth does that."

Nixon reveals that some of his friends came to him a few weeks ago suggesting that he withdraw Judge Haynsworth's nomination because a doubt had been raised which would be politically difficult to handle. But the President made this observation:

"I had to consider then whether because charges had been made without proof, and whether there was a doubt, whether I would then take upon my hands the destruction of a man's whole life, to destroy his reputation, to drive him from the bench and public service. I did not do so."

The President notes that if Judge Haynsworth's philosophy leans to the conservative side, this is in his favor, because the Supreme Court "needs balance." Nixon explains it this way:

"I think that the court needs a man who is conservative—and I use the term not in terms of economics, but conservative, as I said of Judge Burger, conservative in respect of his attitude towards the Constitution.

"It is the judge's responsibility, and the Supreme Court's responsibility, to interpret the Constitution and interpret the law, and not to go beyond that in putting his own socio-economic philosophy into decisions in a way that goes beyond the law, beyond the Constitution."

The President is right when he says that no man who has already served many years on a federal court bench should have to go through such an ordeal. The truth is the critics oppose Judge Haynsworth because of his views. They have raised the issue of honesty as a smokescreen in order to defeat the nomination as demanded by civil-rights leaders and labor unions who don't like some of Judge Haynsworth's rulings.

[From the Dallas (Tex.) News, October 14, 1969]

CUT OUT THAT JAZZ

The nomination of Judge Clement Haynsworth to the Supreme Court has again been

reviewed by the American Bar Association's committee on the federal judiciary. After the second review, again the ABA has given the nominee its endorsement—but the endorsement is unlikely to calm in any degree the storm directed at Haynsworth.

That's because the attacks on Haynsworth have nothing to do with his qualifications as a jurist, acknowledged to be outstanding, or the charges of conflict of interest, which have been demonstrably groundless.

The liberals leading the attack on Haynsworth object to him because they do not own him. Newsweek magazine quoted couple of critics who made it clear that the judge's nomination is being fought on this basis, despite the smoke screen of false charges and unfounded innuendo.

One senator declared, "Conflict of interest is so much jazz. We are against him for what he believes. He thinks like a medieval prince."

A civil rights leader narrowed down the focus, saying that Haynsworth's "much heralded 'strict constructionist' approach is not new to the Negroes. (It) means granting their constitutional rights with an eyedropper when they should be flowing like a river . . ."

Since, by the critics' own admission the other charges are "so much jazz," why don't they stop confusing the issues and debate the main issue here, which is the philosophy of strict construction?

Strict construction implies no doctrinaire way of looking at racial questions or labor disputes or any other public issues. Strict construction refers to the way in which an individual regards the law.

The strict constructionist believes that the law pretty well means what it says, as written. The loose constructionist prefers to interpret the law not on the basis of what it says, but on what it would have said had the lawmakers had the benefit of his wisdom and experience.

In recent years, the Warren court has placed a construction on the law that is not so much loose as psychedelic. In effect, the high court has not been interpreting law, it has been making policy, disregarding the Congress and the voters in the process.

Under our system, the voters' ability to influence the court has always been tenuous and indirect at best, but they do rate a say. The chief method by which the public can give its opinion of the court's opinions is in its votes for the presidency, the office that nominates the members. The public did so in 1968, making it clear that it felt the court has gone too far in rolling its own law.

What the loose constructionists seek, on the other hand, is to pass on to the court even greater opportunities to take over the task of lawmaking, the task that is Congress' reason for being. If the liberal senators really want to pass on their legislative duties to the court for good, as they seem to do, why don't they just say so and cut out all that other jazz?

[From The Birmingham News, Oct. 20, 1969]

HAYNSWORTH'S RECORD

Opponents of the nomination of Judge Clement Haynsworth to the U.S. Supreme Court have zeroed in publicly on some business dealings. But the hard-core center of opposition to the South Carolinian is a belief that he would bring a more conservative, strict-constructionist approach to the court.

In that belief they are right; or at least we certainly hope and expect so. But even in this respect some of the judge's foes have misrepresented his record on the U.S. Fourth Circuit Court of Appeals to make him appear a segregationist and an enemy of civil rights.

An interesting column to this point appeared last week in *The Washington Post*, hardly a champion of segregation or anti-civil rights sentiment. Written by a *Post* editorial page staff member, James E. Clayton, the article concluded that Judge Haynsworth's record on civil rights in 12 years on the appeals court puts him "somewhere in between."

Clayton wrote:

"Unlike some other federal judges in the South (the heroes of the civil rights movement), he was not willing to go beyond what the Supreme Court or Congress specifically ordered. Also unlike some other federal judges in the South (the heroes of the segregationists), he was not willing to oppose what the Supreme Court, or a majority of his own court, had already done. He preferred to read Supreme Court opinions literally and to interpret them narrowly, doing precisely what that court said had to be done but rarely, if ever, going beyond that narrow interpretation.

"The result was that Judge Haynsworth voted with the most pro-civil rights judge in his circuit, Simon Sobeloff, far more than he voted against him; most of his civil rights cases were easy. But they parted company most of the time when Sobeloff wanted to break new ground in the civil rights struggle or to put a broad interpretation on Supreme Court opinions . . .

"Thus, you can tote up the score in several ways. If the standard of judgment to avoid being called a segregationist is that a judge must almost always support expansions of desegregation and avoid options that discourage it, Haynsworth comes out a segregationist. If the standard is that a judge is a friend of civil rights unless he takes every opportunity to denounce integration and never votes to encourage it, Haynsworth is a friend of civil rights. If the standard is somewhere in between, Haynsworth is somewhere in between. He rarely did anything more than that required of him by the Supreme Court, he rarely did anything less, and when he had options open to him he turned aside from being bold."

That may not be the portrait of the kind of judicial activist Judge Haynsworth's opponents would like to see appointed to the U.S. Supreme Court. But it describes precisely the kind of man most Americans—who, whether anyone likes to admit it or not, have grown increasingly disturbed at the Supreme Court's leanings in recent years—wanted President Nixon to name.

President Nixon is standing by his nomination. The Senate has heard more than enough pertinent testimony—and Judge Haynsworth has been subjected to more than enough attack by innuendo—to make a decision. Every effort should be made to bring this nomination to a vote. We are convinced that a majority of senators after fair-minded consideration will vote for confirmation.

[From the Manchester Union Leader, Nov. 3, 1969]

IN SUPPORT OF JUDGE HAYNSWORTH

The Judge Haynsworth appointment is quite in line with President Nixon's campaign pledge that there would be no more political cronies put on the U.S. Supreme Court but that, wherever possible, promotions would be made from the federal judiciary to the Supreme Court.

This, of course, is the way to produce an experienced and able Supreme Court. It is a marked improvement from the previous practice of picking politicians and cronies that unfortunately, was engaged in too often in the last eight years or so.

The attacks on Judge Haynsworth, of course, border on gutter tactics and are a sad commentary on the political leaders and others who have made them. The attacks are nothing but a complete smokescreen and an attempt to prevent the Haynsworth appointment by hurling so many false charges at the Nixon appointee that he will either withdraw or ask the President to withdraw his nomination.

President Nixon quite properly says he has no intention of withdrawing the nomination and Judge Haynsworth, who does not seem to be afraid of the cross-fire, has announced that he has no intention of asking the President to withdraw his name.

This is as it should be.

If appointees to the Supreme Court are to be scared off by verbal garbage thrown at them from individuals with special interests and very personal axes to grind, then we would indeed end up with a very sorry Supreme Court.

Senator Cotton has announced that he will support the Haynsworth appointment. It certainly would be a happy event if Senator McIntyre were to do the same.

The Haynsworth appointment really should not be a question of partisan politics. It should be a question of putting a man who has proved his capabilities as a judge on the Supreme Court by way of promotion from the Court of Appeals on which he has been sitting.

President Nixon elevated Chief Justice Burger from the Appeals Court of another district and if he continues to make appointments to the Supreme Court from such experienced jurists, then a much higher quality of decisions should be forthcoming from the highest court in the land.

[From the Orlando (Fla.) Sentinel, Nov. 2, 1969]

THE CHARACTER ASSASSINATION OF JUDGE CLEMENT HAYNSWORTH

There has been controversy over the nomination of several great Supreme Court justices, including Hughes, Brandeis, Black and Warren.

So controversy is not new to the court and perhaps it is a good thing. In a democracy all should be free to voice their opinions whether agreeable or not.

If anything distinguishes the Judge Clement F. Haynsworth case it is the depth to which his detractors have gone to try to destroy his character.

The judge has been accused of many things by many irresponsible people. He has answered all of the accusations satisfactorily. He has willingly cooperated in baring his life and his record to the glare of investigation.

He emerges, in our opinion, as a man of integrity, a man of honesty and a man of qualifications, who deserves, as Richard Nixon said, "the support of the President and also the votes of the senators who will be voting on his nomination."

The American Bar Association, the same group which found that Justice Abe Fortas acted "clearly contrary" to the canons of judicial ethics in his dealings with financier Louis E. Wolfson, was quick to support the Haynsworth nomination and has defended Haynsworth's handling of cases in which some senators have charged there was an interest conflict. Obviously there was none or the ABA would have withheld its support.

Many senators who have said they intend to vote against confirmation of Judge Haynsworth state they have found nothing dishonest or unethical in his record, but feel compelled to oppose him only "because there is considerable public doubt about him."

That is asinine logic. The public doubt has been created to a large extent by the continued circulation of false and misleading statements and irresponsible accusations.

President Nixon, who has been pressured to withdraw his nomination because "a doubt had been raised" about Haynsworth, categorically refused with this explanation:

"The appearance of impropriety, some say, is enough to disqualify a man who served as judge or in some other capacity. That would mean that anybody who wants to make a charge can thereby create the appearance of impropriety, raise a doubt, and that then his name should be withdrawn.

"That isn't our system. Under our system, a man is innocent until he is proven guilty.

Judge Haynsworth, when the charges were made—instead of withdrawing his name, as he could—openly came before the committee, answered all the questions and submitted his case to the committee and now to the full Senate.

"I have examined the charges. I find that Judge Haynsworth is an honest man."

As the Judge Haynsworth case drags on it is clearer than ever that those opposing him can find nothing on which to base their allegations of "impropriety." So they have resorted to wild character assassination.

Part of this is inspired by the fact they want to embarrass President Nixon, but more by the fact that in truth Haynsworth may be too honest for them. A Southern conservative, he has a middle of the road record on major issues. Most of us, including Richard Nixon, feel Haynsworth is a man who would simply intepret the Constitution and the law, not put his own socio-economic philosophy into decisions in a way which goes beyond the Constitution.

In short, the Supreme Court needs Clement F. Haynsworth.

Mr. FANNIN. Mr. President, long years ago, Mathew Henry gave us that now famous quotation, "None so blind as those that will not see."

I am afraid that is the sad situation with regard to the debate which presently surrounds the President's nomination of Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States.

It is not my purpose to scold or deride or to scoff at those with whom I am in disagreement over this nomination. Nothing is to be gained in that direction. Besides, such a function, if it is to be performed with some force, is best left to those to whom we, as elected representatives of our several States, are responsible.

The purpose I have in mind today is to bring what I believe to be the real issue into sharper focus so that the Nation may better see the point on which this issue turns, and the basis upon which the votes are cast.

On the day of the White House announcement of the nomination of Judge Haynsworth, I stated:

The President has nominated a man of proven ability and qualifications to sit on the bench of the highest tribunal. Judge Haynsworth's record as an attorney and a jurist fulfill the President's stated desire to see men serve on the Court who are concerned with interpreting rather than making law. In nominating Judge Haynsworth, I feel the President has selected a man of character and integrity, and I feel sure the Senate will agree.

On September 4, 1969, here in this Chamber, I reaffirmed that conviction. As yet I have found nothing in the record that changes my mind. The judge has been subjected to an examination—much of it by his own request and using information which he, himself, has supplied.

Never, in comparatively recent history, has a Presidential nominee to the highest Court been subjected to the attacks, innuendoes, and judgments of motive which have been leveled at Judge Haynsworth.

I only hope that those who have been so "nitpicking" in regard to the record of this outstanding man will be able to find a candidate in some future nomination who can meet their standards.

The question which should be examined today, Mr. President, is the consistency of those who have opposed the nomination of Judge Haynsworth and in so doing have denied the very principles upon which they, such a short time ago, were castigating their colleagues.

Let us review a little history, Mr. President.

Last year we had before the Senate the nomination of Mr. Justice Abe Fortas to be Chief Justice of the United States, and Judge Homer Thornberry to be an Associate Justice. Since that nomination was before the Senate, several important events have taken place. A sequence of events transpired, sparked by a magazine article appearing in Life magazine, which resulted ultimately in Mr. Justice Fortas resigning from the Court.

Mr. President, I am not one to take advantage of another man's misfortune, mistake, or indiscretion.

There are men sitting upon the highest bench today about whom there is, even now, some question as to complete candor, uprightness, perhaps even a cloud as to former clientele. The question is, Can these Justices be completely unbiased when certain persons or causes come before them?

The Court deserves the best men who can be found to serve. I think that Judge Haynsworth is such a man. But those of us who were so sorely used when the Fortas affair was before the Senate, found our reservations and opposition fully justified.

Mr. President, in going back through the record of late in the summer of 1968, and early fall, one can find quotations that are most embarrassing in light of subsequent events. I know that we cannot always be sure of the actions of those we must trust. And I am sure that those who were most vocal in their support of the former Associate Justice were just as chagrined as I to learn of his seeming indiscretions.

I shall not trot out those quotations. I feel it is neither fair nor proper to do so. I will say they exist; and to those who are so glib and easy with their condemnations and pronouncements today, I say look at the record and see how very wrong some have been.

If I may cite the record in my own behalf, Mr. President, one of the major labor organizations in the United States, the AFL–CIO, has made my quotations of the Fortas case one of their frequent headlines. I suppose I should be flattered that they endow me with such power and influence that I have never noticed to exist.

They have gone back to the Fortas case and cited my opposition and quoted my words that "A judge should not only avoid impropriety, he should avoid the appearance of impropriety."

Well, that is what I said, Mr. President, when I quoted the Canons of Judicial Ethics and that is what I believe. That is what I believe is the case in the present circumstances before us.

There have been many comparisons made between the Fortas case and the Haynsworth case. They are unworthy. There is no comparison possible.

If there are those who seriously wish to compare the two, let us just look together at a few facts.

Former Justice Fortas received a substantial payment from the Wolfson Family Foundation in pursuit of a contract which called for payments to him and his wife after his death of $20,000 a year for assistance to the foundation and its charitable activities during the Court's summer recess. He said he returned the payment a year later when he found he would be unable to serve as contracted. There is a real question as to the size of the fee in consideration or the amount of the foundation sums to be administered. The statements made by Mr. Fortas when confronted with these facts were contradictory. He was faced with the need of giving further explanations or to resign. Mr. President, he chose to resign. This does not compare with Judge Haynsworth's actions.

There are several other major contrasts, Mr. President, but perhaps this is the most striking.

Judge Haynsworth has made a thorough disclosure of the facts and the records involving his judicial activities. He has provided the Judiciary Committee with information pertaining to the most minute and miniscule of his transactions—even to a 15-cent dividend.

In fact, Mr. President, the only case in which there even is the semblance of a serious question is the so-called Brunswick case—which I shall deal with later—and even Judge Haynsworth's most severe critics, including the Senator from Indiana, have not charged the judge with bad motive, or with attempting to make a financial gain, or with any other impropriety in this connection.

There is nothing in Judge Haynsworth's record that suggests impropriety, Mr. President. In fact, all the evidence points the other way. Most of the judge's detractors, when pinned down, admit that the Brunswick case might never have been "discovered" at all, were it not for the judge's complete and meticulous disclosure of his total investment activity. Is that the act of a devious man, Mr. President? It does not compare with Mr. Fortas.

Under these circumstances, Mr. President, and many more which can be cited, it is a gross distortion to suggest that there is even an appearance of impropriety in the case of Judge Haynsworth.

There are many other comparisons and contrasts which could be drawn, but I fear that following down that trail does not lead out at the right place, for there are none so blind.

Today, Mr. President, I would like to raise a question of honesty—intellectual honesty.

I have dealt with my own record in these matters. So far as I can determine I am applying the same standards to Judge Haynsworth that I have applied to the previous appointees. In my view there is no such nice distinction to be made between a nominee's ability and his philosophy. I am aware, Mr. President, that on the matter of Judge Haynsworth some of my colleagues, who back the President on this issue, notably the Senator from Kentucky (Mr. COOK), do make such a distinction.

Certainly, my colleague from Kentucky is a distinguished lawyer, a former judge, and far more learned in the matters of law than I shall ever hope to be. But as I read the Constitution and the duty of the Senate to advise and counsel the President on these appointments, I can find no distinction. I respect the Senator's view however, and I suggest that he is completely honest and consistent in applying it. If I interpret what the Senator has said on this subject correctly, I understand that if he considered it proper to take a judge's philosophy into account he might have some reason to disagree with the President's choice, particularly since he views Judge Haynsworth's record of decisions in civil rights as somewhat in disagreement with his views.

I respect the Senator's position, even though I do not agree with his reasoning on this particular point. I would like to point out that he is being consistent with the principle which he espouses and has not shifted his ground to suit the expediency of the moment.

It is unfortunate, I feel, that this consistency cannot be discerned in all those who have taken this line in opposition to Judge Haynsworth.

If I may paraphrase the language of my friend from Michigan (Mr. HART), in in the record which appears on page 27 of the judiciary hearings, in regard to Mr. Fortas, he said that while it may be interesting which side of the tracks a fellow comes from, or if he, as in the case of Justice Frankfurter, has had a great deal of correspondence with the President, and all other bits and pieces of extraneous information, while these are interesting, the Senator says, they are not the questions to be asked. He says we must only ask, "Is the man a distinguished lawyer, able to preside over the court? And is he intellectually fitted for the work?" Those, if I am to believe the Senator from Michigan, are the only two tests that he would apply, at least in the case of Mr. Fortas.

Now I submit, Mr. President, that Judge Haynsworth meets those qualifications and meets them without question.

In all the testimony developed in the committee, from friend and foe alike, there is no suggestion that Judge Haynsworth is anything less than a distinguished and dedicated jurist.

Attorneys whose practice is almost entirely made up of labor or civil rights groups, who have appeared before Judge Haynsworth multitudes of times, all testify to his capability, and to his fairness.

I was most impressed with the testimony, Mr. President, of one John Bolt Culbertson. Mr. Culbertson, who is an attorney in Judge Haynsworth's hometown of Greenville, S.C., has represented almost every unpopular cause in that area for years and years.

He was a liberal before it became fashionable to be one. He has stood with the NAACP in their legal battles when it was almost impossible to find someone to help them. He testified on the day he appeared before the committee that he planned to go by the Washington headquarters of the Teamster's Union to pick up a check which was due him for some work he had recently done for them.

Here was a labor attorney, Mr. President. Here was a lawyer whose life, practically, has been spent in arguing civil rights and labor cases before the courts—and specifically before Judge Haynsworth.

If anyone has a question as to the testimony of John Bolt Culbertson, I suggest he go and look at the record. The hearing record is full of praise for the judge's fairness and complete competence in matters relating to these cases. To those of my colleagues who have so glibly charged the nominee with bias in these areas of labor and civil rights, I again ask them to read and reread that section of the hearing record. Here is an attorney in a position to know, an adversary position, if you will, for his duty is to represent those very causes and cases in which the judge has been accused of bias.

Here is a quotation, Mr. President, taken from the CONGRESSIONAL RECORD of September 13, 1968. I will not identify the speaker, needless to say, he is opposed to Judge Haynsworth. However, at this point in the record he was advocating the confirmation of the nomination of Justice Fortas to the post of Chief Justice. He is saying that we must not look at decisions of the court when we make our judgments:

> With regard to decisions of the Supreme Court, each of us as lawyers and individuals, can disagree with their reasonings or results, but we must not consciously distort them and impute motives to the justice which simply do not exist.

Now I am of the opinion, Mr. President, that we must examine the judicial philosophy of the nominee. I thought that when Mr. Justice Fortas was nominated. I think it now that Judge Haynsworth is the nominee. I examined Mr. Justice Fortas' judicial philosophy. I did not like what I found; I opposed him. I examined Judge Haynsworth's judicial philosophy, I like what I find, I support him.

If one makes the argument, however, that judiical philosophy does not pertain in the case of Mr. Fortas—then to be intellectually honest—one must make the same argument in the case of Judge Haynsworth.

Here is another quotation from a Haynsworth opponent, a New England senator, who supported Justice Fortas. He said on September 12, 1968:

> There is a serious question whether any judge in our system should be accountable to an elected legislative body for his decision in a specific case. There is a great danger in basing decisions on their popular appear to a majority of senators rather than on less emotional considerations of constitutional law.

This same colleague who, a year ago, could not countenance the application of a test of judicial decisions to a nominee he supported, is today opposing the President's nominee for the very reasons he denounced.

There are many other instances, Mr. President. The record is full for all who care to browse. I would just like to conclude this section of my argument by citing a recent statement of former Supreme Court Justice Charles E. Whittaker. Mr. Justice Whittaker served on the highest tribunal from 1957–1962. He has publicly stated that he is convinced that opposition to Judge Haynsworth is spurred by his philosophy not by ethics nor his character.

The Supreme Court Justice, now retired, said his study of the records of hearings before the Judiciary Committee, in the light of criticism of Haynsworth's appointment, compelled him to speak out on the matter. He said that a thorough review of the hearings had convinced him that Haynsworth is guilty of no improper or unethical conduct.

To quote the Justice exactly:

> I say simply 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. It seems evident to me, that any proper sense of moral decency requires those who oppose Judge Haynsworth's confirmation to state their real reasons for opposing him rather than to resort to false charges of unethical conduct.

The Justice went on to say that he is convinced that Haynsworth is guilty of no misconduct in the two cases brought up in the hearings. Regarding the Brunswick case, which I have already mentioned, Mr. Justice Whittaker said:

> 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 judgement of $1,425 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.

If this eminent jurist comes to such a conclusion, based on his experience with evidence, giving it credence, and so forth, I think he must be quite close to the truth.

The point is, Mr. President, there are those who are opposing the nomination of Judge Haynsworth on grounds that are not only specious, but contradictory to positions which they espoused just a few short months ago.

J. P. STEVENS SECTION

Critical allusion has been made in this Chamber, Mr. President, to the fact that Judge Haynsworth, after coming on the bench, continued to hold shares in a major textile firm operating in his region of the country and nationally. The criticism is directed at the fact that this concern, J. P. Stevens & Co., Inc., has on a number of occasions been ruled in violation of the National Labor Relations Act, by various Federal courts, including the fourth circuit of which Judge Haynsworth is the chief judge. Such ownership, his critics suggest in a not too veiled manner, implies approval of wrongdoing. This is not so.

Those who have adopted this stand missed the entire point of Judge Haynsworth's position in the matter, possibly because they have not mastered the facts as they actually stand.

The judge himself has pointed out that this textile company was a client of his law firm before he ascended to the bench, and he has added that he held the relationship to be one that clearly would forever disqualify him from sitting on

a case concerning it. This disqualification, he held, was so basic that disposal of shares in the company could not in any way modify it. And why was that?

Well, questioning of almost anyone in the judge's home city of Greenville, S.C., would disclose that many more years ago than living man can remember with certainty, the Haynsworth family firm was representing a number of cotton mills in this city and surrounding areas. The Stevens firm, which has its roots in New England, during the War of 1812, was selling agent for several of these mills. The relationship of the law firm began in the time of the judge's grandfather.

Nearly a quarter century ago these several companies were acquired by Stevens, thus making possible their expansion, modernization, and adaption to new products and new markets. From the Greenville standpoint the firm is an economic benefactor of no mean proportions. It has been and is responsible for growth of employment, payrolls, and business throughout the Piedmont area, largely because it had the capacity to move forward with the times while many other concerns found it difficult to meet the competition and keep up with new technology. This ability was publicly given later as the reason why the company was singled out as a union target. One may well imagine that the firm of Haynsworth, Perry, Bryant, Marian & Johnston was very pleased to be asked to continue handling the local legal affairs of the national company which took charge of these mills, and the interest expressed itself in modest investment in Stevens shares upon this new relationship being established.

A three-generation connection of that sort is as definite a link as a blood relationship, and Judge Haynsworth with proper appreciation of the fact knew, when he was appointed to the bench in 1957, he would not sit on any case concerning Stevens. Secure in the fact in succeeding years he increased his investment in an expanding and profitable venture that continued to benefit his whole community.

If, on ascending to the bench, he should have to dispose of shares in the company, whose acts he could not pass upon legally, what could he invest in?

There never has been the slightest suggestion on Judge Haynsworth's part that the investment was not a substantial one. It was and is, if $25,000 is substantial, and so what? It seems inevitable that any man raised to the bench through corporate practice would have a number of disqualifications applying to former client companies and their successes. To draw a line against investment in such firms would be tantamount to requiring any occupant of the bench to hold no investment in shares or bonds that could in any way be affected by any court rule. This would debar even investing in U.S. funds.

One would expect instead that a judge might feel freer to invest where he could and would not sit in judgment than in the situation of a company which might at any time come before him with no one else knowing, unless he or someone disclosed the fact, that he might be an interested party through financial holdings. Other judges have been less prompt to disqualify themselves.

But the issue as presented by the critics of the nominee does not turn on any such question. The objection is based on the demands by his critics that to suit them he should throw out investment in a company toward which they bear extreme prejudice.

The prejudice is based on the fact that when in 1963 this company was selected from the entire textile industry as the target of a widely heralded massive multimillion-dollar organization drive of the Textile Workers Union of America, the union was totally unsuccessful and turned to the Labor Board which ruled against Stevens, not once but repeatedly, and had been supported in those cases the company appealed and had heard by the courts. The company still is not unionized.

The last recorded acquisition of Stevens' shares by Judge Haynsworth occurred in 1964. The first ruling of an NLRB examiner against the company was not announced until July 26, 1965, and the Board itself did not rule until March 1966. Disposal of appeal and conclusion of this first case took place in December of 1967 and by the end of the following November the company had gone through the stages of compliance required by the Board order. The fact that other cases involving small numbers of employes in various plants of the company were arising and that a civil contempt action was launched this year concerning a small number of supervisor actions toward a few employees, is sharply magnified by those who feel thwarted by the failure to unionize this company, but Judge Haynsworth was not going to be passing on any affairs of the concern under any circumstances. In this situation he has refrained from action.

Where should he have shifted his investment to satisfy these critics?

There are very few corporations outstanding in this country that have not lost some cases involving the Labor Board, probably quite a number have lost far more such than Stevens, but the unions have organized them whereas the workers at Stevens for whatever cause have turned down election drives by wide margins registered in secret ballots.

It is probably also that, by decisions of the Board, or of umpires, many large companies have had to reinstate far more employees discharged for infraction of rules and other types of disapproved conduct than Stevens has been required to reinstate.

This is not the occasion to discuss the controverted conduct of the National Labor Relations Board nor the constantly heard questioning of the wide disparity between the language of the law Congress enacted and the interpretation at this time.

Suffice is to say that the union here in question has fared no better with competitors than Stevens nor with many of the industries in the Southeast. I would like to meet the public man who makes unionization a controlling criterion in selecting his investments.

Judge Haynsworth's relations with Stevens did not affect the judgment of his own circuit which was one of the courts that upheld Labor Board rulings on Stevens. This should be favorable rather than unfavorable evidence concerning his conduct.

But the fact is that what the critics of Judge Haynsworth demand in the present instance is that he exercise active interventionary prejudice. They demand that despite his disqualification from sitting on matters affecting his old client, he register his disapproval of its policies and of the action of its employees. They demand that he conduct his investments in such a way as to indicate he believes Stevens must not only obey Government orders, which it contends it has done, but must bow its neck to a TWUA which employees have not chosen. He must, in other words, intervene morally in a case from which he is disqualified legally.

Mr. President, without elaborating further let me say that the whole case amassed against Judge Haynsworth is shot through with this same quality, this sharp disappointment and failure to find the judge acting on the prejudice of his critics. The actions they demand are not made necessary by any standard of ethics, morals, prudence, or sense of propriety and fitness.

For the reasons I have stated and because of his record that has been placed before the Senate, I support and shall vote for the confirmation of Judge Haynsworth.

Mr. MILLER. Mr. President, one of the things that has made it so difficult for me to oppose the nomination of Judge Haynsworth has been the proclivity for some of the opponents, aided and abetted by a few columnists and reporters, to raise false issues and inneundos against the nominee. These have no place on the Senate floor and they are unbecoming the Senate.

An example of what I am referring to is the story about Judge Haynsworth's gift of his home to Furman University which, understandably, resulted in a charitable contribution deduction for him on his income tax return. It has been insinuated that there was some violation of the income tax laws connected with this gift. However, from all of the facts I have been able to ascertain about the matter, there was nothing but careful compliance with the income tax laws and the serving of a very worthy purpose for which charitable contribution deductions were designed by Congress.

HAYNSWORTH HOME GIFT

In 1958, Senator and Mrs. Charles Daniel started construction of a large new home in Greenville, S.C. At that time Mrs. Daniel, who held title to the home in which they were living, gave a one-half interest in that home to Furman University. In 1959, Mrs. Daniel gave Furman University the remaining one-half interest in the old Daniel home.

The deductions for these gifts were taken on the Daniel tax returns in 1958 and 1959, but the deed was not recorded until May 1960. The delay in recording the deed was at the request of Mrs. Daniel, who did not want publicity in

connection with the gift of the home to Furman University.

In May 1960, Judge Clement F. Haynsworth, Jr., purchased the Daniel home for the appraised value of $115,000. Furman University had no need for this type of home, but did need the money and accepted Judge Haynsworth's offer. In purchasing the home, Judge Haynsworth gave the university $65,000 in cash along with his former home, which had an appraised value at that time of $50,000. The former Haynsworth home was actually sold by the university for $50,000, so this was not an imaginary figure.

There was no arrangement or even discussion between Senator Daniel and Mrs. Daniel and the Haynsworths in connection with the gift of the house to Furman and the subsequent purchase by Judge Haynsworth. The Daniels, looking forward to moving into a new and much more elaborate home, permitted the old home to fall into disrepair in the last 2 years they were living in it, while paying rent to the university.

Upon moving into the old Daniels' home in June of 1960, Judge and Mrs. Haynsworth improved it with remodeling, air conditioning, and landscaping. The total cash outlay in connection with these improvements was in excess of $10,000.

In 1963, the Haynsworths concluded that the children were not coming home to Greenville to live, and they then decided to give the home to Furman University and retained a life estate. Under this arrangement, Judge Haynsworth and Mrs. Haynsworth retained the right to live in the house during his life and her life; during that time they were liable to pay real estate taxes, other taxes, insurance, and maintenance on the property.

In 1963, Judge and Mrs. Haynsworth held clear title to the home for which they had paid $115,000, and upon which they had expended more than $10,000 for improvements. The appraised value at that time was $153,000, and the replacement value was $184,000.

Judge and Mrs. Haynsworth could have retained the home for their estate. They could have sold it for something in the neighborhood of $153,000. They could have made a gift of the home to any university, including Furman University, and claimed something between $125,000—which includes the more than $10,000 cash outlay—and the $153,000—appraised market value—as a tax base for deductions on Federal tax returns. Judge Haynsworth chose to give the home to Furman University, the school from which he was graduated and which was named after one of his ancestors. His close relationship with the university, and his membership at that time on the university advisory council, was no barrier to him making a gift of the family home to the university while retaining a life estate for himself and his wife.

Judge Haynsworth passed up the legal right to claim the "market value" of $153,000 on the home as the base for his tax deduction. Instead, he took the $115,000 figure, which represented the sum he paid for the home in 1960. He arranged to take the deduction over a 5-year period as provided in the Internal Revenue Service laws and regulations.

Pursuant to a table prepared by the IRS, Judge Haynsworth took the following deductions:

1963	$9,844.46
1964	10,125.98
1965	10,414.00
1966	10,996.00
1968	11,294.00
Total	52,673.44

The variations follow the IRS tax table where a life estate is retained by persons of the ages of Judge and Mrs. Haynsworth.

Instead of being an illegal or questionable act, this was a commendable act. Judge Haynsworth had no conversations or arrangements with Senator Daniel in connection with his purchase of this house, and all of the evidence indicates that these were two separate and unrelated gifts of the same home to Furman University.

Judge Haynsworth is not now and has never been a trustee of Furman University.

Since early 1961, he has been a member of a Furman University advisory council. This council was established by the university in October 1960, 5 months after Judge Haynsworth had purchased the old Daniel home. Judge Haynsworth was appointed to this council in early 1961 and has served on that council since that time.

This advisory council is a "visiting board" with no authority in the operations and administration of the university. It has only the authority to advise and recommend.

At the time he purchased the Daniel home in May 1960, Judge Haynsworth had no official connection with Furman University other than that of a loyal alumnus and as a public-spirited citizen of Greenville who consistently contributed money to support this local educational institution.

Because of my own background as a tax lawyer, it seemed little enough for me to bring this matter to the attention of my colleagues. When the vote is taken on this nomination next Friday, let it not be said that any Senator cast his vote on a basis of a specious issue such a this.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I am about to propound a unanimous-consent request, which may or may not be accepted by this body.

It had been my position that we could have voted on the pending nomination today, or Wednesday or Thursday next. It was otherwise indicated that, because there were so many speakers, it could go into next week. On the basis of the give-and-take of the discussion concerning a vote on the nomination, it was finally suggested that the vote occur at 1 o'clock on Friday next.

Unfortunately, there are Members on both sides of this question who have longstanding engagements outside the city. The same reasoning would apply to any other day we could mention, because I have indications that that would be the case on Wednesday and Thursday, and on Monday and Tuesday of next week as well.

Thus, no matter which way the leadership goes, it is caught between the anvil and the hammer. The only way to face up to the situation is to make a unanimous-consent request and see if the Senate will bear with the suggestion of the joint leadership and grant that request.

Mr. President, I ask unanimous consent that the vote on the pending nomination occur at 1 o'clock p.m. on Friday next.

Mr. BAYH. Mr. President, if the Senator from Montana will yield, and, reserving the right to object, would the distinguished Senator consider the possibility of amending that unanimous consent to make it either Wednesday or Thursday, instead of Friday?

Personally, I am prepared to vote right now. I would prefer to have the vote now rather than on Friday.

Mr. MANSFIELD. Mr. President, it would make no difference to me. All I want to do is get the business along and the issue decided. I seem unable to get a mutually satisfactory agreement for either of those days.

Mr. HRUSKA. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. HRUSKA. It should be suggested that there are at least 12 requests on this side of the aisle by Senators who have not yet spoken and who would like to speak tomorrow or the next day. That, it seems to me, would be ample reason for saying that we must rule out of consideration the matter of trying to vote either tomorrow or Thursday. It seems to me the choice should be either Friday or Monday next.

This Senator proposed Monday as the time, because it is one thing to have Senators with commitments on Thursday or Friday having to modify them on such short notice, and it is another thing, with 6 days' notice, to have the opportunity to adjust commitments that would have to be changed for next Monday.

In common and widespread discussion of this thing informally, I receded from the Monday position to Friday at 1 o'clock. Whichever way the pie is cut, it will not be a happy decision for some one or the other.

Therefore, we might as well—I say in answer to what the Senator from Indiana has suggested—get out of our minds either Wednesday or Thursday because there will not be enough time to take care of all those who wish to speak on the subject.

Mr. BAYH. I am joining in the effort to find a common ground. Would it be conceivable, instead of 1 o'clock on Friday, to have the vote at 6 o'clock on Thursday? This gives us practically 2 whole days of speeches. Certainly, no Senator is going to keep any other Senator from being heard.

Mr. HRUSKA. If the Senator undertakes to make a unanimous-consent request on that basis, let him try it. I know he will meet with failure, because there

are some speeches to be made, but principally because someone's ox is going to be gored.

Mr. MANSFIELD. Some Members of the Senate will be absent on Thursday, or on Friday, or on Monday, or whatever day is proposed. I do not know. All one can do is try.

Mr. AIKEN. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. AIKEN. I would suggest that a time which would be satisfactory to everyone would be 1 a.m. on Friday.

Mr. MANSFIELD. 1 a.m.?

Mr. AIKEN. Yes.

Mr. MANSFIELD. No; I know one Member of the Senate who would be very much put out.

Mr. AIKEN. Make it 6 a.m. on Friday.

The PRESIDING OFFICER. Is there objection to the request?

Mr. MANSFIELD. Mr. President, I withdraw my request for the time being. I understand the distinguished Senator from Indiana has a request to make.

Mr. BAYH. Mr. President, so that we may "sense" the sense of the Senate and move forward on this matter, with 2 further days of debate, with what is remaining of today as well—and I would think we could go on as long this evening and tomorrow as the leader and both sides thought necessary to accommodate those of our colleagues who have not been heard—let me propose a unanimous-consent request that we consider voting at the end of the day on Thursday, 6 p.m.

The PRESIDING OFFICER. Is there objection to the request that a vote be had on Thursday next at 6 p.m.?

Mr. HRUSKA. Mr. President, I would be constrained to enter an objection, not on my own behalf, but on behalf of Senators who want to speak, together with other Senators, at least one of whom comes from the other side of the aisle. As far as I know, he is not going to favor the position very meritoriously favored by the Senator from Nebraska, but before he departed the Nation's Capital he said that if he were present, he would object to voting at any time on Thursday.

So I do hope the Senator from Indiana will withdraw his suggestion so I will not be put to the duty of entering an objection; and I do not think the Senator from Indiana wants me to do that.

Mr. BAYH. Mr. President, it is difficult for me to imagine my friend from Nebraska being objectionable in any way. I am glad to withdraw the request, faced with the cold facts as they are.

Mr. MANSFIELD. Mr. President, I renew my request.

Mr. HRUSKA. Mr. President, what is the request? May we have it repeated?

The PRESIDING OFFICER. Is there objection to the request that the vote on the nomination be set for Friday at 1 p.m.? Without objection, it is so ordered.

The agreement reduced to writing is as follows:

Ordered, That at 1 p.m. on Friday, November 21, 1969, the Senate proceed to vote on the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

[The following proceedings were conducted as in legislative session.]

LEGISLATIVE PROGRAM—ANNOUNCEMENT ON A POSSIBLE ADJOURNMENT SINE DIE

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, this may be as good a time as any for me to make this announcement with respect to the rest of the year.

During a recent discussion with the distinguished minority leader, an understanding was reached that adjournment sine die would occur between December 15 and 23, probably closer to the 23d, 1969. Further, the second session of the 91st Congress will not convene before January 12, and possibly a few days thereafter.

Legislation to be considered prior to adjournment includes the following: Six appropriation bills; a tax reform and tax relief measure; draft reform; a drug bill; a crime bill, a pornography bill; a gun bill—the Lesnick bill; and, if possible, elementary and secondary education.

It is our intention to call the Senate into session early and stay late during the weeks ahead in order to finish this schedule. All Senators are advised that Saturday sessions will be scheduled during the deliberation of the tax bill.

This information is provided in order that Senators may plan their schedules between now and the beginning of the second session of this Congress.

And on that merry note, I will conclude.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. McCLELLAN. Will our leader advise us about next week? As I understood earlier, there had been an announcement that there would be some kind of recess over Thanksgiving.

Mr. MANSFIELD. Yes.

May I say it is the hope of the joint leadership, in addition to disposing of the Haynsworth nomination this week, to take up the draft reform proposal, which should not take too long; the Lesnick gun bill, which was reported unanimously——

Mr. McCLELLAN. Mr. President, if the Senator will yield—which bill?

Mr. MANSFIELD. The Lesnick gun bill, to provide that if one carries a gun in the perpetration of a crime, the carrying of the gun itself is a crime.

Mr. McCLELLAN. That bill was reported today.

Mr. MANSFIELD. Unanimously.

Sentences would be mandatory, to a degree, and a sentence imposed in such a case would be in addition to the sentence imposed for the crime itself.

Then it is my understanding that the Finance Committee may well place the tax reform-tax relief bill on the calendar Friday. It is the hope of the joint leadership to make that the pending business and to get started on the tax reform-tax relief bill on Monday, hopefully to finish it within two weeks or so.

Mr. McCLELLAN. Mr. President, do I understand there will be a session this Saturday?

Mr. MANSFIELD. Not this Saturday.

At the conclusion of business on Wednesday next, the Senate will have Thanksgiving Day off and Friday as well.

Mr. McCLELLAN. And Saturday and Sunday?

Mr. MANSFIELD. Yes.

Mr. DODD. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. DODD. I did not hear all the Senator said about the gun amendment. We did not report the amendment until this afternoon.

Mr. MANSFIELD. Yes, and I appreciate the efforts of the Senator and the other members of the committee.

Mr. DODD. I wanted to make that clear.

Mr. HART. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. HART. I hope to make it clearer that the majority leader is not quite accurate when he says the gun bill was reported out of the committee unanimously. I rise only to correct the RECORD.

Mr. MANSFIELD. When we get within one of unanimity, I think that is pretty fair shooting.

Mr. HART. The Senator did not come that close, but he came one step shorter.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. BROOKE. Mr. President, would the Senator consider bringing up the draft bill and disposing of it prior to the end of business on Friday?

Mr. MANSFIELD. Hopefully, if conditions permit. I would like to see it disposed of this week. I would hope, when we take it up, that Senators would not spend too much time expounding their views, but would allow the matter to come to a vote as soon as possible, so that the matter could be sent to the President as expeditiously as possible.

Mr. BROOKE. If the debate on the Haynsworth nomination were concluded by Thursday, at the end of the day, would it be possible that the draft bill would be taken up on Friday and laid before the Senate?

Mr. MANSFIELD. Yes, or possibly before, if conditions permit.

Mr. HRUSKA. Or after the vote.

Mr. BROOKE. Or after the vote; either.

Mr. MANSFIELD. Yes.

HELSINKI: A HOPEFUL BEGINNING

Mr. BROOKE. Mr. President, the most momentous arms control discussions in history have opened. The United States and the Soviet Union have come together in Helsinki, Finland, to consider how best to promote their mutual security and the peace of the world through agreed limitations on strategic arms.

Yesterday's opening statements by Finnish Foreign Minister Karjalainen, Soviet Deputy Foreign Minister Semyenov, and U.S. Ambassador Smith offer clear testimony to the sober determina-

tion with which the parties approach these discussions and the profound concern which all nations have for them. As the Finnish leader put it, the so-called SALT talks "will largely determine, not only the prospects of further progress in the field of disarmament and arms control, but also the future trend of international relations as a whole."

I believe that both Moscow and Washington have come to the negotiations with the most serious intentions to reach viable agreements. A broad variety of understandings may be feasible, especially if it is made clear in these preliminary talks that the two States recognize that the only stable strategic balance open to them is one founded on a clear recognition of the fact of mutual deterrence.

While the urgency of the issues for negotiation is great, and heightened by the quickening pace of weapons technology, there is yet time to address the problem of halting another spiral in the arms race. As Soviet Foreign Minister Gromyko declared some months ago, "The arms race has long become sheer madness." On that conviction, which is certainly shared by Americans, a saner foundation for peace and security can be erected.

All men can be heartened by the open-minded approach voiced at the opening session. In his charge to the American delegation, President Nixon left no doubt that the United States is ready to consider reasonable limitations on all major strategic systems, including the menacing new weapon known as MIRV and the planned ABM system. In the President's words:

> We are prepared to discuss limitations on all offensive and defensive systems, and to reach agreements in which both sides can have confidence. . . . We are prepared to deal with the issues seriously, carefully, and purposefully. We seek no unilateral advantage. Nor do we seek arrangements which could be prejudicial to the interests of third parties. We are prepared to engage in bona fide negotiations on concrete issues, avoiding polemics and extraneous matters.

I take these assurances to mean that the administration is willing to consider any sensible proposal of mutual interest to the Soviet Union and the United States, including such suggestions as a moratorium of MIRV tests and a freeze on deployment of both offensive and defensive weapons.

The Soviet Union seems to bring a similar willingness to the conference table and does not appear to view the effort as another propaganda exercise. Moreover, in recent discussions with American participants in the so-called pugwash conferences, a number of prominent members of the Soviet technical elite explicitly stressed that the priority task for SALT should be an early limit on both MIRV and ABM. Since Soviet commentators have long resisted any hint of acknowledgement that ABM systems might have destabilizing implications for the strategic balance, their forthcoming stand in these conversations may herald a basic modification in the official Soviet position. That would be a hopeful development indeed, since the prospects for halting the insidious MIRV technology will certainly perish if there is no chance for an agreed limit on the anti-ballistic-missile systems they are designed to penetrate.

Every informed person will be looking to Helsinki for the signs which will emerge there. The encouraging words I have cited are mere straws and the hard bargaining is yet to come. But the straws are bent the right way and all of us must pray that they point toward the historic agreements that will ultimately save mankind from the awesome weapons it has wrought.

Mr. President, I ask unanimous consent that the opening statements of the Helsinki conference be printed in the RECORD at this point.

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

STATEMENT BY THE FOREIGN MINISTER OF FINLAND, DR. AHTI KARJALAINEN

Ladies and gentlemen, on behalf of the Government of Finland it is a great pleasure for me to welcome to Finland today the distinguished leaders and the members of the delegations of the Soviet Union and the United States.

We are today witnessing a historical occasion. Two major powers, the United States and the Soviet Union, have decided to begin negotiations on a question which has the utmost importance and urgency, not only for themselves, but for mankind as a whole. Never has the need for putting an end to the nuclear arms race been so universally recognized as it is today. By starting these discussions the two powers which are in control of the major part of the nuclear arsenal of the world have on their part acknowledged their supreme responsibility for the maintenance of international peace and security.

Even as we realize the complexity of the task, we believe that the starting of discussions between the two leading nuclear powers is an encouraging sign of their willingness to advance in the field of disarmament and thus to continue along the road of arms control in the spirit of the treaties on a partial test ban and on the non-proliferation of nuclear weapons. There can be no doubt that the outcome of these talks will largely determine, not only the prospects of further progress in the field of disarmament and arms control, but also the future trend of international relations as a whole.

Ladies and gentlemen, as a neutral country which maintains friendly relations, with all nations across the dividing lines of military blocks and ideological alignments, Finland is ready to make every effort to serve the cause of peace. We are proud that you have chosen Helsinki as the site for your discussions. We wish to do our utmost to facilitate your efforts. As a spokesman for the host country I would like to express the hope that the arrangements made will meet with your approval and that the neutral ground which we offer you will be beneficial to the important task that you have before you. We will now give you the privacy that you will need.

We wish you the best of success.

Thank you.

ADDRESS BY MR. V. S. SEMENOV, HEAD OF THE U.S.S.R. DELEGATION

Esteemed Mr. Karjalainen, esteemed Mr. Smith, ladies and gentlemen, permit me first of all to express our sincere gratitude to Mr. Karjalainen, Minister of Foreign Affairs, for his warm welcome and wishes for success in our work.

The Government of the U.S.S.R. attaches great importance to the negotiations on curbing strategic arms race. Their positive results would undoubtedly contribute both to improvement in the Soviet-American relations and to the consolidation of universal peace.

Unswervingly guided by the principles of ensuring lasting peace and international security, laid down by V. I. Lenin into the basis of the foreign policy of the Soviet State, the Soviet Union has always been a proponent of the implementation of the principles of peaceful co-existence, of effective measures to end the arms race and of general and complete disarmament. The Soviet moves aimed at this goal are widely supported by peace-loving states and peoples.

It is our desire to see this meeting in Helsinki successfully solving its tasks.

Curbing of the strategic arms race, limitation and subsequent reduction of such armaments—this is an important goal the achievement of which would meet the vital interests not only of the Soviet and American peoples, but also of other nations of the world.

Given genuine desire on both sides to seek mutually acceptable agreement without prejudice to the security of our states and all other countries it is possible and imperative to overcome obvious complexities and obstacles and to bring about reasonable solutions.

As regards the Soviet delegation, our efforts at the talks will be directed towards this very end.

On behalf of the U.S.S.R. delegation we extend greetings to Mr. Smith, Chairman of the United States delegation, to all its members and staff. We are hopeful that an exchange of views between us will develop in a constructive manner and create the necessary foundation for further negotiations.

In conclusion may I on behalf of the Soviet Government express our appreciation to the Government of Finland for providing opportunity to hold this meeting in Helsinki. We regard it as an expression not only of the traditional Finnish hospitality but also of the active peace-loving foreign policy of the Government of Finland which has won respect throughout the world.

STATEMENT BY AMBASSADOR GERARD C. SMITH, HEAD OF THE U.S. DELEGATION

Foreign Minister Karjalainen, Minister Semenov, ladies and gentlemen, on behalf of the United States delegation, I want to thank you, Mr. Karjalainen, for your kind words of welcome. I would also like to express the appreciation of delegation for the hospitality and cooperation of the Finnish Government in providing such a fine site for the preliminary talks on strategic arms limitation between the Soviet Union and the United States. May I thank you personally, Mr. Karjalainen, for your part in making available the accommodations for the United States delegation in this lovely city of Helsinki, the capital of a neutral country of friendly and stouthearted people.

I also wish on this occasion to extend greetings to you, Minister Semenov, and to the other members of the Soviet delegation. We look forward to working with you on the complex tasks before us. The start of these preliminary talks on strategic arms limitation is an historic occasion, for as the Secretary of State of the United States said last Thursday, the United States and the Soviet Union open today talks "leading to what could be the most critical negotiations on disarmament ever undertaken."

Mr. Foreign Minister, Minister Semenov, I have a message from the President of the United States, which I would like to read at this time.

"You are embarking upon one of the most momentous negotiations ever entrusted to an American delegation.

"I do not mean to belittle the past. The Antarctic Treaty, the Limited Test Ban Treaty, the Outer Space Treaty, and most recently the Non-Proliferation Treaty, which we hope will soon enter into force, were all important steps along the road to international security. Other tasks remain on the agenda of the United Nations and the Conference of the Committee on Disarmament. Today, however, you will begin what all of your fellow citizens in the United States and, I believe, all people throughout the world, profoundly hope will be a sustained effort not only to limit the buildup of strategic forces but to reverse it.

"I do not underestimate the difficulty of your task: the nature of modern weapons makes their control an exceedingly complex endeavor. But this very fact increases the importance of your effort.

"Nor do I underestimate the suspicion and distrust that must be dispelled if you are to succeed in your assignment.

"I am also conscious of the historical fact that wars and crises between nations can arise not simply from the existence of arms but from clashing interests or the ambitious pursuit of unilateral interests. That is why we seek progress toward the solution of the dangerous political issues of our day.

"I am, nevertheless, hopeful that your negotiations with representatives from the Soviet Union will serve to increase mutual security. Such a result is possible if we approach these negotiations recognizing the legitimate security interests on each side.

"I have stated that for our part we will be guided by the concept of maintaining 'sufficiency' in the forces required to protect ourselves and our allies. I recognize that the leaders of the Soviet Union bear similar defense responsibilities. I believe it is possible, however, that we can carry out our respective responsibilities under a mutually acceptable limitation and eventual reduction of our strategic arsenals.

"We are prepared to discuss limitations on all offensive and defensive systems, and to reach agreements in which both sides can have confidence. As I stated in my address to the United Nations, we are prepared to deal with the issues seriously, carefully, and purposefully. We seek no unilateral advantage. Nor do we seek arrangements which could be prejudicial to the interests of third parties. We are prepared to engage in bona fide negotiations on concrete issues, avoiding polemics and extraneous matters.

"No one can foresee what the outcome of your work will be. I believe your approach to these talks will demonstrate the seriousness of the United States in pursuing a path of equitable accommodation. I am convinced that the limitation of strategic arms is in the mutual interest of our country and the Soviet Union."

The United States delegation is deeply conscious of the responsibility we have in these talks to try to limit strategic arms in the United States and the Soviet Union. This objective concerns not only the United States and the Soviet Union, but the whole world.

AUTHORIZATION FOR COMMITTEE ON THE JUDICIARY TO FILE ITS REPORT ON S. 849 BY MIDNIGHT TONIGHT

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Committee on the Judiciary be authorized to file its report on S. 849, known as the Lesnick gun bill, by midnight tonight.

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

(Subsequently, as in legislative session, Mr. DODD, from the Committee on the Judiciary, reported favorably with amendments, the bill (S. 849) to strengthen the penalty provisions of the Gun Control Act of 1968, and submitted a report (No. 91-539) thereon.)

NEWSPAPER PRESERVATION ACT—REPORT OF A COMMITTEE—INDIVIDUAL VIEWS (S. REPT. NO. 91-535)

Mr. EASTLAND. Mr. President, as in legislative session, from the Committee on the Judiciary, I report favorably, with amendments, the bill (S. 1520) to exempt from the antitrust laws certain combinations and arrangements necessary for the survival of failing newspapers, and I submit a report thereon. I ask unanimous consent that the report be printed, together with the individual views of the Senator from Nebraska (Mr. HRUSKA).

The PRESIDING OFFICER. The report will be received and the bill will be placed on the calendar; and, without objection, the report will be printed, as requested by the Senator from Mississippi.

AMENDMENT TO H.R. 13270 TO END THE INCOME TAX SURCHARGE AS OF JANUARY 1, 1970

AMENDMENT NO. 287

Mr. BYRD of Virginia. Mr. President, as in legislative session, I sent to the desk an amendment to H.R. 13270, the tax reform bill. I ask that this amendment be printed.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. BYRD of Virginia. My amendment would end the surcharge on income taxes as of January 1, 1970.

When the surtax first was imposed, it was described as a temporary tax. At the end of this year, it will have been in effect for 21 months for individuals and 24 months for corporations.

It already has been extended once beyond its original expiration date. In my opinion, extension of the tax beyond the end of 1969 would take it out of the "temporary" category.

I give full credence to the President's good intentions in his pledge that the tax will be allowed to die as of July 1, 1970, but I fear that the temptation to extend it beyond that date will be very strong—just as was the temptation to extend it beyond its previous termination date of June 30, 1969.

Each extension of a tax makes the next extension easier.

Sooner or later—and I suspect the time is at hand—the Government will begin to regard the temporary tax increase as a permanent part of the tax structure.

I think that this must be avoided. I think that the Government must keep faith with the people.

The way to keep faith with the people is to kill the surcharge on income taxes as of the end of this year.

There is evidence that many Senators have serious misgivings about extending the surtax. When a vote was taken on the question in the Senate Finance Committee, the count was only 9 to 7 in favor of extension.

I recognize that there is a pressing need to combat inflation in this country. But I submit that the best way to fight the war on inflation is by reducing spending—not by increasing taxes.

During the recent debate on the military procurement bill, I remarked that it was essential to cut the fat from the military budget, but that we dare not cut the muscle. That statement applies with equal force to the whole budget.

I am convinced that, despite the commendable efforts of the administration to reduce the budget, there remain significant areas of fat that can be trimmed.

For one thing, the proposed budget for foreign economic aid is $2.2 billion. That is almost double last year's authorization—an increase of a billion dollars.

I do not believe that the American people should be called upon to pay a surcharge on their income taxes to help finance this kind of increase. As a matter of fact, I am strongly inclined to vote against the entire appropriation for foreign economic aid, for I know that there is $5.2 billion available in the pipeline to take care of contingencies.

The anticipated revenue from the surtax at the proposed rate of 5 percent for the first 6 months of 1970 is approximately $1.7 billion, according to the Budget Bureau's September estimate. Elimination of the foreign aid authorization would more than compensate for the loss of this revenue.

As a matter of fact, if the surtax were to die on next January 1, foreign aid could be funded at a reduced level without changing the administration's budget goals.

Foreign aid is not the only area of the budget in which there is considerable fat. I feel sure that reductions can be made without damage to the Nation in the antipoverty program—in which there has been much waste and inefficiency—and in a number of other domestic fields. Furthermore, the $2 billion reduction made so far in the military budget probably is not the limit of what can be cut without risking our security.

I admit that, if the surtax is eliminated, it will make the budgetary choices ahead of us more difficult. But I feel that we must undergo necessary discipline. We must control spending.

In the long run, controlled spending—and not repeated extensions of tax increases—will best combat inflation.

ORDER OF BUSINESS

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

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

SENATE RESOLUTION 285—RESOLUTION AUTHORIZING SENATE FOREIGN RELATIONS COMMITTEE TO STUDY POSSIBILITIES FOR INTERNATIONAL COOPERATION IN SPACE EXPLORATION

Mr. PROXMIRE. Mr. President, in recent years, a number of Senators have been concerned over the high costs of the U.S. space program. Unfortunately, efforts to reduce these costs have been consistently met with the argument that man's thirst for knowledge and the advancement of science compel us to keep our space program fully funded.

However, a way does exist to sharply cut our costs on the space program without reducing advancements in this area. It involves sharing the benefits and costs of space exploration with the international community.

Accordingly, Mr. President, as in legislative session, on behalf of myself and Senators GOODELL, HART, MCCARTHY, MCGOVERN, MONDALE, MUSKIE, NELSON, PACKWOOD, PASTORE, SPARKMAN, TYDINGS, and YARBOROUGH, I am today submitting a resolution which would authorize the Senate Foreign Relations Committee to undertake a comprehensive study of all possibilities for international cooperation in space exploration.

The resolution reads as follows:

Resolved, That the Committee on Foreign Relations, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, and in accordance with its jurisdiction specified by Rule XXV of the Standing Rules of the Senate, to make a full and complete study of the possibilities for international cooperation and cost sharing in the exploration of space, including, but not limited to, the desirability and feasibility of—

(1) establishing an international consortium for space missions, or

(2) utilizing the United Nations Organization, or a subsidiary organization thereof, for securing international cooperation and participation in the exploration of space.

SEC. 2. The Committee shall report its findings upon the study authorized by the resolution, together with such recommendations, including recommendations for additional legislation, as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1971.

SEC. 3. For the purposes of this resolution the committee is authorized, through February 28, 1971, (1) to make such expenditures as it deems advisable; (2) to employ upon a temporary basis, technical, clerical, and other assistants and consultants; and (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

Mr. PROXMIRE. Mr. President, such a study has been sorely needed for a long time. The benefits from space exploration are certainly international in character.

We ought to realize that the moon flights, for example, are going to be just as beneficial to a person in West Germany or in England or in France or in Russia, for that matter, as to an individual American. The benefits are the satisfaction in seeing men in space and on the moon and the knowledge of how the moon, the earth, and the sun evolved. Nobody is saying that we should keep these secrets or that we are going to do so.

So everybody is going to benefit almost equally, throughout the world.

We all know that the space exploration has no military value. This particular space effort certainly does not. Of course, we have to recognize the multibillion dollar cost of future explorations, including those in the solar system and those beyond the solar system, and no one would maintain that there is any national value in our taking that long step for mankind. Yet, we all know that it is going to be taken.

Unless we move, and move soon, to begin to get an understanding of the possibilities of involving other countries, our taxpayers are going to be so heavily burdened that either they are going to refuse to go ahead, understandably, or we are going to have a very heavy burden of space exploration which, as I have said, will benefit all mankind, but the cost will be on the American taxpayer.

Achievements in space inure to the benefit of all mankind, not just to citizens of any one nationality. Moreover, any psychological lift or entertainment value generated by space spectaculars is shared equally by the world community. If the benefits are shared on an equal basis, why not the costs? Hundreds of millions of dollars could be saved—and should be saved—by encouraging other nations to join us in the space venture.

In the past, NASA has repeatedly asked the Soviet Union if they would cooperate and share expenses on various aspects of the space program. A list of these efforts through the end of 1967 was included in the hearings on the NASA authorization bill for fiscal 1970, and I should like to read this list because I think it sheds some light on the way NASA has approached this question in the past:

December 7, 1959.—NASA Administrator Glennan offered U.S. assistance in tracking Soviet manned flights. The Soviets replied that they would be in touch if the need arose.

March 7, 1962.—President Kennedy proposed an exchange of tracking and data acquisition stations. The Soviets did not accept.

September 20, 1963.—President Kennedy suggested in a speech to the U.N. General Assembly that the United States and the U.S.S.R. explore the possibility of joint exploration of the moon. President Johnson later reaffirmed this offer. There has been no official Soviet response.

December 8, 1964.—NASA proposed an exchange of visits by NASA and Soviet teams to deep space tracking and data acquisition facilities. The Soviets replied on August 13, 1965, that such visits were not then possible.

May 3, 1965.—NASA suggested United States/U.S.S.R. communications tests via the Soviet Molniya I. There was no Soviet response.

August 25, 1965.—At the request of President Johnson, Administrator Webb invited the Soviet Academy of Sciences to send a high-level representative to the launching of Gemini VI. At the same time, the President said that "we will continue to hold out to all nations, including the Soviet Union, the hand of cooperation in the exciting years of space exploration which lie ahead for all of us." The Soviets did not accept this invitation.

November 16, 1965.—NASA inquired about the possibility of United States/U.S.S.R. communications tests via Molniya I. On January 23, 1966, the Soviets replied that it was not possible to consider joint experiments "in the present conditions."

January 6, 1966.—Administrator Webb asked Academician Blagonravov, Chairman of the Soviet Academy's Commission on the Exploration and Use of Outer Space, for a description of experiments on Soviet Venus probes then in flight in order that NASA plans for Venus probes might emphasize experiments which could complement rather than duplicate Soviet work. Blagonravov replied informally that he did not have authority to describe the experiments.

March 24 and May 23, 1966.—Administrator Webb suggested to Academician Blagonravov that the Soviets propose subjects for discussion with a view to extending cooperation between NASA and the Soviet Academy. Blagonravov replied informally that the Soviets were not ready for further cooperation.

September 22, 1966.—Ambassador Goldberg, speaking in the U.N. General Assembly, said that if the U.S.S.R desired tracking coverage from US. territory, we were prepared to discuss with the Soviets the technical and other requirements involved "with a view to reaching some mutually beneficial agreement."

March 27, 1967.—President Seitz, of the National Academy of Sciences, proposed to President Keldysh, of the Academy of Sciences of the U.S.S.R. that the U.S.S.R. provide the United States with some results of the Luna 13 soil meter experiment in advance of Soviet normal reporting to the world scientific community in return for comparable data from future flights in the Surveyor series. President Keldysh replied 4 months later on July 28, forwarding data which had already been reported at the International Committee on Space Research (COSPAR) meeting in London.

March 27–31, 1967.—Dr. Kistiakowsky, during the visit of a National Academy of Sciences delegation to Moscow, suggested small United States/U.S.S.R. meetings to consider such topics as cooperation in weather prediction, lunar and planetary research, and orbiting telescopes. At the same time, Dr. Brown proposed that representatives of the two academies consider joint space efforts in basic science, excluding rocketry. The Soviets have not replied to these proposals.

April 4, 1967.—Administrator Webb said in his statement on the death of Cosmonaut Komarov that NASA wished to make every realistic effort to cooperate with the Soviet Union. The Soviets have not responded.

June 2, 1967.—Administrator Webb proposed to Academician Blagonravov that they meet in July at the time of the COSPAR meeting in London to review progress in the exchange of weather data as required every 6 months under bilateral agreements. Blagonravov replied on July 3 that he had been unable to arrange for the presence of the necessary Soviets experts. The required

semiannual meetings had not been held since October 1965.

October 10, 1967.—President Johnson, speaking on the occasion of the entry into force of the U.N. Outer Space Treaty, listed previous U.S. offers of cooperation and said "We again renew these offers today. They are only the beginnings of what should be a long, cooperative endeavor in exploring the heavens together."

October 18, 1967.—President Seitz of the National Academy of Sciences, in a telegram congratulating Academician Keldysh on the success of Venus 4, spoke of the need to further full and prompt exchange of data on planetary exploration. Keldysh's telegram of acknowledgement made no reference to data exchange.

December 15, 1967.—President Seitz of the National Academy wrote to Academician Keldysh proposing a small working meeting between the Soviet Venera IV experimenters and the American Mariner V experimenters to compare results of the two Venus probes and to assist each other in understanding the significance of the measurements. Keldysh replied in a letter of January 24, 1968, that he would be sending proposals on this matter shortly. The proposals never came, and there has been no further Soviet response.

Mr. PROXMIRE. Mr. President, nowhere in this list do I find any efforts to make a unilateral offer to have the Soviet Union participate, without insisting on a quid pro quo in return. Have we, for example, ever offered to take a Russian cosmonaut along with us to the moon? Have we sent samples of moon rock to the U.S.S.R. for Russian scientists to analyze? Or have we instead made sharing strictly conditioned on getting some of Russia's undisclosed space information in return? A reading of the list suggests such a limitation, which in turn could well have led to the rejection which NASA complains of.

It is precisely because I think new approaches are needed—approaches that are not limited by old thoughts and concepts—that I am asking the Foreign Relations Committee to make this study. Granted, if such a unilateral approach were to be undertaken, it is possible that at the outset little would be saved in terms of American outlays, American manpower, and the like. But as time goes on, I am convinced that space exploration can—and must—become a cooperative effort, and that the U.S.S.R. would be encouraged to contribute whatever it could in terms of money, manpower, equipment, and technology in order to reap benefits which are of as much value to the Russian citizen as they are to us.

But another, and more important, reason exists for my asking the Foreign Relations Committee to make this study. In the past, NASA's efforts to achieve cooperation have been limited exclusively to the U.S.S.R.—presumably on the ground that they are the only other nation in the world which presently has any space capability. It is high time, Mr. President, that we considered inviting other nations—indeed, the entire world community—to participate in this venture whose benefits are of such an international character. I might add that Russia is only one country. Other countries have great scientific achievements and they should be invited to come in.

As stated by NASA, the space program—and in particular the Apollo series—is designed to provide clues to the origin and development of the moon, the earth, and the entire solar system. If this is the primary mission of space exploration, I can think of nothing which is less of a national character, or which has more of an international purpose, than such a goal. Surely the common man in the street—whatever his nationality—would feel the same thrill of discovery as the American man in the street at new information concerning the origin of our planet and the beginnings of the human race.

It is to provide the approach which would include the entire world community at large that I have asked the Senate to authorize a study by the Foreign Relations Committee.

The resolution suggests two possible avenues to take advantage of international cooperation in space, although the committee is free to consider such other approaches as it deems appropriate. First, the resolution calls upon the committee to consider the example of the Intelstat consortium as one avenue toward international cooperation and sharing of costs. The Communications Satellite Corporation—Comsat—was set up in 1962 pursuant to the Communications Satellite Act. Since 1962 Comsat has acted as manager for the Intelstat international consortium in arranging for satellite launches, and Comsat has also served as the American representative in the consortium. Member nations own and operate earth stations that are located in their country—stations are strategically situated around the globe for the purpose of tracking the satellites and communicating with them. Since all of the launch capability and most of the technological capability is presently concentrated in the United States, Comsat, the American representative, is charged with management responsibility for the entire system. Nevertheless, the goal of global communications is one in which all nations share a common interest. This has been borne out by the resounding success enjoyed by Intelstat in the 7 years of its existence. More than 60 nations now belong to the consortium and share its costs.

The possibility of establishing a similar international consortium for space missions is certainly worth exploring. Space exploration, like global communications, is a goal in which all nations have a common interest. Success of the Comsat experiment augurs well for the approach outlined in my amendment. Of course, should NASA and the State Department recommend the establishment of such an organization, an act of Congress would be required to set the necessary wheels in motion.

A UNITED NATIONS SPACE COUNCIL

My resolution would also direct the committee to consider the possibility of bringing space exploration under the jurisdiction and control of thhe United Nations. Such a step, if recommended, would emphasize the peaceful nature of space exploration, and could even provide a mechanism for insuring against the use of space for military advantage.

Utilizing the United Nations would permit each of the 120-odd member nations to contribute whatever they could—in terms of manpower, money, equipment, technology—to the common pursuit of knowledge. The mechanism could be structured along the lines of the World Health Organization, a U.N. subsidiary whose aim of advancing the cause of science and medicine is not too far different from the U.N. Space Council which I am proposing. A corollary benefit of this approach could be to bolster and revitalize the parent United Nations.

Mr. President, the current flight of Apollo 12, which is costing the American taxpayers $350 million, points up the gigantic cost of our space program, and should provide a tremendous incentive to get such a study underway at the earliest possible moment.

I might add that $350 million, as I understand it, is the out-of-pocket cost for this flight. If one were to prorate the overhead costs all together, the cost of the three flights this year would be in the neighborhood of $1.7 billion. If we fund nine additional flights the cost will be around $5 billion. Therefore, if other countries assist us the immediate benefits and the longterm benefits can be seen because of the enormous cost of going to Mars and unimagined cost to go farther, which we may want to do in a few years. I strongly urge the Senate to give this resolution early and favorable consideration.

Mr. President, I send the resolution to the desk for appropriate reference.

The PRESIDING OFFICER (Mr. GRAVEL in the chair). The resolution will be received and appropriately referred.

The resolution (S. Res. 285) was referred to the Committee on Foreign Relations.

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

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

ADJOURNMENT TO 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in executive session, in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 1 minute p.m.) the Senate adjourned until tomorrow, Wednesday, November 19, 1969, at 10 a.m.